

# **Inquiry into the adequacy of existing financial protections for Queensland's seniors**

**Report No. 2, 55th Parliament  
Communities, Disability Services and Domestic  
and Family Violence Prevention Committee  
August 2015**

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Family Violence Prevention Committee**

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## **Communities, Disability Services and Domestic and Family Violence Prevention Committee**

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**Deputy Chair** Mr Mark McArdle MP, Member for Caloundra

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### **Acknowledgements**

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## Contents

<b>Abbreviations</b>	<b>vi</b>
<b>Chair's foreword</b>	<b>ix</b>
<b>Recommendations</b>	<b>x</b>
<b>1. Introduction</b>	<b>15</b>
1.1 Role of the Committee	15
1.2 Referral of the Inquiry	15
1.3 Inquiry process	16
<b>2. Inquiry overview</b>	<b>17</b>
2.1 Background	17
2.2 An agenda for financial protection	22
2.3 Who are Queensland's seniors?	25
2.4 Financial wellbeing and financial security of Queensland's seniors	28
<b>3. Financial inclusion and support</b>	<b>34</b>
3.1 Mature workforce engagement	35
3.2 Income support and concessions	38
3.3 Housing support	42
3.4 Consumer credit and financial products	48
3.5 Social participation and support	52
<b>4. Financial literacy</b>	<b>59</b>
4.1 Current levels of financial literacy	62
4.2 Improving financial literacy	64
<b>5. Support for independent financial decision-making</b>	<b>71</b>
5.1 Financial planning	71
5.2 Financial counselling and advice	74
5.2.1 <i>Reverse mortgages, credit contracts and debt issues</i>	77
5.2.2 <i>Housing and aged care options</i>	81
5.3 Implications for support services	83
<b>6. Online vulnerabilities and fraud</b>	<b>92</b>
6.1 Seniors' engagement with online technologies	92
6.2 Prevalence and impacts of consumer scams	95
6.3 Risk factors for victimisation	98
6.4 System responses to fraud	100
6.4.1 <i>Underreporting of victimisation</i>	100
6.4.2 <i>System response challenges</i>	101
6.4.3 <i>Post-incident support</i>	103
6.5 Early detection and prevention	106
<b>7. Support for seniors requiring financial protection</b>	<b>111</b>
7.1 Federal provisions and partnerships	111

7.2	Financial elder abuse in Queensland	114
7.2.1	<i>Impacts of financial elder abuse</i>	118
7.3	Preventing and responding to financial abuse	119
7.3.1	<i>Elder Abuse Prevention Unit</i>	119
7.3.3	<i>Seniors Legal and Support Service</i>	124
7.3.4	<i>Office of the Public Guardian</i>	126
7.3.6	<i>Current service limitations</i>	130
7.3.7	<i>Legislative protections against financial elder abuse</i>	133
7.3.8	<i>Alternative dispute resolution: supported elder mediation</i>	136
7.3.9	<i>Prevalence study</i>	137
7.4	Supported and substituted decision-making	138
7.4.1	<i>Prioritising supported decision-making</i>	138
7.4.2	<i>The Public Trustee</i>	145
7.4.3	<i>Elder abuse and powers of attorney</i>	147
7.4.4	<i>Registration of powers of attorney</i>	149
7.4.5	<i>Enhanced legislative responses to guardianship and administrative abuses</i>	152
7.4.6	<i>Improved access to legal remedies</i>	153
7.5	Education and awareness	156
7.6	Other service providers	157
7.6.1	<i>Health Justice Partnerships</i>	159
<b>8.</b>	<b>Financial sector role</b>	<b>162</b>
	<b>Appendix A – Terms of Reference</b>	<b>173</b>
	<b>Appendix B – List of Submissions</b>	<b>174</b>
	<b>Appendix C – List of Witnesses at Public Briefings and Hearings</b>	<b>175</b>

## Figures and Tables

Figure 1	Identified reasons retirement decisions were unpleasant/challenging	76
Figure 2	Abuse types experienced by victims – Helpline data 2012-14	120
Figure 3	Comparison of primary abuse type for impaired and unimpaired victims – Helpline data 2013-14	121
Figure 4	Orders by respondent relationship and age, Helpline data 30 June 2004 to 30 June 2012	122
Figure 5	Relationship between perpetrator and victim – Helpline data 1 July 2013 to 30 June 2014	122
Figure 6	Referral breakdown for EAPU Helpline calls, 2013-14	123
Figure 7	Perpetrator's relationship to client – from a sample of 500 cases	134
Table 1	Expected demographic movements, population aged 60 years and over, Queensland, 2011-2036	18
Table 2	Dementia prevalence estimates and projections – Queensland population groups	19
Table 3	Abuse victims and perpetrators by gender, 2013-14	121

## Abbreviations

ABA	Australian Bankers' Association
ABARES	Australian Bureau of Agricultural and Resource Economics and Sciences
ABS	Australian Bureau of Statistics
ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
ACMA	Australian Communications and Media Authority
ACORN	Australian Cybercrime Online Reporting Network
ADCQ	Anti-Discrimination Commission Queensland
AFSA	Australian Financial Security Authority
AHD	Advance Health Directive
AHURI	Australian Housing and Urban Research Institute
AIC	Australian Institute of Criminology
AICA	Australian Indigenous Communications Association
AIFS	Australian Institute of Family Studies
AIHW	Australian Institute of Health and Welfare
AIM	The Australian Institute of Management
ALRC	Australian Law Reform Commission
ANZ	Australia and New Zealand Banking Group Limited
APSL Qld	Australian Pensioners' and Superannuants' League Queensland Inc.
APRA	Australian Prudential Regulation Authority
APS	Adult Protective Services (US)
ARC	Australian Research Council
ASFA	Association of Super Funds of Australia
ASIC	Australian Securities and Investments Commission
ATM	Automatic Teller Machine
ATSI	Aboriginal and Torres Strait Islander
ATSILS	Aboriginal and Torres Strait Islander Legal Service
BCC	Brisbane City Council
CALD	Culturally and Linguistically Diverse
CDC	Consumer Directed Care
CEDA	Committee for the Economic Development of Australia
CEPAR	Centre of Excellence in Population Ageing
CEO	Chief Executive Officer

CHSP	Commonwealth Home Support Program
CHURP	Centre for Housing, Urban and Regional Planning
Committee	Communities, Disability Services and Domestic and Family Violence Prevention Committee
COTA	Council on the Ageing
Com. Dec.	Commissioner of Declarations
CSI	Centre for Social Impact
Department	Department of Communities, Child Safety and Disability Services
DVO	Domestic Violence Order
EAPU	Elder Abuse Prevention Unit
EFTPOS	Electronic Funds Transfer at Point of Sale
EPoA	Enduring Power of Attorney
FOS	Financial Ombudsman Service
FIS	Financial Information Service (Centrelink)
FTE	Full-time equivalent
HSBC	Hong Kong and Shanghai Banking Corporation
Inquiry	Inquiry into the adequacy of existing financial protections for Queensland's seniors
ISSR	Institute for Social Science Research
JP	Justice of the Peace
LAQ	Legal Aid Queensland
NAB	National Australia Bank
NASD	National Association of Securities Dealers, Inc.
NATSEM	National Centre for Social and Economic Modelling
NILS	No Interest Loan Scheme
NSWLRC	New South Wales Law Reform Commission
OECD	Organisation for Economic Cooperation and Development
OICV-IOSCO	Board of the International Organisation of Securities Commissions
OPG	Office of the Public Guardian
OPSO	Older People Speak Out
QADA	Queensland Aged and Disability Advocacy Inc.
QCAT	Queensland Civil and Administrative Tribunal
QCOSS	Queensland Council of Social Service
QGSO	Queensland Government Statistician's Office
QLRC	Queensland Law Reform Commission



QPS	Queensland Police Service
PAVIL	Park and Information Link
PoA	Power of Attorney
PT	Public Trustee
SEQUAL	Senior Australians Equity Release
SLASS	Seniors Legal and Support Service
SMS	Short Message Service
SMSF	Self-Managed Superannuation Fund
The Tracker	Australian Financial Attitudes and Behavioural Tracker
WHO	World Health Organisation

## Chair's foreword

Increased longevity and an ageing population are rewarding Queensland with the opportunities associated with a growing and diverse senior population. By mid-century, it is estimated that close to a quarter of the state's population will be aged 65 years and over, and these individuals can look forward to many more years of life than could be expected in previous eras.

These additional years should be active and enjoyable, and characterised by high levels of wellbeing and financial and personal security. However, the Committee recognised that the wide range of opportunities for seniors' extended engagement and participation in society in later years can also be accompanied by certain challenges and vulnerabilities.

Seniors entering or in retirement confront an increasingly complex financial investment landscape and an associated array of significant financial decisions with direct and lasting impacts on their lifestyle and ability to access to essential services. These decisions mean that our seniors have to develop specific knowledge and skills, at a time when they may confront declining capability associated with increasing rates of dementia and other age-related or personal vulnerabilities. Unfortunately, these circumstances can give rise to instances of serious financial mismanagement, exploitation, or abuse. Alarming, as the Committee heard, such acts can be carried out in family contexts by those nearest and dearest, with irreparable impacts on seniors' financial and personal wellbeing.

It is incumbent on Government and society to ensure that adequate safeguards are put in place to minimise risks of such incidents. A preventative and proactive focus in this regard is especially critical, given seniors' reduced capacity to recoup losses through employment or other active income generating pursuits. When abuse, mistreatment and exploitation of older people occurs, affected individuals must also be provided with information, support and practical assistance to help them find a remedy for their suffering, and to regain a good quality of life.

This report presents a summary of the Committee's inquiry into the adequacy of existing financial protections for Queensland's seniors. In forming its recommendations, the Committee was particularly aware of the need for responses to be based on a strong commitment to the human rights of older people, including their right to guide any action which may be taken on their behalf. If we are to successfully address the dangers of perceptions of entitlement and due inheritance, and support a shift to sustainable financial self-provision in later age, we must put in place the necessary information and decision-making support structures to better facilitate positive outcomes for our seniors.

On behalf of the Committee, I thank those individuals and organisations who lodged written submissions and participated in the public hearing process throughout the course of the inquiry. I also thank the Committee's Secretariat and the Department of Communities, Child Safety and Disability Services.

I commend this Report to the House.



Leanne Donaldson MP  
**Chair**

## Recommendations

### **Recommendation 1** 22

The Committee recommends that the Queensland Government develop an updated whole-of-government seniors' strategy.

### **Recommendation 2** 23

The Committee recommends that the Department review its existing staffing arrangements to ensure they adequately support the development and ongoing implementation of the seniors' policy agenda.

### **Recommendation 3** 25

The Committee recommends that the Department ensure that current information and service delivery mediums are sufficiently inclusive and multifaceted to ensure vulnerable seniors are not disadvantaged in terms of their awareness and/or access to vital programs and support.

### **Recommendation 4** 38

The Committee recommends that the Queensland Government investigate the introduction of a whole-of-government program to support and monitor employment among over 50s in Queensland, including particular strategies and initiatives for those vulnerable population groups who are especially underrepresented or disadvantaged in terms of both employment opportunities and average wage levels.

### **Recommendation 5** 42

The Committee recommends that the Queensland Government consider supporting a thorough review of current and potential concessions to ensure that supports and services are appropriately targeted to those individuals who are most in need of assistance, and that an appropriate mix of communication channels and messages are employed to ensure such supports and services are accessible to Queenslanders.

### **Recommendation 6** 47

The Committee recommends that the Queensland Government develop a seniors housing framework which facilitates growth in affordable and accessible housing options and supports seniors to live as safely and independently as possible.

### **Recommendation 7** 47

The Committee recommends that the Queensland Government finalise and implement recommendations stemming from existing reviews of the *Retirement Villages Act 1999* and the *Manufactured Homes (Residential Parks) Act 2003*.

### **Recommendation 8** 52

The Committee recommends that the Department's development of financial resilience and inclusion strategies include exploring options to address the credit and insurance needs of financially excluded seniors, and improving referral pathways linking older Queenslanders with safe, affordable alternative financial service products.

**Recommendation 9** 58

The Committee recommends that the Queensland Government ensure that its whole-of-government seniors' strategy includes an explicit focus on reducing social isolation and fostering the active engagement and participation of seniors in community and social life, in keeping with best practice guidelines.

**Recommendation 10** 58

The Committee recommends that the Queensland Government, in connection with regional councils, conduct inquiries into the policy implications of ageing communities, with a view to joining the WHO Global Age Friendly Cities and Communities Network.

**Recommendation 11** 70

The Committee recommends that the Queensland Government explore options to improve the efficacy of current financial literacy efforts through the incorporation of more interactive, practice-based program delivery methods and the informed development of more specific, targeted interventions for the State's most vulnerable seniors and the particular financial decisions with which they are faced.

**Recommendation 12** 74

The Committee recommends that the Queensland Government develop a coordinated, whole-of-government strategy to encourage long-term financial planning and pro-active independent decision-making, including improved uptake of powers of attorney, advanced care directives and will making.

**Recommendation 13** 90

The Committee recommends that the Queensland Government investigate the establishment of a dedicated, 24-hour financial advice helpline, drawing on the model provided by the UK FirstStop service.

**Recommendation 14** 90

The Committee recommends that the Queensland Government work in partnership with Federal counterparts to explore options to reduce the complexity of aged care related contracts and educate consumers about fair and reasonable charges and contract conditions.

**Recommendation 15** 90

The Committee recommends that the Queensland Government reinstate funding for financial counselling in Queensland, and investigate ways to better facilitate vulnerable seniors' access to and uptake of free and independent financial advice.

**Recommendation 16** 91

The Committee recommends that the Queensland Government explore options to encourage the formalisation of family agreements.

**Recommendation 17** 106

The Committee recommends that the Queensland Government engage with the Queensland Police Service and other key financial sector and consumer protection agencies in support of more comprehensive training for frontline staff in culturally appropriate and sensitive responses to victims of fraud.

**Recommendation 18** 106

The Committee recommends that the Queensland Government explore options for improved support for Queensland seniors who are victims of fraud, including:

- partnering with key agencies to establish built-in mechanisms for referral to personal and financial counselling and victim support groups
- increased resourcing for victim support groups in high victimisation areas, including dedicated telephone counselling and referral options as employed in Canada
- consideration of options for statutory provision of non-financial assistance mechanisms in the *Victims of Crime Assistance Act 2009*.

**Recommendation 19** 109

The Committee recommends that the Queensland Police Service explore further opportunities to leverage financial sector partnerships and technological systems to trace questionable or irregular transactions and identify early intervention opportunities.

**Recommendation 20** 110

The Committee recommends that the Queensland Government continue to support seniors' positive engagement with computing and internet technologies, through computer literacy and cyber-safety education programs and resources.

**Recommendation 21** 110

The Committee recommends that the Queensland Government develop a fraud prevention and awareness campaign based on best practice evidence, to reduce barriers to reporting and build resilience to social engineering techniques.

**Recommendation 22** 110

The Committee recommends that the Queensland Government consider the introduction of a comprehensive telephone and advice service in relation to consumer protection and scams, modelled on the "Savvy Seniors" program developed in South Australia.

**Recommendation 23** 114

The Committee recommends that the Queensland Government continue to work with the Federal Government and enforcement agencies to promote responsible lending and other ethical business practices to better safeguard the interests and assets of vulnerable seniors.

**Recommendation 24** 131

The Committee recommends that the Queensland Government audit and increase Seniors Legal and Support Services provided throughout the State and prioritise the provision of services to regional hubs and under-served areas.

**Recommendation 25** 133

The Committee recommends that the *Public Guardian Act 2014* be amended to allow the Office of the Public Guardian to continue to investigate a matter, notwithstanding the death of the individual whose affairs are being investigated.

**Recommendation 26** 133

The Committee recommends that the community visitors program be expanded into all areas of care in Queensland.

**Recommendation 27** **133**

The Committee recommends the development of agreed standards of care for clinical staff working in care in Queensland with regard to the recognition and identification of risk factors relating to abuse and exploitation.

**Recommendation 28** **133**

The Committee recommends that clinical staff working in aged care in Queensland be required to be mandatory reporters where abuse or exploitation of a person with impaired capacity is suspected, regardless of the nature of the abuse or exploitation.

**Recommendation 28** **136**

The Committee recommends that the definitions of “relevant relationship” in the *Domestic and Family Violence Prevention Act 2012* be amended to include paid carers, companions, friends and boarders.

**Recommendation 29** **137**

The Committee recommends that the Queensland Government develop programs to enhance the delivery, availability and accessibility of Supported Elder Mediation.

**Recommendation 30** **138**

The Committee recommends that the Queensland Government commission a study into the prevalence of elder abuse in Queensland.

**Recommendation 31** **145**

The Committee recommends that the Queensland Government work closely with service providers to develop a broader range of strategies to assist individuals manage their affairs in the least restrictive, most supported way possible.

**Recommendation 32** **145**

The Committee recommends that the Queensland Government explore options to ensure substitute decision-making paperwork better reflects principles of supportive decision-making and more clearly communicates to the parties involved the implications of the arrangements.

**Recommendation 33** **147**

The Committee recommends that the Queensland Government consider and adopt strategies to regulate and record the appointment of attorneys in Queensland.

**Recommendation 34** **147**

The Committee recommends that the Queensland Government consider amendments to the *Powers of Attorney Act 1998* to expressly provide that attorneys demonstrate explicit and actual knowledge of an attorney's duties and responsibilities before they are appointed as an attorney.

**Recommendation 35** **149**

The Committee recommends that the *Powers of Attorney Act 1998* be amended to provide a specific duty for former attorneys to produce and hand over records to subsequent attorneys.

**Recommendation 36** **149**

The Committee recommends that the *Public Trustee Act 1978* is amended to give the Public Trustee powers to enable them to investigate and prosecute both current and former attorneys where there is evidence of financial abuse, regardless of whether the person has capacity.

**Recommendation 37** **152**

The Committee recommends the compulsory registration of powers of attorney.  
The Committee recommends that the Queensland Government work with the Federal Government to implement a Federal Register to complement the proposed State Register.

**Recommendation 38** **153**

The Committee recommends that the Queensland Government provide an update on its position regarding recommendations 17.18 and 17.19 of Queensland Law Reform Commission report no. 67, *A review of Queensland's Guardianship Laws* (2010).

**Recommendation 39** **156**

The Committee recommends that the Queensland Government examine options to improve available financial remedies and compensation available for seniors who are victims of financial elder abuse.

**Recommendation 40** **157**

The Committee recommends that the Queensland Government develop an education and awareness program that promotes awareness of elder abuse and incorporates a range of accessible and inclusive community education programs that outline the role and responsibilities of powers of attorney.

**Recommendation 41** **161**

The Committee recommends that the Queensland Government implement a multi-disciplinary approach to training, support and reporting elder abuse.

**Recommendation 42** **172**

The Committee recommends that the Queensland Government support efforts to develop more formal protocols and service obligations for financial services providers with regard to elder abuse, including exploring opportunities for trials of coordinated partnership projects and mandatory reporting.

## 1. Introduction

### 1.1 Role of the Committee

The Communities, Disability Services and Domestic and Family Violence Prevention Committee (Committee) is a portfolio committee of the Queensland Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001*, and the Standing Rules and Orders of the Legislative Assembly.<sup>1</sup>

The Committee's primary areas of responsibility include:

- Communities, Women, Youth, Child Safety and Multicultural Affairs
- Domestic and Family Violence Prevention, and
- Disability Services and Seniors.

Section 92 of the *Parliament of Queensland Act 2001* provides that, in relation to its areas of responsibility, a portfolio committee is responsible for:

- considering legislation and proposed legislation
- considering Appropriation Bills
- performing a public accounts and public works role, and
- dealing with any other issues referred to it by the Legislative Assembly or under another Act of Parliament.

### 1.2 Referral of the Inquiry

On 27 March 2015, the Legislative Assembly agreed to a motion that the Committee inquire into and report on the adequacy of existing financial protections for Queensland's seniors (the Inquiry), including:

- the current levels of financial literacy of seniors and how that can be improved, for example by education programs
- what support and advice is available to assist seniors with their independent financial decision-making
- online and internet based vulnerabilities and the prevalence and vulnerability of seniors to scams
- agencies and organisations that provide advice and support to seniors requiring financial protection, and
- the role of the financial sector in ensuring adequate safeguards for seniors in relation to financial decision-making.

In undertaking the Inquiry, the Committee was to seek public submissions and consult with key stakeholders, including seniors' representative bodies, the financial sector and relevant experts.

The Committee was required to report to the Legislative Assembly by 31 August 2015. The Terms of Reference are provided in **Appendix A**.

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<sup>1</sup> *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.



### 1.3 Inquiry process

After receiving the referral, the Committee determined it would call for public submissions and set a closing date for written submissions of 31 May 2015. The Committee received a total of 20 written submissions. A list of those submissions is provided at **Appendix B**.

The Committee also held public briefings attended by representatives from the Department of Communities, Child Safety and Disability Services (Department) and other key agencies, to receive an overview of existing services and identify service issues and emerging trends. This included:

- A public departmental briefing on 6 May 2015, and
- A public briefing from Queensland Police Service (QPS) and the Queensland Health Elder Abuse Prevention Unit (EAPU) on 20 May 2015.

In accordance with the Terms of Reference, the Committee also held public hearings in Brisbane on 3 June 2015 and 15 July 2015, to take evidence from professional bodies and affected individuals and thereby shed light on the operation of various protective mechanisms, and any shortcomings or opportunities for improvement.

A list of witnesses who provided evidence to the Committee appears at **Appendix C**. Transcripts for the public hearings are available on the Committee website.<sup>2</sup>

The Committee received a considerable amount of evidence from submitters and witnesses and accumulated significant additional information through its own research activities.

This report sets out a summary of the Committee's consideration of these materials and makes a number of recommendations as to measures to improve financial literacy and decision-making and increase resilience to financial risks and shocks in older age; thereby supporting Queensland's seniors to maintain their fiscal wellbeing and sustainability, and remain active participants in society throughout their later years.

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<sup>2</sup> Queensland Parliament, *Communities, Disability Services and Domestic and Family Violence Prevention Committee*, website, 2015, <http://www.parliament.qld.gov.au/CDSDFVPC>.

## 2. Inquiry overview

### 2.1 Background

Queenslanders today are working longer, living longer and leading more active lives than ever before. A male aged 65 years in 2013 could expect to live, on average, another 19.2 years (to 84.2), while females of the same age could expect to live for another 22.1 years (87.1).<sup>3</sup> This is about five years longer than the life expectancy of the average man or woman reaching 65 in 1970, and many seniors now live well into their 90s or even longer.<sup>4</sup>

As a result, life as a senior may now be almost as long as years spent in the workforce, and actuarial estimates point to expected years in retirement increasing to 25 years by 2040, even with the retirement age rising from 65 to 67 years and upwards.<sup>5</sup> When taken in concert with reduced fertility, this increased longevity is expected to see the ranks of seniors swell to around a quarter of the population by mid-century, up from roughly one in seven in 2014.<sup>6</sup> Statistical agencies have also highlighted that this will include a significant multiplication in the number of Queenslanders classed as very elderly (those aged 85 years and over),<sup>7</sup> with projections suggesting that by 2061 there will be just six babies for every centenarian, up from 90 babies to each centenarian in 2014.<sup>8</sup>

While these population trends are anticipated population-wide (see Table 1), the Office of the Public Trustee's submission to the Inquiry noted that senior population growth is anticipated to occur at an especially high rate in the key areas of Southeast Queensland, Ipswich, Logan and Townsville.<sup>9</sup>

<sup>3</sup> Queensland Government Statistician's Office (QGSO), *Queensland Seniors, 2013-14*, Queensland Treasury, March 2015, page 4; Australian Bureau of Statistics (ABS), 'Life Tables, States and Territories and Australia, 2011-2013' (Table 1.3 Life Tables, Queensland, 2011-2013), [3302.0.55.001 – Life Tables, State, Territories and Australia, 2011-2013](#), 6 November 2014. See also: Vincents Chartered Accountants, 2015 Prospective Life Tables (as adopted in *Golden Eagle International Trading Pty Ltd v Zhang* (2007) HCA 15), webpage, 2015, <http://www.vincents.com.au/tools-resources/tables-litigation/qld/prospective-life>.

<sup>4</sup> QGSO, *Queensland Seniors, 2013-14*, 2015, page 4.

<sup>5</sup> Actuaries Institute, *Australia's Longevity Tsunami: What should we do?*, White Paper, Actuaries Institute, August 2012, page 21 (Appendix A); AMP and National Centre for Social and Economic Modelling (NATSEM), *Don't stop thinking about tomorrow: The changing face of retirement – the past, the present and the future*, Income and Wealth Report, no. 24, November 2009, page 17.

<sup>6</sup> QGSO estimates published in March 2015 suggest that 24.2% of the state population will be aged 65 years or over by 2062. See: QGSO, *Queensland Seniors, 2013-14*, 2015, page 4. See also: F Gibson and F Rochford, 'Emerging Consumer Credit Issues for Older Australians', *University of NSW Law Review*, no. 12, 2008, page 76.

<sup>7</sup> As defined by the Queensland Government Statistician's Office. See: QGSO, *Queensland Seniors, 2013-14*, 2015, page 4.

<sup>8</sup> Townsville Community Legal Service Inc., Submission no. 1, page 6.

<sup>9</sup> The Public Trustee, Submission no. 7, pages 2-3.

**Table 1 Expected demographic movements, population aged 60 years and over, Queensland, 2011-2036**

Age Group	2011 '000	2016 '000	2026 '000	2036 '000	Difference '000
60–64	245.4	264.8	325.5	375.4	130.0
65–69	191.2	240.7	300.3	352.3	161.0
70–74	139.4	181.9	254.2	317.3	178.0
75–79	101.3	126.7	215.5	279.0	177.7
80–84	78.0	84.2	145.2	215.2	137.2
85+	69.9	85.4	126.7	238.9	169.0

Source: Public Trustee, Submission no. 7, page 3.

The wide range of submissions and evidence considered by the Committee highlighted that this significant and growing proportion of the state's population face a unique and complex array of financial decisions as they enter and move through this later and increasingly extended phase of their lives. Changes in government policy over the past twenty years have had the effect of transferring the responsibility for major financial decisions and significant financial risks to households, with consumers now expected to manage their own personal finance, accumulation of assets, reconciliation of debts, and long-term planning to fund their retirement.<sup>10</sup> Accompanying this paradigm shift to self-provision has been a proliferation of new investment and financial products and trends towards more ready access to credit, increased marketing, and accelerating technological change.<sup>11</sup> As a result, consumers now face an increasingly complex financial environment and investment choice landscape,<sup>12</sup> which has heightened the need for them to possess a range of specialist skills and knowledge to enable them to make effective and informed personal financial decisions.<sup>13</sup>

This combination of increased longevity and greater exposure to diverse products and investment choices brings with it a heightened risk of adverse financial decisions or management. These issues can be compounded by:

- pre-existing debt and income challenges

<sup>10</sup> V Vyvyan, L Blue and M Brimble, '[Factors that Influence Financial Capability and Effectiveness: Exploring Financial Counsellors' Perspectives](#)', *Australasian Accounting, Business and Finance Journal*, vol. 8, no. 4, 2014, page 4.

<sup>11</sup> Vyvyan et al, '[Factors that Influence Financial Capability and Effectiveness: Exploring Financial Counsellors' Perspectives](#)', 2014, page 4; Davis, cited in N Gallery, C Newton and C Palm, '[Framework for Assessing Financial Literacy and Superannuation Investment Choice Decisions](#)', *Australasian Accounting, Business and Finance Journal*, vol. 5, no. 2, 2011, page 3.

<sup>12</sup> Gallery et al, '[Framework for Assessing Financial Literacy and Superannuation Investment Choice Decisions](#)', 2011, page 6.

<sup>13</sup> S Taylor and S Wagland, '[The Solution to the Financial Literacy Problem: What is the Answer?](#)', *Australasian Accounting, Business and Finance Journal*, vol. 7, no. 2, 2013, page 70; Vyvyan et al, '[Factors that Influence Financial Capability and Effectiveness: Exploring Financial Counsellors' Perspectives](#)', 2014, page 4.

- the impacts of often unexpected economic shocks associated with pre-retirement unemployment, health issues and costs, or other environmental factors (including natural disasters, market downturns etc.)
- deficits in planning or financial literacy and financial advice, and
- challenges associated with the intra-familial distribution and intergenerational transfer of resources, which may be muddled by divorce, new partners, and step children, etc.<sup>14</sup>

Further complicating these matters is the fact that approximately 7.8 per cent of Queenslanders aged over 65 and one third of those aged over 85 have dementia, according to 2011 estimates; with longitudinal figures and projections also pointing to ongoing trend rises in the number of people with dementia “in every single electorate, in every state and territory across Australia” (see state-wide estimates in Table 2).<sup>15</sup> This is in addition to a range of other cognitive, health or functional impairments or limitations which may increase levels of dependency and vulnerability.

**Table 2 Dementia prevalence estimates and projections – Queensland population groups**

	Number of people with dementia			Proportion of people in the population group with dementia		
	65 years +	85 years +	All Ages*	65 years +	85 years +	All Ages*
<b>2011**</b>	45,352	21,184	48,674	7.80%	30.30%	1.1%
<b>2012</b>	47,667	22,486	51,005	7.80%	30.90%	1.1%
<b>2013</b>	49,943	23,835	53,336	7.80%	31.40%	1.1%
<b>2014</b>	52,352	25,228	55,804	7.90%	31.90%	1.2%
<b>2015</b>	54,992	26,697	58,509	8.00%	32.50%	1.2%
<b>2016</b>	57,725	28,170	61,321	8.00%	33.00%	1.2%
<b>2017</b>	60,584	29,380	64,268	8.10%	33.40%	1.3%
<b>2018</b>	63,392	30,566	67,157	8.20%	33.80%	1.3%
<b>2019</b>	66,333	31,701	70,200	8.20%	34.10%	1.3%
<b>2020</b>	69,495	32,991	73,470	8.30%	34.30%	1.4%
<b>2030</b>	110,101	53,783	114,800	9.30%	33.00%	1.8%
<b>2040</b>	160,621	90,498	166,032	10.40%	31.40%	2.2%
<b>2050</b>	208,429	126,056	215,272	10.80%	29.10%	2.5%

\*Prevalence for those aged under 25 years was considered zero.

\*\*Values for 2011 are population estimates and values from 2012 onwards are projections.

Source: Table compiled by Committee Secretariat based on Deloitte Access Economics age group dementia prevalence estimates and projections and QGSO medium series general population projections. See: [Dementia Across Australia: 2011-2050](#), A report prepared by Deloitte Access Economics, September 2011, page 17; QGSO, *Projected population, by series, Queensland, 2011 to 2061*, (Original data sources: QGSO, *Queensland Government population projections*, 2013 edition; Australian Bureau of Statistics, *Australian Demographic Statistics*, March 2013 (Cat no. 3101.01)).

<sup>14</sup> G Crosby, A Clark, R Hayes, K Jones and N Lievesley, [The Financial Abuse of Older People: A Review of the Literature carried out by the Centre for Policy on Ageing on behalf of Help the Aged](#), Help the Aged UK, London, 2008, page 6.

<sup>15</sup> I Buttrose, Foreword to Deloitte Access Economics, [Dementia Across Australia: 2011-2050](#), A report prepared by Deloitte Access Economics for Alzheimer’s Australia, September 2011, page 7. By 2030, it is estimated that the current population of around 55,000 Queensland dementia sufferers will have doubled to around 110,000; and by 2050, that number is expected to be close to 210,000 (see Table 2).

These difficulties can significantly impact on the capacity of seniors to manage their financial affairs in a manner that is consistent with their personal self-interest and values. Further, the confluence of their sometimes significant retirement asset pools with:

- the increased complexity of the financial landscape, and
- new and increased lines of communication and accessibility through online and digital mediums;

can lead to seniors being targeted or vulnerable to financial exploitation through various modes of consumer fraud and undue influence or financial abuse.

Although seniors are less likely to be victims of crime generally, consumer fraud (including property and investment and other scams) is the crime that they are most likely to experience.<sup>16</sup> Projections indicate that the prevalence of fraud could increase by up to 20 per cent over the next 25 years, with the rate of growth in the number of older victims of fraud particularly anticipated to accelerate.<sup>17</sup> A recent survey of older Australians aged 50 to 75 years conducted by internet security firm McAfee found 85 per cent of surveyed seniors were daily users of the internet (“silver surfers”), and nearly one in five internet users aged 50 to 70 years had been the victim of online fraud including stolen credit card and bank details, email scams or online purchase scams.<sup>18</sup>

Significant rates of supported asset management also make seniors vulnerable to financial abuse – defined by the Elder Abuse Prevention Unit (EAPU) as “the financial exploitation of an older person, through either legal (but considered improper) or illegal misappropriation of their finances or property, by a person who is in a position of trust”.<sup>19</sup> This may include abuse at the hands of those “appointed under an enduring power of attorney to manage a person’s financial affairs, or a... service provider, or friend informally assisting or managing a person’s financial affairs”, or most commonly, a family member,<sup>20</sup> (often initiated or shaped by “inheritance impatience”).<sup>21</sup> The limited prevalence data available indicates that between 2 per cent and 5 per cent of Australians over the age of 65 years have experienced elder abuse, with at least half of these instances involving financial abuse.<sup>22</sup> Further, in

<sup>16</sup> J Temple, ‘[Older people and credit card fraud](#)’, *Trends & issues in crime and criminal justice*, Australian Government, August 2007, page 1.

<sup>17</sup> Acting Sergeant Rod Sparrow, Crime Prevention Unit, QPS, ‘[Older people and credit card fraud](#)’, *Senior’s Task Force*, Issue no. 2, 2008, page 1. See also Temple, ‘[Older people and credit card fraud](#)’, 2007, page 1.

<sup>18</sup> McAfee, ‘[Older Australians found to be the latest vulnerable victims online](#)’, Media Release, 11 November 2013.

<sup>19</sup> Sanders highlights research pointing to an elder abuse incidence rate of between 2% and 5%; while the Office of the Public Advocate and Queensland Law Society have acknowledged Australian research indicating that between 3% and 7% of people over the age of 65 years are affected. See: L Sanders, [Financial Abuse of Older People: A Queensland Perspective](#), Elder Abuse Prevention Unit, 2005, page 4; Australian Pensioners’ and Superannuants’ League of Queensland (2001) and Jackson (2005), cited in Office of the Public Advocate (Qld) and Queensland Law Society, [Elder Abuse: How well does the law in Queensland cope?](#), Office of the Public Advocate (Qld) and Queensland Law Society, 2010, page 1.

<sup>20</sup> Wilson et al note that informal carers – primarily family members – play a major role in assisting older people to manage their assets. They particularly highlight a national prevalence study conducted by Tilse et al in 2007 in which a quarter of surveyed Australians reported having assisted an older person with managing their assets in the previous year. See: J Wilson, C Tilse, WH Chui, D Setterlund, HC Chan and J Woo, ‘Elder Financial Management,’ Chapter 5 in J Woo (ed.), *Aging in Hong Kong: A Comparative Perspective*, International Perspectives on Ageing, vol. 5, Springer Science & Business Media, New York, 2013, page 94.

<sup>21</sup> K Miskovski, ‘[Preventing Financial Abuse of People with Dementia](#)’, *Alzheimer’s Australia*, NSW, June 2010, page 6.

<sup>22</sup> W Lacey, ‘Neglectful to the Point of Cruelty? Elder Abuse and the Rights of Older Persons in Australia’, *Sydney Law Review*, vol. 36, 2014, page 100.

the 2013-14 financial year, the number of abuse notifications recorded by the EAPU increased by 19.5 per cent to 1183 (for 1266 cases), with approximately 43.21 per cent of the resulting abuse cases recording financial abuse as the primary abuse type.<sup>23</sup>

The impacts of financial losses resulting from financial exclusion, mismanagement, exploitation or abuse have particularly significant ramifications for seniors given their “very limited” ability to improve their financial position.<sup>24</sup> As the Australian Securities and Investments Commission (ASIC) highlighted in its submission, “seniors are generally not employed and are unable to recoup their losses via further savings”,<sup>25</sup> and thereby also have no real capacity to repair consequential superannuation losses.<sup>26</sup> These concerns were echoed by Legal Aid Queensland (LAQ), which emphasised that seniors are “generally precluded from rebuilding financially by age and limited capacity for participating in the workforce”.<sup>27</sup> In addition, the Committee notes that any inheritances are likely to have long since been received.<sup>28</sup>

The Committee for the Economic Development of Australia (CEDA) has identified that people aged 65 and over are less likely to exit poverty than other groups, and are also more likely to return to poverty soon after an exit:

*In fact, there is a clear age gradient with the risk of re-entry increasing as individuals age. The re-entry hazard rates for income and multidimensional poverty for those who are 65 and over are 44 and 18 per cent larger, respectively, than those of the reference group [35-44 years].<sup>29</sup>*

Financial losses can, therefore, fundamentally and *permanently* impact on seniors’ wellbeing and capacity to contribute actively and productively to society by undermining their ability to procure shelter and food, meet the costs of increasing medical and pharmaceutical needs, and access various social and other services throughout their later lives. In addition, the emotional stress associated with financial insecurity and the trauma stemming from financial exploitation or abuse can manifest in a range of adverse mental and physiological ill-effects and resulting secondary health and social service burdens and costs.<sup>30</sup>

In Indigenous families in particular, the Aboriginal and Torres Strait Islander Legal Service (ATSILS) noted that tendencies towards significant financial interdependence mean that any adverse impacts can have repercussions for the financial security of the whole family and manifest in intergenerational debt and disadvantage.<sup>31</sup>

<sup>23</sup> Elder Abuse Prevention Unit, [Highlight Report: 2013-14 Financial Year](#), August 2014, page 2.

<sup>24</sup> Preece in Gibson and Rochford, ‘Emerging Consumer Credit Issues for Older Australians’, 2008, pages 73-74.

<sup>25</sup> ASIC, Submission no. 19, page 5.

<sup>26</sup> The Productivity Commission and Human Rights Commission have highlighted that people aged 55 years and over have significantly lower labour force participation rates than younger people, and relatively high rates of unemployment, facing a range of barriers to mature employment and workforce re-entry. See: Productivity Commission, [An Ageing Australia: Preparing for the Future](#), Productivity Commission Research Paper, Australian Government, November 2013, page 173; E Broderick, [Age Discrimination – exposing the hidden barrier for mature age workers](#), Australian Human Rights Commission, 2010, page 1.

<sup>27</sup> LAQ, Submission no. 9, page 3.

<sup>28</sup> Gibson and Rochford, ‘Emerging Consumer Credit Issues for Older Australians’, 2008, page 73.

<sup>29</sup> Committee for the Economic Development of Australia, [Addressing Entrenched Disadvantage in Australia](#), CEDA, Melbourne, April 2015, page 42.

<sup>30</sup> L Jackson, [The costs of elder abuse in Queensland: Who pays and how much](#), EAPU Queensland, 2009, page 1.

<sup>31</sup> ATSILS, Submission no. 16, page 2.



## 2.2 An agenda for financial protection

The Council on the Ageing (COTA) Queensland, in its submission, noted that while much scrutiny and commentary on financial security issues affecting seniors has been focussed at the national level and on regulation pertaining to superannuation, aged care and pensions, banking and credit, and consumer protection; “state governments play a vital role in seniors’ everyday life,” and should take “an active role in helping seniors to make informed financial decisions”.<sup>32</sup>

Given the significant and long-lasting consequences of financial loss and exclusion in senior years, the Committee concluded that preventive interventions and protective support mechanisms that actively engage seniors and support their financial inclusion and participation in society are likely to be the most effective means of safeguarding seniors’ assets and best positioning them to lead healthy and productive lives in their later years.<sup>33</sup> However, the Committee also recognised that various post-event and reactive legal mechanisms and services – including legal protections and sanctions, information or assistance services, and avenues for redress – equally play a critical protective role through their ability to limit further losses and support justice outcomes and recovery processes; while also serving to educate the community and reinforce social norms regarding acceptable behaviour.

This report outlines a wide range of specific challenges and opportunities pertaining to the Inquiry's terms of reference and highlights protections in National Seniors Australia’s “key areas of Cost of Living, Mature Age Employment, Health, Aged Care, Housing and Transportation”.<sup>34</sup> Importantly, considering the multi-level and multi-dimensional nature of these various supports and protective mechanisms and interventions, the Committee concurred with National Seniors that “an updated whole-of-government seniors strategy would ensure that the broad range of issues impacting older Queenslanders are addressed in a pragmatic and sustainable way”.<sup>35</sup>

While recognising that the current, 2010 *Positively Ageless* seniors’ strategy aims to provide a long term vision for Queensland seniors to 2020;<sup>36</sup> the Committee considered that the adaptive incorporation of novel, evidence-based approaches to fiscal support and protection in response to emerging trends and vulnerabilities could ensure that seniors’ financial issues continue to be addressed in a comprehensive, responsive and evidence-based manner.

### Recommendation 1

The Committee recommends that the Queensland Government develop an updated whole-of-government seniors’ strategy.

In making this recommendation, the Committee wishes to express its concerns that existing Departmental staffing arrangements may not best support the delivery of such a coherent, senior-specific policy framework, cutting across multiple service areas.

<sup>32</sup> COTA Queensland, Submission no. 3, page 4.

<sup>33</sup> Jackson notes of elder abuse in particular that ‘prevention is considered the most effective means, both in human and financial terms, when dealing with elder abuse...because of the size of the problem and the amounts of money involved, any reduction in elder abuse will have a significant reduction in cost burden to the whole community’. See: Jackson, [The costs of elder abuse in Queensland: Who pays and how much](#), 2009, pages 1; 6.

<sup>34</sup> National Seniors Australia, *Queensland State Budget Submission 2015-16*, May 2015, page 6.

<sup>35</sup> National Seniors Australia, *Queensland State Budget Submission 2015-16*, May 2015, page 6.

<sup>36</sup> Queensland Government, *Positively Ageless: Queensland Seniors Strategy 2010-20*, State of Queensland, May 2010.

More specifically, the Committee was particularly struck by the Department's response to a question on notice regarding portfolio staffing arrangements, in which the Department submitted:

*Prior to 2012, the Office for Seniors, Office for Volunteering, and Office for Women consisted of 46.5 FTE [full time equivalent staff]. As part of fiscal repair, the staffing in these offices was reduced to 14 FTE in February 2012. This necessitated changes to staffing structure in order to provide continued service delivery across these content areas. A combined Office for Women, Seniors, Carers and Volunteering now works across portfolio areas of women, seniors, carers, volunteering, cards and concessions and cost of living, as required to meet peak work demands.<sup>37</sup>*

The Committee notes this is a very broad and multi-focused policy remit to be managed by such a reduced staffing contingent. This may limit scope for ensuring a coordinated and continuous approach to seniors policy development and implementation, and the development of a body of specialist policy and program expertise within the area (and other key population groups or portfolio focus areas).

Accordingly, the Committee recommends that the Government undertake to ensure Departmental staffing arrangements are both appropriately geared and provide sufficient capacity to meet current and anticipated seniors' strategy workload requirements, and to support ongoing and responsive policy innovation and program delivery for those Queenslanders in this later stage of their lives.

#### **Recommendation 2**

The Committee recommends that the Department review its existing staffing arrangements to ensure they adequately support the development and ongoing implementation of the seniors' policy agenda.

The Committee also received information highlighting concerns that an increasing proportion of information and service offerings for seniors are reliant on online models of communications and delivery which may not be the most appropriate or effective means to reach many of those most vulnerable to financial disadvantage and mistreatment.

Caxton Legal Centre Inc. submitted that in many cases, accessing services "is dependent on online access and capability on the part of the older person, and where that person is on a fixed income, the costs of access to the internet may be too expensive".<sup>38</sup> ATSILS expressed similar reservations about dependencies on both internet and telephone communications, noting that in rural areas particularly this can significantly narrow options for seniors "who are not confident with technology or do not have regular access to a telephone".<sup>39</sup>

In addition, UnitingCare Community highlighted "broader service access vulnerabilities for seniors, including difficulties of seniors in dealing with automated telephone systems":

*This includes lengthy call waiting queues, computer generated voice responses which are often difficult to understand or which do not understand the older person's response, and press button phone systems which at times can be difficult to negotiate.<sup>40</sup>*

Further:

*...Older people may have speech or hearing difficulties which may not be considered by call centre staff...<sup>41</sup>*

<sup>37</sup> Correspondence from the Department, 27 May 2015, page 17.

<sup>38</sup> Caxton Legal Centre Inc., Submission no. 15, page 2.

<sup>39</sup> ATSILS, Submission no. 16, page 5.

<sup>40</sup> UnitingCare Community, Submission no. 14, page 2.

<sup>41</sup> UnitingCare Community, Submission no. 14, page 2.



In response to such concerns, the Department acknowledged that “improving digital literacy is vital to ensure seniors are not disadvantaged in the move to digital information provision”.<sup>42</sup> In order to facilitate such improvements and support service access, the Department stated that it:

- has simplified online systems by creating a 'one-stop shop' for seniors, where information and links to services for seniors were consolidated under a dedicated work program completed in 2014
- is supporting the operation of digital customer service centres providing seniors with easy online access to government services through a self-service kiosk
- is drawing on community feedback to offer new communication mediums, including video-call facilities at the newly opened Tamborine centre enabling users to talk directly with a Queensland Government customer service adviser via web link, and
- is exploring partnerships with the private sector to expand opportunities for seniors to become “tech savvy”.<sup>43</sup>

The Department also reported that it is continuing to review its seniors' website to ensure it meets the needs of older Queenslanders; and is undertaking channel preference research to ensure information and services are being delivered to seniors via their channel of choice (e.g. online, phone, counter, etc.).<sup>44</sup> In keeping with this consideration of seniors' information and service preferences, COTA Australia has particularly emphasised the importance of ensuring seniors have equitable and timely access to relevant information across multiple platforms “to help them make informed decisions, increase community participation and connectedness, and subsequently improve health and well-being”.<sup>45</sup>

COTA Australia also reported, in its 2012 *Policy & Position Statements* document, that:

*...face-to-face consultation in conjunction with take-away material is the most effective.*

*Hard copy published information is generally less available for cost reasons, and web-based information alone is inadequate to meet the information needs of senior Australians.*

*Telephone information services may only be found to be effective when they are provided in an appropriate language and allow for personal interaction and questioning. Many senior Australians are disadvantaged by lack of Internet access. According to the Australian Bureau of Statistics data on Household Use of the Internet 2008-2009, only 29% of people over the age of 65 have access to the internet at home, a significantly lower percentage than the 58% of 55-64 year olds who do. But even this group of older Australians is at a disadvantage in comparison to all other reported age groups from 15 to 54 years where household internet access ranges from 74% to 89%.*

*To accommodate a diversity of languages spoken, literacy and education levels, and preferences of senior Australians, multiple strategies are required when disseminating information.*<sup>46</sup>

As per these recommendations, the Committee considers that best practices should be followed by the Government in terms of providing access to information and services via a range of appropriate media.

<sup>42</sup> Correspondence from the Department, 8 July 2015, page 4.

<sup>43</sup> Correspondence from the Department, 8 July 2015, page 4.

<sup>44</sup> Correspondence from the Department, 27 May 2015.

<sup>45</sup> COTA Australia, [COTA Australia Policy & Position Statements](#), 2012, page 10.

<sup>46</sup> COTA Australia, [COTA Australia Policy & Position Statements](#), 2012, page 11.

In addition, it supports the COTA Australia's recommendations that:

*Community education and access programs need to be funded and supported by Governments to assist take-up and effective use of electronic services among mature age workers and senior Queenslanders,*

*Providers of online and e-commerce services should involve users with a range of capabilities and limitations in testing all new products and equipment before installation,*

*People who are unable or unwilling to access information or services electronically, should be provided with alternative methods of access without financial penalty.<sup>47</sup>*

Further, as National Seniors noted:

*...it is essential that any services which are provided are delivered in multiple communication channels and not solely based on a web/online format. Many seniors still find it difficult to access information online and have a learning style which requires more direct forms of communication.<sup>48</sup>*

### Recommendation 3

The Committee recommends that the Department ensure that current information and service delivery mediums are sufficiently inclusive and multifaceted to ensure vulnerable seniors are not disadvantaged in terms of their awareness and/or access to vital programs and support.

## 2.3 Who are Queensland's seniors?

Determining the age when a person is considered "senior" presents a number of challenges. Age-based determinations inevitably fail to capture the great diversity of experiences and circumstances of people in later life, who come from a variety of backgrounds and cultures; live in a wide range of communities, from inner urban to rural and remote; and also have distinctly different capacity and needs. As the Human Rights Commission has acknowledged, for many persons in later life:

*...ageing and old age are not simply defined by numeric age. Rather, they are underpinned by deeper perceptions of self and associations with health, wellbeing, life-balance and social interaction.<sup>49</sup>*

Further, as the Office of the Public Guardian (OPG) noted in its submission, "capacity issues arise for individuals at all stages of life", even if "the likelihood of capacity issues arising does increase with age".<sup>50</sup>

These issues of oversimplification of a greatly heterogeneous older population may be particularly acute given that the specific definition or grouping adopted may result in people being considered

<sup>47</sup> COTA Australia, [COTA Australia Policy & Position Statements](#), 2012, page 10.

<sup>48</sup> National Seniors Australia, Submission no. 18, page 2.

<sup>49</sup> Australian Human Rights Commission, [Fact or fiction? Stereotypes of older Australians](#), Research Report, Australian Human Rights Commission, 2013, page 26. \*The Human Rights Commission similarly noted in their report *Age discrimination – exposing the hidden barrier for mature age workers* (2010) that there is no "magic" number that denotes mature or older age: "people of any age can be told they are 'too old' for a job". See: Broderick, *Age Discrimination – exposing the hidden barrier for mature age workers*, 2010, page 8. \*\*In line with this, social gerontologists tend to conceptualise chronological ageing as just one of four dimensions of ageing, which is dependent also on relative levels of biological, psychological and social ageing. See: J Phillips, K Ajrouch and S Hillcoat-Nallétamby, *Key Concepts in Social Gerontology*, Sage Publications Ltd, 2010, pages 13-14.

<sup>50</sup> OPG, Submission no. 5, page 6.

“senior” within an age band that spans 40 to 50 years. This has been acknowledged by the Australian Institute of Health and Welfare (AIHW), in its periodic publication *Older Australia at a Glance*:

*Grouping all Australians aged 65 years and over into one category contains an age range of almost 40 years— equivalent to grouping the population aged 20 to 60 together. The family circumstances, physical abilities, economic circumstances and service needs of an average 65 year old are likely to be very different to those of a 90 year old... These differences emerge very clearly in many sections of this publication.*<sup>51</sup>

For this reason, many social gerontologists have sought to divide the older adult population into three life-stage sub-groups – the young-old (typically 60-69 or 65-74); the middle-old (ages 70-79 or 75-84), and the old-old (80+ or 85 years+).<sup>52</sup> In its submission, ASIC also emphasised the need to recognise this population diversity, noting “seniors are not a homogenous group – rather they are a diverse population with various skills, experiences, attributes and challenges”.<sup>53</sup>

The Committee was also mindful that the use of particular terminology to describe people in later life can be used to reinforce negative stereotypes and ageism. In this respect, it acknowledges the OPG's advice that:

*...it is important to ensure that if government is mindful to introduce policies or legislation to assist specific groups in the community it does so in a way that does not discriminate against such groups or individuals within such groups... care must taken to avoid stigmatising individuals who are part of such a group ... [A]ge of itself should never be the justification for imposing constraints on individuals or giving them special privileges which do not reflect the fundamental principle that an individual possesses full capacity to make their own decision until the contrary is individually established.*<sup>54</sup>

Despite these various issues, there was general acceptance among submitters that any consideration of the wellbeing of seniors, as per the Inquiry's terms of reference, inevitably requires some general frame of reference or parameters for discussing the population involved, and the resulting targeting of various government and community sector interventions and support.

Unfortunately, there was no clear consensus among submitters as to what the parameters for the “senior” population should be, with a range of different limits having been used by various stakeholders and programs for different groups of older people.<sup>55</sup> As acknowledged by ASIC:

*In Australia, the term [senior] is not defined by common law and therefore has no legal meaning. In 2007 the Federal Government in their report “Older People and the Law” used the term “older Australians” when referring to persons aged 65 years or over. In 2002 the World Health Organisation’s World Report on Violence and Health looked at elder abuse and recognised that a person is considered of older age in developed countries at 60 or 65 years*

<sup>51</sup> Australian Institute of Health and Welfare (AIHW), [Older Australia at a Glance](#), AIHW cat. no. AGE 52, Fourth edition, AIHW, November 2007, page 2.

<sup>52</sup> W Little, ‘Ageing and the Elderly’, [Chapter 13](#) in [Introduction to Sociology](#), BC Open Textbooks, Vancouver, 2012 (online resource).

<sup>53</sup> ASIC, Submission no. 19, page 2.

<sup>54</sup> OPG, Submission no. 5, pages 6-7.

<sup>55</sup> Victorian Equal Opportunity and Human Rights Commission, [Submission to the Inquiry into opportunities for the participation of Victorian seniors](#), Victorian Joint Investigatory Committee for Family and Community Development, Inquiry into opportunities for the participation of Victorian seniors (Submission no. 62), 2011, page 4.

*of age. It was acknowledged that adopting an age of 50 years may be better practice in the case of Indigenous Australians.*<sup>56</sup>

Generally speaking, for demographic and statistical purposes, key agencies such as the Australian Bureau of Statistics (ABS), the AIHW and the World Health Organisation (WHO) have accepted the chronological age of 65 years as the lower limit in defining the senior or “older” population, as is commonly associated with the transition to retirement and receipt of pensions.<sup>57</sup> In line with this, COTA Queensland, the Australian Bankers’ Association (ABA), the Queensland Council of Social Service (QCOSS), Public Trustee (PT) and OPG all focussed on those aged 65 years and over, in keeping with demographic reporting. COTA Queensland stated that the 65-year mark served as an appropriate population demarcation:

*...due to this group approaching an age where financial security in retirement is foremost in their minds, but also because of personal and life factors that are more likely to affect this group’s financial independence than younger age groups.*<sup>58</sup>

In contrast, National Seniors identified that it represents a senior contingent comprised of persons aged 50 years and over, and ASIC “adopted a catchment pool of people aged 55 years and over as fitting within this category for the purposes of its submission”.<sup>59</sup>

The Committee notes that while the Federal age pension kicks in at 65 years (soon 67 years) and the Queensland Government Statistician’s Office (QGSO) also denotes those aged 65 years and over as “senior” for demographic purposes;<sup>60</sup> people become eligible for the Queensland Seniors Card at 60 years of age and most government seniors programs broadly cater to those aged 60 and above.<sup>61</sup> The Queensland EAPU, for example, reported that it uses 60 and above in its service definition,<sup>62</sup> and Caxton Legal Centre Inc. also emphasised that the Seniors Legal and Support Service (SLASS) “assist people who are aged 60 years and over”.<sup>63</sup>

The Committee also notes the importance of adopting a differential age grouping for Indigenous Australians, given “the life expectancy for Aboriginal and Torres Strait Islander people is significantly lower than that of the non-Indigenous people”, such that “Aboriginal and Torres Strait Islander “seniors” require support at a much earlier age than non-Indigenous seniors”.<sup>64</sup> ATSILS advised that “commonly ‘elderly’ Aboriginal or Torres Strait Islander (ATSI) people are defined as between 50 to 55

<sup>56</sup> Caxton Legal Centre Inc., Submission no. 15, page 4.

<sup>57</sup> Australian Bureau of Statistics, *Who are Australia's older people?*, 2071.0 – Reflecting a Nation: Stories from the 2011 Census, 2012-2013, June 2012; Australian Institute of Health and Welfare, Ageing, Overview, webpage (accessed 22 May 2015); AIHW, *Older Australia at a glance*, 2007, page 2. World Health Organisation, *Definition of an older or elderly person*, webpage, <http://www.who.int/healthinfo/survey/ageingdefnolder/en/> (accessed 22 May 2015).

<sup>58</sup> COTA Queensland, Submission no. 3, page 4.

<sup>59</sup> ASIC, Submission no. 19, page 1.

<sup>60</sup> QGSO, *Queensland Seniors 2013-14*, 2015, page 1. \*Within this broad definition, the QGSO also respectively identifies the ‘elderly’ and ‘very elderly’ as those aged 75-84 years and 85 years and over.

<sup>61</sup> Queensland Government, *Applying for a Seniors Card*, webpage, June 2014, <https://www.qld.gov.au/seniors/legal-finance-concessions/applying-seniors-card/> (accessed 22 May 2015).

<sup>62</sup> Ms Samantha Klintworth, Director – Community Services, Elder Abuse Prevention Unit, UnitingCare Community, *Transcript of Proceedings (Hansard)*, Public Hearing, Communities, Disability Services and Domestic and Family Violence Prevention Committee, 20 June 2015, page 7.

<sup>63</sup> Brisbane City Council, *Senior's Strategy 2012-2017: Delivering a seniors-friendly city*, BCC, 2012, page 7.

<sup>64</sup> ATSILS, Submission no. 16, page 2.

years of age”.<sup>65</sup> In keeping with this, the EAPU and Caxton Legal Centre Inc. confirmed that their various senior assistance programs are provided to ATSI seniors from 50 years of age.<sup>66</sup>

In the interests of inclusivity and in keeping with most State Government programs and service offerings, the Committee generally refers to Queensland’s seniors as those people aged 60 years and over for the purposes of the report; and those aged 50 years and over for Indigenous Australians. At times, however, it has been necessary to adopt a flexible approach depending on the context being considered and the information available.

The Committee also refers to the State’s seniors using a range of terms throughout the report, including references to “older people” and “people in later life”. In so doing, however, it respected the advice of ATSILS that:

*When using the term ‘elderly’, it is important to note that this term carries a different connotation for Aboriginal and Torres Strait Islander people in general. Many Aboriginal or Torres Strait Islander people would define elderly or ‘elders’ to be those that have been identified as such in the community according to lore or custom... it is important to be wary of the connotation the terms carry for Aboriginal and Torres Strait Islander people so that they do not perceive themselves as ineligible for support and assistance because of misunderstandings about the terms ‘seniors’ and ‘elders’.*<sup>67</sup>

## 2.4 Financial wellbeing and financial security of Queensland’s seniors

Many seniors are well equipped to manage the transition to retirement, having engaged in considered life-course planning and concordant saving, investment and insurance activities. Indeed, estimates suggest that the approximately 30 per cent of national wealth held by contemporary seniors may increase to around 47 per cent by 2030.<sup>68</sup> However, these higher levels of aggregate wealth and income are not evenly distributed.<sup>69</sup> ABS survey data highlights that the wealthiest quarter of Australia’s baby boomer cohort controls approximately 60 per cent of the group’s total net worth, while the poorest quarter holds just 4 per cent of the group’s total net worth.<sup>70</sup> As Kelly has identified:

*...The assumption that wealth increases with age is true for only a minority of older people. The gap between richer older people and poorer older people is widening...*<sup>71</sup>

Gibson and Rochford note that the main financial problem faced by older people is that many simply do not have sufficient income to live on, facing income streams that are ultimately outstripped by their expenses.<sup>72</sup> In stark contrast to hopes that retirement might be a time for indulgences missed while working (including spending time with partners or grandchildren, engaging in overseas travel, and

<sup>65</sup> ATSILS, Submission no. 16, page 2.

<sup>66</sup> Ms Samantha Klintworth, EAPU, *Transcript of Proceedings (Hansard)*, Public Hearing, 20 June 2015, page 7; Caxton Legal Centre Inc., Submission no. 15, page 4.

<sup>67</sup> ATSILS, Submission no. 16, page 2.

<sup>68</sup> J Daley and D Wood, *The wealth of generations, Supporting data*, (Figure 2.2) Grattan Institute, December 2014, downloaded 22 April 2015; NATSEM estimate, cited in Financial Ombudsman Service (FOS), *‘Financial Abuse of the Vulnerable Older Person’*, *Banking & Finance Bulletin*, no. 56, December 2007, page 2.

<sup>69</sup> Productivity Commission (2011), cited in Australian Institute of Health and Welfare (AIHW), *Chapter 6 – Older People* in *Australia’s welfare 2013*, AIHW, September 2009, page 240.

<sup>70</sup> AIHW, *Australia’s welfare 2013*, 2009, page 240.

<sup>71</sup> S Kelly, *Simulating Future Trends in Wealth Inequality*, Paper presented at the 2002 Australian Conference of Economists, Adelaide; NATSEM, Canberra, October 2002, page 20.

<sup>72</sup> Gibson and Rochford, *‘Emerging Consumer Credit Issues for Older Australians,’* 2008, page 76.



enjoying the finer things of life),<sup>73</sup> the reality is that many seniors do not have the resources to finance a comfortable retirement for any number of reasons both within and beyond their control.<sup>74</sup>

Recent market reversals have been acknowledged as having significantly worsened the position of many retirees, irrespective of their financial aptitude and investments in future planning. A 2009 Organisation for Economic Cooperation and Development (OECD) income report identified that “of the 30 OECD countries, only Ireland’s superannuation funds had a worse performance than Australia’s in 2008 due to the economic downturn”.<sup>75</sup> The country’s private pension assets declined by approximately 27 per cent overall across the calendar year.<sup>76</sup>

These investment losses have also been exacerbated by the fact that older workers are more vulnerable in redundancy exercises (they are traditionally the first to go and the last to be rehired); and seniors who seek to re-enter the workforce to recoup losses are confronted with an array of barriers to employment, including discriminatory attitudes and age-based thresholds in income insurance and protection, professional licensing and workers’ compensation schemes.<sup>77</sup> The Association of Super Funds of Australia (ASFA) reported that once unemployed, people aged 55 and over spend 73 weeks on average out of work; compared to only 40 weeks for Australians aged 15 to 54;<sup>78</sup> and the majority of those unemployed seniors on government pensions are in fact “job losers rather than job leavers”.<sup>79</sup> National Department of Social Services data show that in September 2014, there were nearly 400,000 job seekers receiving the Newstart Allowance,<sup>80</sup> of whom 79,163 were aged over 50 – nearly 20 per cent of Newstart recipients.<sup>81</sup> The Department has also noted that between 2010 and 2013, there was a 41.2 per cent increase in people in their 50s and 60s receiving the Newstart unemployment benefit – much higher than the overall growth across all demographics.<sup>82</sup> These reduced years of workforce participation crucially undermine seniors’ capacity to recover lost earnings or bolster their savings in their final years of pre-retirement.

<sup>73</sup> AMP and NATSEM, [Don’t stop thinking about tomorrow: The changing face of retirement – the past, the present and the future](#), 2009, page 3.

<sup>74</sup> AMP and NATSEM, [Don’t stop thinking about tomorrow: The changing face of retirement – the past, the present and the future](#), 2009, page 1.

<sup>75</sup> M Snook, H Kendig and K O’Loughlin, ‘[Australian Evidence of Baby Boomers Financial Security: A Review](#)’, *Journal of Economic and Social Policy*, vol. 14, no. 1, 2011, page 3.

<sup>76</sup> Organisation for Economic Cooperation and Development (OECD), [Pensions at a Glance 2009: Retirement – Income Systems in OECD Countries](#), OECD, 2009, page 32.

<sup>77</sup> National Seniors Australia, [Federal Pre-Budget Submission 2015-16](#), March 2015, page 8.

<sup>78</sup> National Seniors Australia, [Federal Pre-Budget Submission 2015-16](#), March 2015, page 9.

<sup>79</sup> Australian Bureau of Statistics, ‘[Ageing Well, Queensland](#)’, 4409.2 – *Ageing Well, Queensland, 2005*, July 2005; K Shacklock, L Fulop and L Hort, ‘Managing older worker exit and re-entry practices: A ‘revolving door’?’, *Asia Pacific Journal of Human Resources*, vol. 45, 2007, page 154.

<sup>80</sup> The Newstart Allowance offers financial help to adults aged 22 years or older but under pension age who are looking for paid work. See: Australian Government, Department of Human Services, *Newstart Allowance*, webpage, last updated 4 August 2015, <http://www.humanservices.gov.au/customer/services/centrelink/newstart-allowance> (accessed 21 August 2015).

<sup>81</sup> Department of Social Services, [Labour market and related payments: a monthly profile](#), September 2014, page 9 (accessed 10 May 2015).

<sup>82</sup> Senate Community Affairs References Committee, [Bridging our growing divide: inequality in Australia: The extent of income inequality in Australia](#), December 2014, page 127.

As a result of these various developments, despite around half of people over 45 years of age expecting to rely on superannuation as their main income source after retirement,<sup>83</sup> Australia counts just 600,000 fully self-funded retirees.<sup>84</sup> This compares to the approximately 2.4 million Australians aged 65 and over who receive the age pension, of whom 1.43 million receive the full age pension amount.<sup>85</sup> In Queensland, approximately 439,848 individuals were in receipt of the age pension as of March 2014, according to Department of Social Services statistics – that is, around two-thirds of the State's senior population.<sup>86</sup> Although this benefit is meant primarily for poverty alleviation and is set well below the level of average weekly earnings,<sup>87</sup> results from the ABS Multipurpose Household Survey for the financial year 2012-13 reveal that the age pension and other government benefits are ultimately the primary source of income for around half of the retiree population (in contrast to superannuation, which was the main income source for just 17 per cent).<sup>88</sup> Further, Gibson and Rochford have highlighted statistics from an in-depth study of the adequacy of retirement savings that indicate that “only 53% of couples and 22% of single people are on track to achieve a comfortable level of retirement income”; and “96% of single people and 89% of couples aged 40 to 64 today are expected to receive at least a partial age pension at some stage”.<sup>89</sup>

Australia has the fourth highest old age poverty rate in the OECD<sup>90</sup> – “2.5 times the OECD average”, as the Townsville Community Legal Service reported – with more than one in four older Australians living below the poverty threshold on the basis of this measure;<sup>91</sup> and three quarters of older persons in Queensland recording “weekly income of less than \$600”.<sup>92</sup>

QGSO reports for 2013-14 indicated that approximately two-thirds of Queensland's elderly (75 to 84 years) and very elderly (85 years and over) had weekly incomes of less than \$400 (\$20,800 annually), while less than 5 per cent of the very elderly reported personal weekly incomes over \$1,000 per week (\$52,000 annually).<sup>93</sup>

The Australian Human Rights Commission has identified that women, Indigenous Queenslanders, culturally and linguistically diverse Queenslanders, people with a disability, and those living in rural and remote areas are particularly overrepresented among these low-income and pension-dependent

<sup>83</sup> The Australian Research Council's (ARC) Centre of Excellence in Population Ageing (CEPAR) has reported that for people aged between 55 and 74 years in 2012-13, significantly more people found themselves reliant on the public pension than expected prior to retirement – and as a result, confronted lower levels of financial resilience to adverse circumstances and unexpected costs. See: PerCapita, [Blueprint for an Ageing Australia](#), Per Capita Australia Limited, 2014, page 23.

<sup>84</sup> National Seniors Australia, [Federal Pre-Budget Submission 2015-16](#), March 2015, page 11.

<sup>85</sup> National Seniors Australia, [Federal Pre-Budget Submission 2015-16](#), March 2015, page 11.

<sup>86</sup> Department of Human Services, [Social Security Payments by Electorate Data – March 2014](#), July 2014 (accessed 12 May 2015).

<sup>87</sup> Gibson and Rochford, ‘Emerging Consumer Credit Issues for Older Australians’, 2008, page 76.

<sup>88</sup> Australian Bureau of Statistics, [6238.0 – Retirement and Retirement Intentions](#), Australia, July 2012 to June 2013, December 2013.

<sup>89</sup> R Wilkins and C Murawski, ‘[The majority of Australians are not saving enough for retirement](#)’, [TheConversation.edu.au](#), 31 March 2014; Queensland Council of Social Service (QCOSS), [Cost of Living Report – Special Edition: The cost of living and pensioner households](#), Issue 1, 2013, page 2.

<sup>90</sup> The OECD is the peak international organisation of 34 advanced countries founded in 1961 to stimulate economic progress and trade.

<sup>91</sup> The 2009 OECD *Pensions at a Glance* publication reported that Australia has an old age poverty rate of approximately 27%. The report identified that the low level at which the age pension benefit is set is one of the main drivers of the high poverty rate: ‘In Australia, for example, the full age pension in 2005 was AUD 12 700 a year, lower than the poverty threshold of AUD 14 770 for a single person’. See OECD, [Pensions at a Glance 2009: Retirement – Income Systems in OECD Countries](#), 2009, page 63.

<sup>92</sup> Townsville Community Legal Service Inc., Submission no. 1, page 6.

<sup>93</sup> QGSO, [Queensland Seniors, 2013-14](#), 2015, page 6.

seniors. This is a result of a range of long-term structural disadvantages, including lifecycle inequality and disparity in wage levels and employment participation,<sup>94</sup> which fundamentally constrain their ability to accumulate superannuation and retirement income.<sup>95</sup>

The cumulative impacts of this “gender gap” and equivalent deficits mean that these groups are predisposed to face a higher “likelihood of sole reliance on the Age Pension” and “an acute vulnerability to poverty in retirement”.<sup>96</sup> For example, with regard to women in particular:<sup>97</sup>

- in Queensland, women working full-time today earn approximately 21.0 per cent less than men (November 2013) – the second highest gender pay gap of all states and territories, and significantly larger than the 17.1 per cent gender pay gap recorded nationally<sup>98</sup>
- at the national level these differential wages and employment translate into a superannuation gap of around 47 per cent (2012), with women's average \$105,000 superannuation balance at retirement a significant \$92,000 less than the \$197,000 for men in 2012; and 29 per cent of women over 65 are living below the poverty line,<sup>99</sup> and
- the average 60-year old Australian woman would need to work an extra 15 to 25 years to retire with the same amount of superannuation as men.<sup>100</sup>

Locational disadvantage can also significantly constrain employment opportunities and resulting scope for accumulation of income; and Indigenous Australians also continue to report more unique, implicit discrimination that can interact with these geographical and other variables to further entrench employment and income disadvantage.<sup>101</sup> The Committee noted that ATSI seniors affected by various health issues and disabilities can often face almost unsurmountable obstacles in this regard.<sup>102</sup>

<sup>94</sup> In addition to lower employment participation more broadly, women are more likely to be absent from the workforce for periods associated with the raising of children, and also participate more heavily in unpaid work. See: Australian Human Rights Commission, *The gender gap in retirement savings*, webpage, 2015, <https://www.humanrights.gov.au/publications/gender-gap-retirement-savings> (accessed 25 May 2015).

<sup>95</sup> S Cerise, K O'Connell, E Rosenman and P SaratChandran, *Accumulating poverty? Women's experiences of inequality over the lifecycle*, Issues Paper, Australian Human Rights Commission, 2009, page 3.

<sup>96</sup> Cerise et al, *Accumulating poverty? Women's experiences of inequality over the lifecycle*, 2009, page 1.

<sup>97</sup> The Australian Human Rights Commission notes “there is limited published disaggregated data available on the level of retirement savings for other marginalised groups including Aboriginal and Torres Strait Islander people, culturally and linguistically diverse people and people with disability”. See: Cerise et al, *Accumulating poverty? Women's experiences of inequality over the lifecycle*, 2009, page 5.

<sup>98</sup> Workplace Gender Equality Agency, *Gender pay gap statistics*, Factsheet, Australian government, March 2014, page 3.

<sup>99</sup> Industry Super Australia, *The gender superannuation gap – without policy action now, women will retire with far less than men for decades to come*, Media Release, March 10, 2015.

<sup>100</sup> Westpac, *Women must work 25 years more to retire with the same amount of super as men*, Media Release, 10 December 2013 (accessed 25 May 2015). Ruby Connection, *2015 Westpac Retirement Readiness Report*, Media Release, Insights – Lifestyle, 5 May 2015 (accessed 25 May 2015).

<sup>101</sup> A recent survey of non-Indigenous Australians conducted by Beyond Blue found that almost a third (31 per cent) has witnessed employment discrimination against Indigenous Australians and 9 per cent admit they themselves discriminate in this context. See: Australian Government, Department of the Prime Minister and Cabinet, ‘Racism and discrimination’, *Aboriginal and Torres Strait Islander Health Performance Framework 2014 Report* (online), Commonwealth of Australia, 2015, <http://www.dpmc.gov.au/sites/default/files/publications/indigenous/Health-Performance-Framework-2014/aboriginal-and-torres-strait-islander-health-performance-framework-2014-report/racism-and.html> (accessed 20 August 2015).

<sup>102</sup> ATSIILS, Submission no. 16, page 4.



QCOSS' submission noted:

*Older Queenslanders who rely solely on the age pension and other government allowances are significantly impacted by cost-of-living pressures. These cost of living pressures can be exacerbated for:*

- *Women, as they are less likely to have accumulated sufficient superannuation during their working life and therefore more likely to rely solely on the age pension.*
- *Seniors who do not own their own home...*<sup>103</sup>

In addition, QCOSS reported:

*Where financial pressures combine with social isolation, the inability to access essential and other services, being from an indigenous or non-English speaking background or having a disability, vulnerability for seniors is increased.*<sup>104</sup>

In terms of financial protections, this presents as:

*... Seniors, particularly those living in rural, remote or outer suburban areas, and experiencing mobility issues, struggling to undertake daily activities such as grocery shopping, accessing health care, participating in recreational activities or visiting family and friends.*<sup>105</sup>

The QCOSS submission identified that due to social isolation, these vulnerable seniors “may be more susceptible to exploitation through the door-to-door marketing of financial products and other products or service”;<sup>106</sup> and in the face of a financial setback “are forced to turn to short-term solutions in the form of expensive sources of credit, such as credit cards or payday loans, the cost of which only further exacerbates their financial crisis”.<sup>107</sup>

With regards to rural seniors, CEDA has noted that:

*Older people in rural areas in general face particular economic disadvantage. Many older Australians obtain their wealth from owning their house and being debt free but 'the increase in farm debt and concomitant financial hardship for aging farmers and their families along with the decline in the value of farm properties and housing in many rural areas stands in stark contrast to the general picture of relative wealth of older Australians'.*<sup>108</sup>

QCOSS, and other stakeholder organisations, also expressed concerns about financial pressures faced by pensioners who do not own their own home – an estimated 14.5 per cent Australia-wide, but likely significantly more in Queensland.<sup>109</sup> In its 2013 special edition report on the cost of living, QCOSS reported that for these individuals (among whom single female pensioners figure prominently), weekly income amounts can be significantly consumed by rental expenses, leaving little room to meet the costs associated with a basic standard of living:

*Both single pensioner and couple pensioner households are in housing stress (paying more than 30 per cent of their gross income), with the single pensioner paying 47 per cent and the couple paying 44 per cent of their incomes on housing.*<sup>110</sup>

<sup>103</sup> QCOSS, Submission no. 8, page 1.

<sup>104</sup> QCOSS, Submission no. 8, page 1.

<sup>105</sup> QCOSS, Submission no. 8, page 1.

<sup>106</sup> QCOSS, Submission no. 8, page 1.

<sup>107</sup> QCOSS, Submission no. 8, page 2.

<sup>108</sup> CEDA, [Addressing Entrenched Disadvantage in Australia](#), 2015, page 42.

<sup>109</sup> QCOSS, [Cost of Living Report – Special Edition: The cost of living and pensioner households](#), Issue 1, 2013, page 3.

<sup>110</sup> QCOSS, [Cost of Living Report – Special Edition: The cost of living and pensioner households](#), 2013, page 3.

Once remaining funds are then directed towards the rising costs of basic necessities including utility costs, food and drinks, and other bills; low-income seniors have very little scope for any discretionary spending and often “no money to pay for unexpected expenses, medical bills, drugs, or urgent house maintenance or repairs”.<sup>111</sup> These findings were reaffirmed in QCOSS’s second, 2014 special issue report, which found single pensioners and couple pensioners were respectively paying 48.3 per cent and 41.0 per cent on rent alone, before factoring other household expenses and bills.<sup>112</sup>

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<sup>111</sup> QCOSS, [Cost of Living Report – Special Edition: The cost of living and pensioner households](#), 2013, page 7.

<sup>112</sup> QCOSS, [Cost of Living Report – Special Edition: The cost of living and pensioner households](#), Issue 2, 2014, pages 9-10.

### 3. Financial inclusion and support

The retirement income system, mature workforce engagement measures, aged care and income support, “safety net” assistance, and other financial inclusion mechanisms, play a crucial protective role in helping to support the financial inclusion and broader societal participation of Queensland’s ample senior cohort.

As CEDA has identified:

*...for most people, income is accessed through the labour market or from savings accumulated while earning. For those who cannot compete in this arena, income takes the form of cash transfers from others – primarily from government, although intra-household transfers also play an important income support role at certain stages of the life cycle, and support from welfare agencies can be critical in times of urgent need.*<sup>113</sup>

Australia’s superannuation scheme is ultimately the responsibility of the Federal Government, with funds and contributions regulated by Commonwealth statutory agencies the Australian Prudential Regulatory Authority (APRA), ASIC and the Commissioner of Taxation.<sup>114</sup> The Commonwealth also has the power under the Constitution to “make laws for old aged and widows pensions”.<sup>115</sup> The Commonwealth uses this power to administer the age pension, carer and family assistance payments,<sup>116</sup> disability support pension, Newstart Allowance and other various income supports for seniors and their carers, under a suite of social security legislation.<sup>117</sup> These payments and assistance are primarily administered by the Department of Human Services through Centrelink, with some additional benefits or entitlements provided to seniors by the Department of Veterans Affairs (e.g. through the *Veterans’ Entitlement Act 1986* (Cth) and other legislation).<sup>118</sup> Additionally, the

<sup>113</sup> CEDA, [Addressing Entrenched Disadvantage in Australia](#), 2015, page 30.

<sup>114</sup> There are a number of pieces of Federal legislation and subordinate legislation that govern the operation of the superannuation system, including: 1) *Superannuation Act 1976* (Cth), which includes provisions with respect to early access to superannuation; 2) *Superannuation (Resolution of Complaints) Act 1993* (Cth) (*SRC Act*), which establishes the Superannuation Complaints Tribunal; 3) *Superannuation Industry (Supervision) Act 1993* (Cth) (*SIS Act*), which makes provision for the prudent management of certain superannuation funds and supervision by APRA, ASIC and the Commissioner of Taxation; and 4) the *Superannuation Industry (Supervision) Regulations 1994* (Cth) (*SIS Regulations*), which articulate the grounds for early access to superannuation. See: Australian Law Reform Commission (ALRC), [Family Violence and Commonwealth Laws – Improving Legal Frameworks: Final Report](#), ALRC Report no. 117, November 2011, page 460.

<sup>115</sup> Section 51 of the Commonwealth of Australia Constitution Act (the Constitution) provides that ‘the Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to... (xxiii) invalid and old age pensions; (xxiiiA) the provision of maternity allowances, widows’ pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription, benefits to students and family allowances’.

<sup>116</sup> Mature age persons may be eligible for family assistance when they care for children, frequently grandchildren. The ALRC has identified that the two primary family assistance payments that grandparents and other mature age non-parent carers may be eligible for are the Family Tax Benefit and Child Care Benefit. They may also be eligible for other payments including: Child Care Rebate; Baby Bonus; Maternity Immunisation Allowance; and Double Orphan Allowance. See: Australian Law Reform Commission, Chapter 5, Social Security (Australia’s Social Security System), in [Grey Areas – Age Barriers to Work in Commonwealth Laws](#), Discussion Paper 78, October 2012, page 147.

<sup>117</sup> Key Federal legislation includes the Social Security Act 1991 (Cth) and the Social Security (Administration) Act 1999 (Cth), and for family payments, A New Tax System (Family Assistance Act) 1999 (Cth) and A New Tax System (Family Assistance Act) (Administration) Act 1999 (Cth).

<sup>118</sup> Department of Veterans’ Affairs, *Legislation*, webpage, 2015, <http://www.dva.gov.au/about-dva/legislation> (accessed 14 May 2015).

Commonwealth pays for the bulk of aged care services in Australia through subsidies paid to aged care providers, and also holds responsibility for the regulation of aged care standards under the Commonwealth *Aged Care Act 1997* (Cth).<sup>119</sup>

These core national income support measures are supplemented by the Queensland Government via a range of cost-of-living concessions, rebates and supports which are intended to assist seniors in accessing utilities, public transport, healthcare and other various services.

The states and territories take the lead in the provision of public housing and addressing housing affordability and homelessness, in partnership with community organisations (though the Commonwealth social security “safety net” does extend to the principal rent assistance payment for income support recipients Australia-wide).<sup>120</sup>

In addition to the *Age Discrimination Act 2004* (Cth) and *Fair Work Act 2009* (Cth), which provide protection for older workers against age discrimination in the workplace and other settings at a national level, together with the Federal Government’s various mature worker incentives and employer subsidies; Queensland administers its own age discrimination legislation and associated complaints mechanisms and sanctions via the *Anti-Discrimination Act 1991* and promotes and funds mature workforce engagement activities.

These various financial inclusion and income support mechanisms and their adequacy are considered in the sections following. In so doing, however, the Committee notes that such mechanisms were not explicitly recognised in the Inquiry’s terms of reference and may in fact warrant a more specific, thorough examination in and of themselves; and were accordingly not deemed a primary focus of the Committee’s investigatory activities and review.

### 3.1 Mature workforce engagement

In Queensland, the *Anti-Discrimination Act 1991* makes it unlawful to discriminate against a person because of their age. It is also against the law to require employees to retire once they reach a particular age (with exceptions for Queensland fire officers or police officers and certain statutory appointments (such as judges)).<sup>121</sup> The Anti-Discrimination Commission Queensland (ADCQ) carries out investigation of complaints and refers matters to the Anti-Discrimination Tribunal as necessary. The ADCQ, together with the Department of Justice and Attorney General, also provide a range of informational resources, initiatives and training to support equal opportunity employment and mature workforce engagement.<sup>122</sup> This includes the provision of grant funding to organisations to support

<sup>119</sup> Department of Social Services, [Information Booklet on Fees for Home Care Packages and Residential Aged Care for People Entering Care from 1 July 2014](#), Australian Government, May 2014, page 5; *Aged Care Act 1997* (Cth), section 2.1.

<sup>120</sup> National Commission of Audit, Chapter 3.1, ‘What do governments do and who does what?’, in *Towards Responsible Government: The Report of the National Commission of Audit – Phase One*, Australian Government, February 2014, pages xxv; 21.

<sup>121</sup> Anti-Discrimination Commission Queensland (ADCQ), *Age, Discrimination*, webpage, last updated 27 June 2013, <http://www.adcq.qld.gov.au/complaints/discrimination/age> (accessed 25 May 2015).

<sup>122</sup> Department of Justice and Attorney General, *Mature-aged employment*, webpage, last reviewed 10 February 2015, <http://www.justice.qld.gov.au/fair-and-safe-work/industrial-relations/mature-aged-employment> (accessed 25 May 2015); Anti-Discrimination Commission Queensland (ADCQ), *Training, Discrimination*, webpage, last updated 27 June 2013, <http://www.adcq.qld.gov.au/training/> (accessed 25 May 2015).

training and re-skilling of senior workers; or assistance to businesses in adopting more flexible work arrangements, and opportunities for mentoring and knowledge transfer.<sup>123</sup>

The Department conducts a number of activities intended to improve community attitudes towards older people and ageing and enhance community connections and participation, including providing support to COTA Queensland to collaboratively plan and run an annual Seniors Week across the State.<sup>124</sup> These various activities and materials promote messages including that:

*Studies have shown that people over 45 stay longer in their jobs, contribute to the long - term performance of a company, have low levels of absenteeism and are flexible in their working hours and conditions. Age diversity in an organisation is also widely regarded as a sound business strategy.*<sup>125</sup>

Despite these actions, older workforce participation rates in Queensland and Australia remain relatively low.<sup>126</sup> Australia currently trails the United Kingdom, the United States of America and Canada in this regard, and lags New Zealand in particular by around 15 per cent.<sup>127</sup> National Seniors identified in its 2015-16 Queensland Budget submission (provided as supplementary material to this Inquiry):

*The over-50s continue to face numerous barriers to employment, including discriminatory attitudes and aged-based thresholds in income insurance and protection and professional licensing.*

*In Queensland once unemployed, individuals aged 55 and over spend 78 weeks on average out of work compared to only 38 weeks for Queenslanders aged 15-54. Older workers are also often the target of redundancy and retrenchment programs which results in a loss of years of corporate knowledge and experience not just from the company but from the Queensland workplace.*

*Evidence suggests that the actual number of mature aged unemployed workers would be much higher however many seniors who have been long term unemployed stop actively looking for work and are no longer counted as unemployed. Up to a quarter of people on the Newstart job seeking allowance are over 50, unfortunately seniors often remain on Newstart for many years until they can access their age pension.*<sup>128</sup>

The Committee understands that employment opportunities for seniors are contingent upon the health of the economy generally, and the broader employment environment. However, it also notes the conclusion of a range of key reports which suggest that the “grey army” could be better harnessed to help boost Australia’s future prosperity. The Australian Institute of Management’s (AIM) 2013 discussion paper on *Engaging and Retaining Older Workers*, for example, stated:

<sup>123</sup> For example, in the latest round of the Gambling Community Benefit Fund, the University of the Third Age – Redlands Division was the recipient of an \$8,500 grant. See: Mark Robinson MP, ‘Cleveland Clubs successful in Gambling Community Benefit Fund’, *Cleveland’s Recent Grant Recipients*, 13 April 2015, <http://www.markrobinsonmp.com/grants/> (accessed 25 May 2015).

<sup>124</sup> Correspondence from the Department, 8 July 2015.

<sup>125</sup> Department of Industrial Relations, *Valuing older workers: Preparing your business for an ageing workforce*, Booklet, Queensland Government, 2005, page 2.

<sup>126</sup> J Daley, C McGannon and L Ginnivan, *Game Changers: Economic reform priorities for Australia*, Grattan Institute, Melbourne, June 2012, page 50. p 50.

<sup>127</sup> L Burgmann (Australian Institute of Management), *Engaging and Retaining Older Workers*, Discussion Paper, AIM Insights, Australian Institute of Management NSW & ACT Training Centre Ltd, 2014, page 6.

<sup>128</sup> National Seniors Australia, *National Seniors Australia: Submission to the 2015-16 Queensland State Budget*, May 2015, pages 8-9.

*A recent report from the Grattan Institute identifies increasing the workforce participation rate of older people as one of the three most effective ways to enhance Australia's productivity over the coming decade, and argues that an increase of 7 percent would result in a \$25 billion increase in Australia's GDP by 2022 (Daley, McGannon, & Ginnivan, 2012: 52). Other research calculates that there are roughly 2 million older people who would be willing and/or able to work and that the loss to the Australian economy from not using their skills and experience comes to \$10.8 billion annually (National Seniors Australia, 2009: 10-11).<sup>129</sup>*

National Seniors Australia has also cited Australian Human Rights Commission research indicating "just a 5 per cent increase in paid employment of Australians aged 55-plus would add \$48 billion per annum to the [national] economy".<sup>130</sup>

National Seniors Australia has expressed concern that in Queensland, currently:

*...there appears to be a large focus and number of programs which assist youth and indigenous individuals to secure and up-skill to employment. The same does not apply to older job seekers.<sup>131</sup>*

Accordingly, National Seniors Australia called on the Queensland Government to:

*...develop a whole-of-government response to the challenges of mature age unemployment including ensuring seniors have access to the Queensland Skills Plan program, providing incentives such as payroll tax reductions and training grants, providing governmental support for mature entrepreneurs and dedicated funding of a community-based not-for-profit employment and training organisation targeting mature worker and job seekers.<sup>132</sup>*

In keeping with this recommendation, COTA Queensland has similarly called on the State Government to convene "a summit to increase mature age employment".<sup>133</sup>

With regards to more specific measures or approaches, National Seniors Australia noted:

*National Seniors has developed a Mature Age Toolkit [www.nationalseniors.com.au/be-informed/research/age-management-toolkit](http://www.nationalseniors.com.au/be-informed/research/age-management-toolkit) which allows employers to tailor the best age management initiatives according to an organisation's individual strategic goals, its size and age profile. The government should set the example by implementing the tool kit and its key concept within the Queensland public sector...*

*The Queensland Government could be guided by the South Australian Government's approach which includes providing \$150,000 per year to fund 'DOME' – a not-for-profit training and employment organisation, which provides services to the unemployed over the age of 40 to get back into the workforce.<sup>134</sup>*

National Seniors Australia has also previously suggested that the introduction of reporting requirements within recruitment agencies, including disclosure of the ratio of applications to job placements on an age group basis (and or other demographics), could help identify trends in mature

<sup>129</sup> Burgmann (AIM), *Engaging and Retaining Older Workers*, 2014, page 6.

<sup>130</sup> National Seniors Australia, *Federal Budget Submission 2014-15*, March 2014, page 6.

<sup>131</sup> National Seniors Australia, *Submission to the 2014-15 Queensland Budget*, January 2014, page 13.

<sup>132</sup> National Seniors Australia, *National Seniors Australia: Submission to the 2015-16 Queensland State Budget*, May 2015, page 9.

<sup>133</sup> COTA Queensland, *'New Government need to honour the Seniors who made Queensland – COTA Queensland'*, Press Release, February 2015 (accessed 25 May 2015).

<sup>134</sup> National Seniors Australia, *National Seniors Australia: Submission to the 2015-16 Queensland State Budget*, May 2015, page 9.



employment and address tacit or concealed age discrimination.<sup>135</sup> Further, its 2015-16 Budget Submission called for the Government to “provide leadership by adopting a promoting a policy of ensuring a minimum of 10% of new government employees are from the long term, mature aged unemployment pool”.<sup>136</sup>

Other submissions more directly pointed to options to support worker re-engagement, including greater funding for re-skilling and professional development opportunities for mature workers. Ms Diana Whiting, in her submission acknowledged her appreciation of the affordable computer tuition for over 50s provided by Brisbane Seniors On Line; but noted that “regarding financial protection for Queensland seniors, waiving fees would help more of us senior citizens return to studying to get degrees and get back into the workforce”.<sup>137</sup>

#### **Recommendation 4**

The Committee recommends that the Queensland Government investigate the introduction of a whole-of-government program to support and monitor employment among over 50s in Queensland, including particular strategies and initiatives for those vulnerable population groups who are especially underrepresented or disadvantaged in terms of both employment opportunities and average wage levels.

### **3.2 Income support and concessions**

While the Federal age pension remains the primary, baseline income support mechanism for seniors nationally, the State Government also provides Queensland seniors with a broad range of concessions, subsidies and discounts.<sup>138</sup> The Department reported that in 2014-15 in Queensland it would administer “\$236.2 million in concessions for electricity, water, gas and rates to seniors, veterans and other eligible people”, of a total of \$5.132 billion in concessions state-wide.<sup>139</sup> A number of submitters emphasised that these income “safeguards” or instruments of financial relief can play a critical role in helping disadvantaged seniors to maintain an adequate standard of living, especially during key life transitions and in the face of both everyday financial pressures and various economic shocks.

ATSILS noted that “financial entitlements are imperative to combating the social disadvantage experienced by Aboriginal and Torres Strait Islander people in all areas”; while QCOSS has identified that the financial stresses experienced by senior households “would be much worse if they did not benefit from several Queensland Government concessions”.<sup>140</sup>

Submissions and various stakeholder commentary were broadly complimentary of the previous and current Queensland governments for having committed significant increases in funding and resources to effectively cover concessions shortfalls left by Federal changes following the cessation of the

<sup>135</sup> National Seniors Australia, [Submission to the 2014-15 Queensland Budget](#), January 2014, page 14.

<sup>136</sup> National Seniors Australia, *National Seniors Australia: Submission to the 2015-16 Queensland State Budget*, May 2015, page 8.

<sup>137</sup> Ms Diana Whiting, Submission no. 2, page 1.

<sup>138</sup> Correspondence from the Department, 8 July 2015, page 6.

<sup>139</sup> Correspondence from the Department, 6 May 2015, page 18.

<sup>140</sup> ATSILS, Submission no. 16, page 4; QCOSS, [Cost of Living Report – Special Edition: The cost of living and pensioner households](#), 2014, page 12.

# National Partnership Agreement on Certain Concessions for Pensioner Concession Card and Seniors Card Holders.<sup>141</sup>

However, submitters and stakeholders called for a number of changes to the concession scheme to ensure it is better targeted to those individuals who are most in need and prevent vulnerable seniors being precluded from accessing assistance. This included proposed amendments to the scheme including:

- a relaxation of Seniors Card eligibility requirements for seniors aged 60-64 who work part-time, aligning eligibility criteria with that of other states and territories<sup>142</sup>
- an extension of the gas concession to vulnerable consumers who rely on bottled gas<sup>143</sup>
- the removal of the four-night lead-in eligibility criteria from the Patient Travel Subsidy Scheme for older concession card holders<sup>144</sup>
- expanded trialling of discounted public transport fares for seniors concession card holders, and free travel on weekends and/or off-peak periods, in partnership with local government and following the leads of other jurisdictions<sup>145</sup>

<sup>141</sup> National Seniors Australia, *National Seniors Australia: Submission to the 2015-16 Queensland State Budget*, May 2015, page 7; QCOSS, *Cost of Living Report – Special Edition: The cost of living and pensioner households*, 2014, page 3; ‘Queensland picks up tab for pensioner discounts’, *Brisbanetimes.com.au* (online), 5 July 2015, <http://www.brisbanetimes.com.au/queensland/queensland-picks-up-tab-for-pensioner-discounts-20150705-gi5iw0> (accessed 17 August 2015).

<sup>142</sup> National Seniors Australia, *National Seniors Australia: Submission to the 2015-16 Queensland State Budget*, May 2015, pages 7-8.

<sup>143</sup> National Seniors and COTA have highlighted that the current concession applies to mains gas only. See: National Seniors Australia, *National Seniors Australia: Submission to the 2015-16 Queensland State Budget*, May 2015, page 7; COTA Queensland, *Time for an Age-Friendly Queensland: 2015 State Election Priorities*, January 6 2015, page 4.

<sup>144</sup> National Seniors Australia, *National Seniors Australia: Submission to the 2015-16 Queensland State Budget*, May 2015, page 8.

<sup>145</sup> National Seniors submitted in this regard that “the Government is encouraged to consider following the lead of other states such as New South Wales, Victoria and Western Australia which provide reduced or free to public transport for seniors”. In support of the proposal, the organisation has also highlighted the success of a trial of free off-peak travel for seniors implemented by the Gold Coast local government; and QCOSS has similarly recommended “exploring the viability of offering alternative concession products”. See: National Seniors Australia, *National Seniors Australia: Submission to the 2015-16 Queensland State Budget*, May 2015, page 12; National Seniors Australia, *Submission to the 2014-15 Queensland Budget*, January 2014, page 9; QCOSS, *Cost of Living Report – Special Edition: The cost of living and pensioner households*, 2014, page 15.



- the introduction of stamp duty concessions for seniors, to address market imbalances and associated affordability issues by encouraging seniors to downsize or 'right-size' their homes<sup>146</sup>
- the extension of subsidies to allow concession card holders to adapt their family home and purchase assistive technologies to facilitate living independently (supporting the maintenance of existing community and social networks to prevent vulnerabilities associated with social isolation)<sup>147</sup>
- the amendment of application requirements to ensure all eligible seniors are able to access government concessions directly (addressing access issues for residents of retirement villages who require the owner to apply for the concession on their behalf),<sup>148</sup> and

<sup>146</sup> Various inquiry reports have highlighted that stamp duties can distort decision-making in a way that negatively impacts on housing affordability, because they tend to encourage people to remain in houses which may not suit them and thereby discourage properties from being allocated to their most efficient use. In addition, such tax disincentives may also promote the uptake of potentially risky equity-stripping reverse mortgage arrangements over relocation to a more affordable property as a means of releasing retirement income; though the former lacks such distributive market effects. National Seniors argued that "by providing a concessional rate of stamp duty will encourage older people to right-size their homes, improving the quality of life for a large number of Queenslanders, while also providing many younger Queenslanders access to suitable family homes which would not otherwise be available". See: Productivity Commission, *Geographic Labour Mobility*, Research Report, April 2014, pages 185-187; 263; Senate Economics References Committee, *Out of reach? The Australian housing affordability challenge*, Commonwealth of Australia, May 2015, page 78; National Seniors Australia, *National Seniors Australia: Submission to the 2015-16 Queensland State Budget*, May 2015, page 12.

<sup>147</sup> National Seniors Australia, *Submission to the 2014-15 Queensland Budget*, January 2014, page 10. Queensland Government, 'Home modifications,' *Community and home care services*, webpage, last updated 17 June 2015, <https://www.qld.gov.au/community/getting-support-health-social-issue/home-modifications/> (accessed 20 August 2015); Correspondence from the Department, 27 May 2015, page 4.

<sup>148</sup> National Seniors Australia, *National Seniors Australia: Submission to the 2015-16 Queensland State Budget*, May 2015, page 7.

- resolving administrative challenges associated with application paperwork and insufficient distribution or use of informational platforms to promote the availability of subsidies and assistance to vulnerable groups.<sup>149</sup>

The Committee was sensitive to these issues and their importance for low income seniors, noting the submissions of QCOSS and others that “there is clearly scope to redesign concessions to target them at those who need them most”, in cooperation with the Federal Government.<sup>150</sup> However, the Committee also acknowledged the Department’s submission that:

*It is important that the extent and range of concessions provided in Queensland is sustainable over the longer term, and that Queensland’s ability to maintain the level of assistance is not eroded. Any changes to concessions will require whole-of-government consultation, community stakeholder engagement and budget modelling.*<sup>151</sup>

In addition, the Department stated:

*Contemporary research indicates that people experiencing financial stress often present with a range of contributing issues, such as domestic violence, disability, injury, family conflict, problem gambling, drug dependence, mental illness and housing instability. The department is investigating service models to better address the needs of vulnerable Queenslanders not only experiencing financial stress, but also other interrelated issues.*<sup>152</sup>

### Committee comment

The Committee understands that various income supports provided by the Queensland Government are considered crucial ingredients in the broader network of financial advice and support services provided as part of a financial safety net and inclusion framework to promote seniors’ fiscal wellbeing and active engagement in society.

Accordingly, the Committee was receptive to submissions which stated that the current concession scheme, while effective, could be better directed and communicated to ensure that those seniors who

<sup>149</sup> COTA Queensland has also submitted with regard to the concession scheme’s application processes that “some application forms are hard to find or fill out... [and] more could be done by the Queensland Government to promote the availability of subsidies and assistance”, including culturally and linguistically diverse (CALD) and ATSI seniors, who are “disadvantaged by the reliance of government agencies on the distribution of information resources (such as application forms) through electronic service channels”. With regards to Indigenous communities in particular, the Australian Indigenous Communications Association (AICA) has emphasised that Indigenous community radio or broadcasting “is often the only, and certainly the primary source of information” in the remote and very remote areas in which many Indigenous Australians (approximately 25%) live; and this is particularly the case where seniors may have lower levels of literacy and English language skills (English may be a second, third or fourth language, making local-language broadcasts especially critical). See: COTA, [Building an age-friendly Queensland: Supporting older people in the state budget 2014-15](#), January 2014, page 13; Australian Indigenous Communications Alliance, submission to the Australian Communications and Media Authority (ACMA), [Discussion Paper: Spectrum reallocation in the 700MH digital dividend band](#), October 2010, page 6. See also: Australian Government, Department of Finance, [Media consumption and communication preferences of Aboriginal and Torres Strait Islander audiences: Qualitative research](#), Commonwealth of Australia, September 2014, pages 7: “To be effective in reaching Aboriginal and/or Torres Strait Islander peoples who reside in metropolitan and regional areas, government communications should utilise oral channels (e.g. television, radio, face-to-face) in addition to written channels (e.g. print media, direct mail, written website content)”.

<sup>150</sup> QCOSS, [Cost of Living Report – Special Edition: The cost of living and pensioner households](#), 2014, page 13.

<sup>151</sup> Correspondence from the Department, 8 July 2015, page 6.

<sup>152</sup> Correspondence from the Department, 8 July 2015, page 7.

are most vulnerable are appropriately targeted and assisted to access supports to which they are entitled.

However, given the significant cross-cutting implications of any comprehensive examination of government concessions for the multiple Departments responsible for their administration; together with the lack of explicit emphasis on such matters in the Terms of Reference; the Committee considered that this Inquiry was not the most appropriate forum to undertake a fulsome consideration of such matters, as required.

Accordingly, the Committee suggests that the Government might consider whether a more specific examination of the concessions scheme might be appropriate as an area of future inquiry by either the Committee or another appropriate body.

#### **Recommendation 5**

The Committee recommends that the Queensland Government consider supporting a thorough review of current and potential concessions to ensure that supports and services are appropriately targeted to those individuals who are most in need of assistance, and that an appropriate mix of communication channels and messages are employed to ensure such supports and services are accessible to Queenslanders.

### **3.3 Housing support**

For many older Australians, home ownership plays a vital poverty alleviation role, helping to ensure they are spared the burden of regular rental payments and offering an important source of equity for them to draw upon in later years.<sup>153</sup> However, while the majority of Australians aged 65 and over own their home, many low income seniors are renting in the private market.<sup>154</sup> The requirement to meet ongoing rental costs has been identified as the single biggest financial burden faced by age pensioners who do not own their own home.<sup>155</sup>

Stakeholder groups commonly emphasise that the national retirement income system largely rests on an assumption of home ownership.

However, as stated by National Shelter:

*If you have not achieved home ownership, and this is increasingly the experience of many low-income households, then the private rental market is a brutal place if you are on a fixed income...*<sup>12</sup>

In Queensland, QCOSS report that pensioners living in Brisbane who rent in the private market are unable to sustain market rates of rent whilst reliant on the fixed low income of the aged pension, and are accordingly unable “to meet the costs associated with a basic standard of living”.<sup>156</sup> Reports suggest that around half of older people in private rental housing are in housing stress – paying more than 30 per cent of their gross incomes on housing.<sup>157</sup> Many older renters relate experiences of significant

<sup>153</sup> CEDA, [Addressing Entrenched Disadvantage in Australia](#), 2015, page 31.

<sup>154</sup> QCOSS, Submission no. 8, page 1.

<sup>155</sup> QCOSS, [Cost of Living Report – Special Edition: The cost of living and pensioner households](#), 2014, page 4.

<sup>156</sup> QCOSS, [Cost of Living Report – Special Edition: The cost of living and pensioner households](#), 2014, pages 3; 4.

<sup>157</sup> Senate Economics References Committee, [Out of reach? The Australian housing affordability challenge](#), 2015, page 273.

anxiety linked to these affordability challenges, and to issues surrounding the security of their rental tenure.<sup>158</sup>

Such scenarios are of particular concern given that senior home ownership rates are expected to decrease significantly in coming decades, amid various housing affordability and other income challenges. This is contributing to a growing trend of remaining in private tenancy for extended periods of life;<sup>159</sup> such that for many people now, renting is “no longer a transitional phase but a stage that would occupy most of their lifetime”.<sup>160</sup>

QCOSS Chief Executive Officer Mr Mark Henley reports that property ownership rates among retirees are in fact in freefall, with ageing Australians increasingly retiring to fixed incomes without ever having owned their home; or without successfully paying off their home.<sup>161</sup>

When this occurs, and in the absence of sufficient accumulated reserves, housing crises can be triggered by a range of life events such as widowhood, marital breakdown, domestic and family violence, evictions, and mental illness.<sup>162</sup> Recent studies have highlighted that substantial numbers of older private renters live in fear of eviction and unaffordable rent increases;<sup>163</sup> and are generally unable to make modifications to properties to accommodate emerging mobility or other related capability and safety issues.<sup>164</sup> National Shelter reports that despite the modest extra cost associated with various adjustments and alterations (e.g. grab rails in bathrooms and kitchens, a ramp instead of steps, and improved insulation);<sup>165</sup> many developers are often “unwilling to bear this cost, and hesitant to take on new home features untested in the market”, especially when “...they can quite easily, in this market, find a new tenant for that housing without having to make those changes to their property”.<sup>166</sup>

These variables, interacting with a small social housing sector characterised by excess demand and often with a priority focus on single people with complex needs and younger families; can create the conditions for homelessness or risk of homelessness for the first time in later life. Notably, recent estimates suggest persons aged 55 and over comprise close to one-fifth of all homeless people in Australia;<sup>167</sup> and while some have lived with continuous ongoing housing disruption or tended to live in temporary accommodation arrangements; Petersen and Parsell have identified that a significant proportion (70 per cent in their study) have had conventional housing histories and are experiencing

<sup>158</sup> Senate Economics References Committee, [Out of reach? The Australian housing affordability challenge](#), 2015, pages 271-273.

<sup>159</sup> Senate Economics References Committee, [Out of reach? The Australian housing affordability challenge](#), 2015, page 249; See K Hulse, T Burke, L Ralston and W Stone, [The Australian private rental sector: changes and challenges](#), *Australian Housing and Urban Research Institute*, July 2012, p. 6.

<sup>160</sup> K Stephens, ‘Retirees’ home ownership set to plummet to 2 per cent’, *Brisbanetimes.com.au* (online), 22 August 2013, <http://www.brisbanetimes.com.au/queensland/retirees-home-ownership-set-to-plummet-to-2-per-cent-20130821-2sbmu.html> (accessed 20 August 2015).

<sup>161</sup> Henley cited in Stephens, ‘Retirees’ home ownership set to plummet to 2 per cent’, 2013 (accessed 20 August 2015).

<sup>162</sup> Crane et al (2005), cited in M Petersen and C Parsell, ‘Homeless for the First Time in Later Life: An Australian Study’, *Housing Studies*, vol. 30, no. 3, 2015, page 369.

<sup>163</sup> Petersen and Parsell, ‘Homeless for the First Time in Later Life: An Australian Study’, 2015, page 371.

<sup>164</sup> QCOSS, Submission no. 8, page 1.

<sup>165</sup> Senate Economics References Committee, [Out of reach? The Australian housing affordability challenge](#), 2015, page 308.

<sup>166</sup> Senate Economics References Committee, [Out of reach? The Australian housing affordability challenge](#), 2015, page 308.

<sup>167</sup> A Jones and M Petersen, ‘Homelessness and older Australians: Developing a Research Base’, *Parity*, vol. 24, no. 9, page 31.

housing disruption for the first time in their lives.<sup>168</sup> Among this “first time” homeless group, primary factors contributing to a “critical housing incident”, included:

- eviction (*'notice to vacate'*) – 24.1 per cent
- unable to live with family (estrangement, family breakdown, carer stress, overcrowding, etc.) – 23.5 per cent
- unaffordability (rental increase, loss of partner, health or other financial crisis, etc.) – 21.9 per cent
- access issues (health incident or decreasing mobility making premises untenable), and
- relationship breakdown (including domestic violence) – 9.6 per cent.<sup>169</sup>

Importantly, these various financial and other stresses are often experienced as a continuum, with many people having “done without” various health and community care services for periods of time due to their rental stress, before a scenario of homelessness might finally be precipitated.<sup>170</sup> This is particularly the case for single older women with low superannuation balances and those facing relationship breakdowns in their later years, who are especially vulnerable.<sup>171</sup>

QCOSS highlighted that:

*These householders can struggle to find appropriate accommodation due to the lack of low-cost housing options available and the significant upfront costs associated with retirement villages and manufactured home communities. Lower cost alternatives such as boarding houses, are often ill-suited to older people as they involve unstable tenure and generally provide poor living conditions.*<sup>172</sup>

In response to these challenges, the Queensland Government currently delivers a range of housing assistance to Queensland seniors under the key objectives of improving housing affordability, reducing homelessness and assisting Queenslanders to access the private housing market.<sup>173</sup> In addition to initiatives such as bond loans and rental grants or assistance, this includes the provision of social and community housing, as funded under the *Housing Act 2003*.<sup>174</sup> As at 31 December 2012, there were 72,329 social housing dwellings in the state, with approximately 75 per cent (54,394) of these government owned and managed through a state network of housing service centres, and the remaining 25 per cent owned and/or managed in partnership with community organisations and local governments, including Indigenous councils.<sup>175</sup> However, in its current *Housing 2020* strategy, the Queensland Government acknowledges that:

<sup>168</sup> Petersen and Parsell, ‘Homeless for the First Time in Later Life: An Australian Study’, 2015, page 368.

<sup>169</sup> Petersen and Parsell, ‘Homeless for the First Time in Later Life: An Australian Study’, 2015, page 377; M Petersen and C Parsell, ‘[Older Women’s Pathways out of Homelessness in Australia](#)’, Institute for Social Science (ISSR) (University of Queensland) Research Report, Report for the Mercy Foundation, February 2014, pages 13-15.

<sup>170</sup> M Petersen, C Parsell, R Phillips and G White, *Preventing first time homelessness amongst older Australians*, AHURI Final Report no. 222, June 2014, pages 14; 56; 66.

<sup>171</sup> Petersen and Parsell, ‘Homeless for the First Time in Later Life: An Australian Study’, 2015, page 370; Senate Economics References Committee, [Out of reach? The Australian housing affordability challenge](#), 2015, page 307.

<sup>172</sup> QCOSS, [Cost of Living Report – Special Edition: The cost of living and pensioner households](#), 2014, page 14.

<sup>173</sup> Department of Housing and Public Works, *Housing*, Queensland Government, webpage, last updated 30 June 2015, <http://www.hpw.qld.gov.au/Housing/Pages/default.aspx> (accessed 20 August 2015).

<sup>174</sup> Department of Housing and Public Works, [Housing](#), webpage, 2015, (accessed 20 August 2015).

<sup>175</sup> Department of Housing and Public Works, [Housing 2020: Delivering a flexible, efficient and responsive housing assistance system for Queensland’s future](#), Queensland Government, July 2013, page 3.

*...the current housing stock is not well aligned to the needs of our tenants and, due to the advanced age of many properties, poses an unsustainable maintenance burden on the State. Tough economic times have increased demand for housing assistance at the same time as the available funding has dwindled.*<sup>176</sup>

QCOSS, in its October 2014 *Cost of Living Report*, indicated:

*It is clear that action is needed to assist age pensioners who are unable to secure their own home. Action is required to stimulate investment in housing that is both affordable and appropriate for people living on the age pension. Action is also required to provide age pensioner households with adequate assistance in the form of improved rental subsidies, access to decent and secure public and community housing and adequate public transport infrastructure and concessions...*<sup>177</sup>

More specifically, in order to better support those aged pensioners who are unable to secure their own home, the QCOSS report recommended that the Government:

*Increase funding for public and community housing that is appropriate in size (more one and two bedroom apartments), accessible (to account for the mobility issues facing older people) and located in areas of high connectivity (to enable easy access to services).*

*Use incentives to encourage the development of appropriate housing stock through the private market. This should include renewed funding for the National Rental Affordability Scheme which encourages the construction of low-cost housing.*

*Complement investment in affordable housing with targeted schemes that assist low-income households into home ownership to decrease the number of households relying on the private rental market and social housing in their retirement.*<sup>178</sup>

COTA Queensland has similarly encouraged the Queensland Government to work with the Commonwealth Government and other states and territories on a new National Affordable and Sustainable Housing Agreement, which “should include a seniors' housing framework, which facilitates growth in affordable and social housing, and also assists those in the private market to remain as independent as possible”.<sup>179</sup>

Amid this complex housing decision-making landscape and in the course of negotiating appropriate housing arrangements to accommodate declining capabilities, seniors who choose to sell their home and move into a retirement village, manufactured home or aged care living arrangement can also find themselves incurring large expenses for which they had not anticipated or planned. National Seniors Australia noted that many seniors who enter such arrangements do so in the belief that Queensland legislation will provide an adequate level of consumer protection, “but this does not always prove to be so”.<sup>180</sup>

National Seniors Australia submitted that legal jargon in contracts and Public Information Documents associated with such arrangements may be an obstacle to full or adequate comprehension; as has also been highlighted by recent inquiries and investigations in the sector, which have identified shortfalls

<sup>176</sup> Department of Housing and Public Works, [Housing 2020: Delivering a flexible, efficient and responsive housing assistance system for Queensland's future](#), 2013, page 2.

<sup>177</sup> QCOSS, [Cost of Living Report – Special Edition: The cost of living and pensioner households](#), 2014, page 14.

<sup>178</sup> QCOSS, [Cost of Living Report – Special Edition: The cost of living and pensioner households](#), 2014, page 14.

<sup>179</sup> COTA Queensland, [Building an age-friendly Queensland: Supporting older people in the state budget 2014-15](#), January 2014, page 5 (accessed 25 May 2015).

<sup>180</sup> National Seniors Australia, [Queensland State Budget Submission 2015-16](#), May 2015, pages 1-2.

in understanding among both seniors and the legal professionals advising them.<sup>181</sup> National Seniors stated:

*National Seniors members who have been long term residents of retirement villages and manufactured homes have expressed that they would not have entered into these types of accommodation arrangements had they had been better informed about the costs associated with their future departure.*<sup>182</sup>

Further, National Seniors highlighted the following areas of concern and financial vulnerability identified by its members:

- *increases in General Service Fees*
- *the level of Exit Fees*
- *capital gains on termination*
- *continuing to pay fees until the unit is sold*
- *disputes over reinstatement works*
- *village closures.*<sup>183</sup>

In keeping with these reports, correspondence received from the Queensland Civil and Administrative Tribunal (QCAT) confirmed that although retirement village disputes do not constitute a high volume jurisdiction for the tribunal;<sup>184</sup> the applications that are received by QCAT in this regard tend to deal generally with disputes involving 1) terminations; or 2) general disputes and instances in which the village owner/operator is seeking a review of the decision of the Chief Executive, pertaining mostly to “exit fees, commissions and maintenance”.<sup>185</sup>

In addition, National Seniors revealed:

*National Seniors members continue to raise issues regarding deferred fee schemes in retirement village contracts. There are a variety of deferred fee schemes contained in retirement village contracts and unfortunately, many potential village residents do not obtain legal or financial advice prior to signing and entering a contract.*

*Members have reported that they are out of pocket by hundreds of thousands of dollars upon exit from a retirement village. Some members have also experienced large expenses to relocate a home from a manufactured park upon the sale of the site by the operator and lack an understanding of the financial arrangements regarding bonds and compensation.*

National Seniors did acknowledge that such failings have been recognised by a near complete working party review of the *Retirement Villages Act 1999* and a progressing review of the *Manufactured Homes (Residential Parks) Act 2003*.

However, the organisation noted that “the outcomes from both reviews remain incomplete”, and accordingly recommended that the Government:

<sup>181</sup> National Seniors Australia, *Queensland State Budget Submission 2015-16*, May 2015, page 1.

<sup>182</sup> National Seniors Australia, *Queensland State Budget Submission 2015-16*, May 2015, page 1.

<sup>183</sup> National Seniors Australia, *Queensland State Budget Submission 2015-16*, May 2015, pages 1-2.

<sup>184</sup> Correspondence from QCAT, 28 July 2015, page 1. The correspondence specifically noted that in the financial year 2012-13, 19 retirement village dispute-related applications were received and in the financial years 2013-14 and 2014-15 respectively, totals of 12 and 14 applications were received.

<sup>185</sup> Correspondence from QCAT, 28 July 2015, page 1.



*Continue the review and implement the changes to the Manufactured Homes (Residential Parks) Act 2003 and the Retirement Villages Act 1999 to ensure that adequate consumer protection measures are in place.*<sup>186</sup>

### Committee comment

The Committee considers that access to affordable, accessible housing is critical to ensuring Queensland's seniors are able to age in place securely. The Committee noted Departmental advice that the Queensland Government is establishing an Advisory Taskforce on the Residential Transition for Ageing Queenslanders, "to support older Queenslanders to retain their independence into old age and control how and where they live", which will include "seniors' organisations, private developers, a health economist, service delivery experts and senior public servants".<sup>187</sup> The Committee is encouraged by the Taskforce's establishment, and suggests that its final report and recommendations be used to support a comprehensive policy framework or strategy for the housing of the State's seniors.

The Committee also considers the stakeholder reference to ongoing concerns about financial issues surrounding contractual arrangements for retirement accommodation options highlight the need for the Government to finalise and implement recommendations stemming from existing reviews of the *Retirement Villages Act 1999* and the *Manufactured Homes (Residential Parks) Act 2003*.

### Recommendation 6

The Committee recommends that the Queensland Government develop a seniors housing framework which facilitates growth in affordable and accessible housing options and supports seniors to live as safely and independently as possible.

### Recommendation 7

The Committee recommends that the Queensland Government finalise and implement recommendations stemming from existing reviews of the *Retirement Villages Act 1999* and the *Manufactured Homes (Residential Parks) Act 2003*.

<sup>186</sup> National Seniors Australia, *Queensland State Budget Submission 2015-16*, May 2015, page 5.

<sup>187</sup> Correspondence from the Department, 8 July 2015, page 6.



### 3.4 Consumer credit and financial products

In the face of many of the income challenges and financial pressures identified in this report, credit issues can resonate with particular force for seniors. Peak superannuation and financial industry organisations have highlighted a growing trend of older generations taking more debt into retirement, such that being debt free leading into this period of their lives is now “unlikely to be the norm”.<sup>188</sup>

Reports suggest that even where people do have access to superannuation, “desperate Australians are tapping into their nest eggs early to pay for medical treatment, to modify their home or cars and to pay off mortgages”,<sup>189</sup> with more than 19,000 Australians applying for early release of superannuation on compassionate grounds in 2013-14 – an increase of 7 per cent on the applications in 2012-13.<sup>190</sup> National time series data also reveals that the proportion of bankrupts aged 60 or over in Queensland has consistently increased over the last decade, from 7 per cent in 2003 to 8 per cent in 2005, 10 per cent in 2007, 12 per cent in 2009 and 13 per cent in 2011.<sup>191</sup> Further, recent Australian Financial Security Authority (AFSA) statistics show that Australia-wide, seniors accounted for 14.1 per cent of bankrupts, 5.0 per cent of debt agreement debtors and 18.1 per cent of personal insolvency agreement debtors (10.7 per cent of all debtors in total) in 2014.<sup>192</sup>

Importantly, while income support and related service provision subsidies or assistance play a crucial role in allowing seniors to meet their day-to-day expenses; many seniors may be precluded from accessing financial services to allow them to deal with more irregular, emergency expenses, and to have greater choice in the management of their money. This type of financial exclusion is less prevalent amongst older Australians than amongst the country's youth; however, annual surveys of financial exclusion published by National Australia Bank (NAB) from 2006 to 2013 have illustrated that persons aged 65 and over consistently account for around 10 per cent of the nation's financially excluded population.<sup>193</sup>

This exclusion is expressed primarily by way of restricting access to credit and to general insurance, both of which tend to decline for people over 65 years of age (by contrast, NAB surveys have

<sup>188</sup> A Sampson, ‘Baby boomers face going into retirement saddled with debt’, *Sydney Morning Herald* (online), 24 March 2010, <http://www.smh.com.au/business/baby-boomers-face-going-into-retirement-saddled-with-debt-20100323-qu5n.html> (accessed 20 August 2015).

<sup>189</sup> S Elsworth, ‘Department of Human Services stats show Aussies are accessing superannuation early’, *News.com.au* (online), 4 May 2014, <http://www.news.com.au/finance/superannuation/departments-of-human-services-stats-show-aussies-are-accessing-superannuation-early/story-e6frmdi-1226904218295> (accessed 20 August 2015).

<sup>190</sup> Australian Government, Department of Human Services, *Annual Report 2013-14*, Commonwealth of Australia, 2014, page 76.

<sup>191</sup> Australian Government, Insolvency and Trustee Service Australia, *Profiles of Debtors 2011*, Commonwealth of Australia, 2012, page 8.

<sup>192</sup> Figures calculated by the Committee secretariat using data from: Australian Government, Australian Financial Security Authority, *Ages of insolvent debtors: The ages of debtors entering a personal insolvency* (‘Ages of insolvent debtors from 2008’ tables), 26 May 2015, <https://www.afsa.gov.au/resources/statistics/socio-economic-statistics/ages/ages-of-insolvent-debtors> (downloaded 30 July 2015).

<sup>193</sup> K Muir, A Marjolin and S Adams, *Eight Years on the Fringe: What has it meant to be severely or fully financially excluded in Australia?*, Centre for Social Impact Report for National Australia Bank NAB, March 2015, page 11. From 2006 to 2013, seniors’ relative proportion of the financially excluded population has varied from an initial rate of 11.4% in 2006 and a peak of 12.1% in 2007; before a steady descent in the years following, to a low of 9.8% in 2013.

determined that age tends to have little impact on access to a transaction account).<sup>194</sup> As with other measures of financial disadvantage, these exclusionary effects tend to be particularly concentrated amongst seniors who have a low income history, live outside capital cities, speak a language other than English, and are women and/or ATSI people. Notably, Indigenous seniors may face particularly high rates of barriers to accessing credit and insurance products because they may occupy many high-risk categories simultaneously.<sup>195</sup>

Whyley notes that this type of disadvantage often receives lower priority as a financial protection and inclusion mechanism because “borrowing is seen as a luxury rather than a necessity”;<sup>196</sup> and not all individuals will have a demand for specific insurance products because they may not “own a car or valuable possessions which justify insurance”.<sup>197</sup> However, research has demonstrated that borrowing can be a key strategy in making ends meet, and smoothing consumption.<sup>198</sup> Additionally, while uptake of insurance is low among people on low incomes, it can help ensure “even those with modest assets and incomes, are able to recover from shocks and are resilient in the event of losses”.<sup>199</sup>

With regard to credit, low income seniors may be precluded from obtaining loans due to their credit history or “because their circumstances are not considered by lending institutions to offer sufficient assurance of their ability to meet their obligations”.<sup>200</sup> With less scope to secure conventional loan arrangements with banks and traditional institutions, and in the face of what can be pressing and immediate financial requirements, they may be dependent on fringe lending products such as payday loans which carry high interest rates.<sup>201</sup> Banks et al, in their survey of Australian payday loan clients published in 2015 noted that “core demand for payday loans originates from households with a poor credit history”, with 80 per cent of research participants receiving a social welfare payment or pension, only 7 per cent possessing a credit card and fewer than two in five having ever taken out a loan.<sup>202</sup>

The comparative disadvantage associated with such products, interest wise, has been highlighted by a number of studies. For example, Banks et al noted that while for those with a credit card accessing a \$300 cash advance at an annual percentage rate of 21 per cent costs \$2.47 if repaid after two weeks;

<sup>194</sup> National Australia Bank, [Measuring Financial Exclusion in Australia](#), Centre for Social Impact for National Australia Bank, April 2014, page 20; National Australia Bank, [Measuring Financial Exclusion in Australia](#), Centre for Social Impact for National Australia Bank, June 2013, page 23.

<sup>195</sup> Gibson has identified that in addition to low incomes and language or literacy challenges, Indigenous seniors may be more likely to face other barriers to credit due to their limited credit history and lack of collateral (as they can't use communal land as collateral), as well as a lack of competition in provision of banking services to many rural and remote communities, and Indigenous cultural preference for face to face banking rather than electronic services. See: F Gibson, [Financial & Consumer Credit Issues for Older Consumers in Central Victoria](#), Loddon Campaspe Community Legal Centre, Advocacy and Rights Centre Ltd, April 2008, page 21.

<sup>196</sup> Gibson, [Financial & Consumer Credit Issues for Older Consumers in Central Victoria](#) 2008, page 21.

<sup>197</sup> NAB, [Measuring Financial Exclusion in Australia](#), 2013, page 9.

<sup>198</sup> Gibson and F Rochford, ‘Emerging Consumer Credit Issues for Older Australians’, 2008, page 91; B Melzer, ‘The Real Costs of Credit Access: Evidence from the Payday Lending Market’, *Quarterly Journal of Economics*, vol. 126, no. 1, page 517.

<sup>199</sup> D Collins, [Covering the essentials: Increasing access and affordability of insurance for people on low incomes](#), Good Shepherd Microfinance, July 2013, page 3.

<sup>200</sup> J Harmer, Department of Families, Housing, Community Services and Indigenous Affairs, [Pension Review Background Paper](#), Commonwealth of Australia, July 2007, page 26.

<sup>201</sup> Gibson and Rochford, ‘Emerging Consumer Credit Issues for Older Australians’, 2008, page 91; G Marston and L Shevellar, ‘[The Experience of Using Fringe Lenders in Queensland: A Pilot Study](#)’, Social Policy Unit, School of Social Work and Human Services, University of Queensland, July 2010, page 12.

<sup>202</sup> M Banks, G Marston, R Russell and H Karger, ‘[In a perfect world it would be great if they didn't exist: How Australians experience payday loans](#)’, *International Journal of Social Welfare*, vol. 24, no. 1, 2014, page 41.

while basic fees and charges for a \$300 payday loan over the same period can amount to \$72.<sup>203</sup> Critics argue that payday lending can deliberately hook customers into a cycle of debt, and that reliance upon serial borrowing, often from multiple lenders, can create a situation of “chronic rollover” and escalating, irrepayable arrears.<sup>204</sup> Notably, a recent ASIC review of industry compliance with responsible lending guidelines found high rates of lending to consumers already in default or with two or more loans in the previous 90 days – that is, of 288 files reviewed “62 per cent triggered the presumption of unsuitability, yet only one of the 13 lenders reviewed indicated they made any further enquiries”.<sup>205</sup> However, a large body of research has emphasised that payday consumers may have no other option in the face of emergency need, identifying the robust nature of the payday loan sector as a necessary market solution to “inadequate social welfare payments” and the lack of alternative credit products.<sup>206</sup> Further, a Queensland study of fringe lenders noted:

*In the context of facing a choice about having the electricity cut off at home or paying a high price for a loan in order to pay a utility bill it becomes a little easier to see why people will access a high cost loan, regardless of the charges and fees.*<sup>207</sup>

Wilson et al have suggested that payday loans can improve the likelihood of financial survival by helping participants absorb expenditure shocks, but only up to a threshold level: subjects borrowing more than 10 loans over the study period (30 months) were at greater risk that they would not survive a financial setback than if they did not access any loans.<sup>208</sup>

At a Federal level, steps continue to be taken to address these issues, building on established regulatory moves to implement caps on interest levels across the credit sector and improve disclosure requirements and service standards, among a range of other regulatory mechanisms imposed under uniform credit code legislation and other financial sector legislation.<sup>209</sup>

The primary focus of the State Government in this regard is to seek to address supply side issues by partnering with mainstream financial service providers and non-profit community organisations to link low income households with access to low-interest credit alternatives such as Federal Centrelink advance payments, the No Interest Loans Scheme (NILS) and StepUp Loans.<sup>210</sup>

<sup>203</sup> Banks et al, [‘In a perfect world it would be great if they didn’t exist’: How Australians experience payday loans](#), 2014, page 38.

<sup>204</sup> Banks et al, [‘In a perfect world it would be great if they didn’t exist’: How Australians experience payday loans](#), 2014, page 42.

<sup>205</sup> A Kelly, [‘Consumer credit law: Payday lending practices: Why unethical loans are harming the vulnerable,’](#) *Law Society of NSW Journal*, vol. 2, no. 5, June 2015, page 82.

<sup>206</sup> Banks et al note that payday lending has become an “alternative welfare state” in its provision of needed but expensive cash, for the day-to-day maintenance of the poor. See: Banks et al, [‘In a perfect world it would be great if they didn’t exist’: How Australians experience payday loans](#), 2014, page 45.

<sup>207</sup> Marston and Shevellar, [‘The Experience of Using Fringe Lenders in Queensland: A Pilot Study’](#), 2010, page 55.

<sup>208</sup> B Wilson, D Findlay, J Meehan Jr, C Wellford and K Schurter, ‘An experimental analysis of the demand for payday loans’, Social Science Research Network Paper (online), April 2010, <http://ssrn.com/abstract=1083796> (accessed 20 August 2015).

<sup>209</sup> The operations of the financial system and its actors are regulated primarily at the Federal level, including laws and schemes covering: 1) authorised deposit-taking institutions, including banks, credit unions and building societies and other financial institutions, 2) insurance (life and general), 3) superannuation, 4) bankruptcy and insolvency, 5) financial markets, 6) financial transactions and payment systems, and 7) fair trading and consumer protection.

<sup>210</sup> The Department noted that while it funds the Carers program which runs NILS, NILS itself is not funded by the Department. Departmental resources do, however, provide seniors with links to a range of these product options. See: Correspondence from the Department, 4 May 2015, pages 3-4.

Banks et al note that although these products have proven popular, they are limited in their provision:

*Current community finance and Emergency Relief arrangements rarely assist such borrowers as their policies explicitly exclude a person's regular expenses in their criteria.*

*The No Interest Loan Scheme, for example, only caters for less commonly mentioned, one-off purchases such as an air conditioner, refrigerator or car repairs. Emergency Relief targets payments to people in immediate financial crisis, but not for chronic day-to-day living expenses.*<sup>211</sup>

Further:

*There are limits to loan amounts (\$500), geographical restrictions and restrictions on use of money (e.g. limiting loans for white goods only). Centrelink advance payments are available, and since July 1, 2010, there is greater flexibility in accessing these – however they are also limited according to pension types and amounts.*<sup>212</sup>

Fewer restrictions are imposed on StepUp Loans, which may be worth up to \$3000 and have a loan term of between six months and three years. However these loans similarly can only be used to purchase essential household goods and services, and not “to fund debt repayments, fines, bills, or non-essential items”.<sup>213</sup> Additionally, as noted in the 2013 NAB report on Financial Exclusion in Australia, “many of these programs are relatively modest in terms of scale, and all programs are subject to funding and sustainability pressures”.<sup>214</sup>

The NAB report also highlights “the absence of initiatives designed to improve access to insurance”.<sup>215</sup> However, the Committee notes that regulation of the insurance industry occurs primarily within the Federal Sphere; and the Insurance Council of Australia's submission emphasised that it continues to engage with community organisations on “issues of insurance access and affordability” and to implement a Financial Inclusion Strategy.<sup>216</sup>

### Committee comment

The Committee recognises that, in addition to various income and housing support mechanisms, seniors require access to affordable credit and insurance products to enable them to smooth their expenditure and protect their assets in the face of unexpected losses and financial shocks. Accordingly, it is important that the Queensland Government continue to work in partnership with the Federal Government, community organisations and financial service providers to support the continued expansion of low interest service options and community finance programs for seniors and other low income Queenslanders.

In this regard, the Committee considers that it is encouraging that the Department's *Strategy 2015-19* includes among its key deliverables for 2015-16, a commitment to “co-develop financial resilience and inclusion strategies....and commission new financial resilience services”.<sup>217</sup> The Committee notes that

<sup>211</sup> Banks et al, [‘In a perfect world it would be great if they didn’t exist’: How Australians experience payday loans](#), 2014, page 44.

<sup>212</sup> Marston and Shevellar, [‘The Experience of Using Fringe Lenders in Queensland: A Pilot Study’](#), 2010, page 14.

<sup>213</sup> Centre for Social Impact (CSI), [StepUp Loan, A little help goes a long way: Measuring the impact of the StepUP Loan program](#), Centre for Social Impact, University of New South Wales for NAB, April 2013, page 12.

<sup>214</sup> NAB, [Measuring Financial Exclusion in Australia](#), 2013, page 7.

<sup>215</sup> NAB, [Measuring Financial Exclusion in Australia](#), 2013, page 7.

<sup>216</sup> Insurance Council of Australia, Submission no. 13, pages 1-2.

<sup>217</sup> Department of Communities, Child Safety and Disability Services, [Strategy 2015-16](#), Queensland Government, June 2015, page 2.

this is in keeping with previous recommendations of microfinance provider Good Shepherd that governments support and advocate for the systematic development of “financial inclusion and resilience plans for and by all actors... to optimise financial inclusion to mutually benefit people, customers and financial service providers”.<sup>218</sup>

The Committee considers that such plans should necessarily include exploration of promising community finance pilot programs or initiatives and other alternatives to the growing fringe lending sector; together with insurance cover for low income seniors.

#### **Recommendation 8**

The Committee recommends that the Department's development of financial resilience and inclusion strategies include exploring options to address the credit and insurance needs of financially excluded seniors, and improving referral pathways linking older Queenslanders with safe, affordable alternative financial service products.

### **3.5 Social participation and support**

Seniors' financial wellbeing can be significantly related to the extent to which they have access to networks of social support and various other opportunities to participate in community life. For example, for some seniors, lone living may reflect welcome independence and autonomy.<sup>219</sup> However, it is also associated with a greater risk of economic hardship, attributable not only to an inability to share income and pool resources; but also to a greater likelihood of social isolation, which carries with it an increased risk of vulnerability to financial exploitation or abuse.<sup>220</sup>

Social isolation has been defined as “living without companionship, having low levels of social contact, little social support, feeling separated from others, being an outsider, isolated and suffering loneliness”.<sup>221</sup> Importantly, in addition to reducing resilience to financial exploitation and mistreatment, it is associated with a range of other adverse effects and consequences which can have a reverberating effect on seniors' finances and across all areas of their lives. For example, researchers have identified positive correlations between social isolation and insomnia, depression, increased propensity for dementia, elevated blood pressure, increased risk of institutional care, and reduced recovery outcomes after serious illness.<sup>222</sup> In fact, recent Australian studies have reported that in comparison to other well-known health risk factors, the absence of supportive social relationships is

<sup>218</sup> G McIlwain, *Response to the Financial System Inquiry Interim Report, Submission by Good Shepherd Microfinance*, Good Shepherd Microfinance, August 2014, page 8.

<sup>219</sup> D de Vaus, *Diversity and change in Australian families: statistical profiles*, Australian Government, Australian Institute of Family Studies (AIFS), July 2004, page 100.

<sup>220</sup> South Australian Department for Health and Ageing, *Strategy to Safeguard the Rights of Older South Australians, 2014-2021*, Government of South Australia, May 2014, page 19; Alzheimer's Australia NSW, *Preventing Financial Abuse of People with Dementia*, Discussion Paper no. 10, Alzheimer's Australia NSW, June 2014, page 9; Elder Abuse Prevention Unit, Risk Factors, *Elder Abuse*, webpage, 2014, <http://www.eapu.com.au/elder-abuse/risk-factors> (accessed 20 August 2015).

<sup>221</sup> G Hawthorne, 'Measuring social isolation in older adults: Development and initial validation of the friendship scale', *Social Indicators Research*, vol. 77, 2006, page 526.

<sup>222</sup> A Beer, 'Worse than Cigarettes and Drink: The Impact of Social Isolation on Older Australians', Presentation (online), Centre for Housing, Urban and Regional Planning (CHURP), University of Adelaide, August 2013, [https://www.adelaide.edu.au/churp/presentations/Worse\\_than\\_Cigarettes\\_and\\_Drink.pdf](https://www.adelaide.edu.au/churp/presentations/Worse_than_Cigarettes_and_Drink.pdf) (accessed 20 August 2015).



equivalent to the health effects of smoking 15 cigarettes a day or drinking more than six alcoholic drinks a day; and is more harmful than not exercising and twice as harmful as obesity.<sup>223</sup>

Current estimates suggest that approximately 20 per cent of older Australians are socially isolated, though prevalence figures may vary depending on the definition and outcome measure used.<sup>224</sup> While more common in lone person households, it can be experienced by seniors in a diverse array of living scenarios and facing distinct obstacles or deficiencies in structural and functional support.<sup>225</sup> For example, in addition to participatory barriers associated with poverty and deprivation, a senior may be isolated by personal or geographical circumstances, including:

- limited or no contact with friends and family, including as a result of significant life events, which can also contribute to loneliness and low morale (bereavement, loss of relationships or family breakdown, retirement/unemployment)
- gender, ethnicity, language and cultural barriers, which can impede communication or engagement with other community members
- a lack of geographic proximity to essential services and age-friendly public or private infrastructure (distance to food, health, financial institutions, etc; potentially challenging urban environments featuring heavy traffic or pedestrian obstacles, lack of seating, signage or devices with small screens and print, etc.)<sup>226</sup>
- a lack of access to private transport and/or public transport and other mobility challenges (many people of elderly age no longer have a drivers licence and find it difficult or are deterred by the need to use public transport; and may accordingly be dependent on others to help them both arrange and travel to and from appointments)
- a lack of access to technology and or limited technological capabilities or aptitude, resulting in reduced opportunities for communication or access to services
- personal functional or other physical and mental health issues, including:
  - failing eyesight and hearing, which may discourage social interactions and can compound the difficulty in accessing printed informational materials and/or making telephone calls<sup>227</sup>
  - cognitive and mobility issues, which may limit their ability to travel to or access services, or to participate in social activities for any lengthy period of time,<sup>228</sup> and

<sup>223</sup> J Holt-Lunstad, TB Smith and JB Layton, '[Social Relationships and Mortality Risk: A Meta-analytic Review](#)', *PLoS Med*, vol. 7, no. 7, page 14 (See Figure 6: Comparison of odds (lnOR) of decreased mortality across several conditions associate with mortality).

<sup>224</sup> A Beer, '[Worse than Cigarettes and Drink: The Impact of Social Isolation on Older Australians](#)', 2013.

<sup>225</sup> Living alone in itself not a predictor of social isolation. For some people independent living may be a conscious choice that does not give rise to loneliness, and may offset by significant engagement in activities within social networks and the community. See: A Pate, '[Social Isolation: Its impact on the mental health and wellbeing of older Victorians](#)', COTA Victoria Working Paper no. 1, COTA Victoria, February 2014, pages 6; 8-9; A Dickens, S Richards, C Greaves and J Campbell, '[Interventions targeting social isolation in older people: a systematic review](#)', *BMC Public Health*, vol. 11, 2011, page 648.

<sup>226</sup> Gibson, '[Financial & Consumer Credit Issues for Older Consumers in Central Victoria](#)', 2008, page 18.

<sup>227</sup> Baptcare, '[Older Australians who are Financially and Socially Disadvantaged](#)', Aged Care for All Series, Baptcare Social Policy Position Paper, 2013, page 4.

<sup>228</sup> The OPG noted in its submission that "persons with impaired capacity are often socially isolated and dependent upon close family or friends who are entrusted by the person with their financial assets and resources". See: OPG, Submission no. 5, page 7.

- other general health conditions which may limit their ability to participate in activities generally,<sup>229</sup> and
- various subjective factors (individual personality characteristics, attitudes and expectations.<sup>230</sup>

Importantly, these factors may be expressed through a decline in both or either of the *quantity* or the *quality* of social relationships and connections;<sup>231</sup> and baby boomers are more likely to be affected by social isolation in older age than previous generations because of their lower marriage rates, higher levels of divorce, reduced fertility, more mobile employment and housing careers, and increasing cultural tendencies for self-reliance.<sup>232</sup>

Many of these isolation risk factors can be particularly acute in rural and regional areas, where public service access points and options are typically fewer in number and geographically dispersed; and where a lack of access to technology can further serve to reinforce this comparative service disadvantage. For example, as noted by the Victorian Family and Community Development Committee in its inquiry into opportunities for participation of Victorian seniors; notional attempts to address geographical service obstacles though telephone-based or internet-based information and service provision can be significantly restricted when “access to internet services and especially fast internet services is limited”,<sup>233</sup> and mobile telephone reception may also be inconsistent (in addition to technical aptitude issues).<sup>234</sup>

It has also been observed that regional isolation challenges may be amplified by effect of the “sea change” or “tree change” phenomenon that sees older people move out of the city to establish new households in their later years (often in coastal areas). Gibson and Rochford have noted that oftentimes those who translocate may initially find themselves “without support networks as they have left family behind”.<sup>235</sup>

All of these variables may serve to increase vulnerability to exploitation by undermining seniors’ participation and social connectedness within the community, and thereby reducing opportunities for interactions which can convey important messages and support.<sup>236</sup> Moschis et al note, for example, that social isolation and exclusion can mean a lack of awareness of various scams that may be topics

<sup>229</sup> For example, the ATSILS Submission noted that “one of the main barriers which prevent Aboriginal and Torres Strait Islander seniors being able to seek necessary access to justice is simply the fact that they may be frail or suffering from a physical or mental disability”. See: ATSILS, Submission no. 16, page 4.

<sup>230</sup> A Beer, [‘Worse than Cigarettes and Drink: The Impact of Social Isolation on Older Australians’](#), 2013.

<sup>231</sup> Seniors may be both quantitatively and qualitatively isolated. For example, research highlights that people living in institutional settings sometimes feel lonely despite being surrounded by others, in keeping with qualitative notions of being “lonely in a crowd”. See: M Stanley, W Moyle, A Ballantyne, K Jaworaski, M Corlis, D Oxlade, A Stoll and B Young, [“Nowadays you don’t even see your neighbours’: loneliness in the everyday lives of older Australians”](#), *Health and Social Care in the Community*, vol. 18, no. 4, 2010, page 412. See also: A Beer, [‘Worse than Cigarettes and Drink: The Impact of Social Isolation on Older Australians’](#), 2013; Cultural & Indigenous Research Centre Australia, [Comparative Isolation Amongst Older People in the ACT: Final Report](#), Department of Disability, Housing and Community Services, ACT Government, 2009, page 22.

<sup>232</sup> A Beer, [‘Worse than Cigarettes and Drink: The Impact of Social Isolation on Older Australians’](#), 2013.

<sup>233</sup> Gibson, [Financial & Consumer Credit Issues for Older Consumers in Central Victoria](#), 2008, page 19.

<sup>234</sup> Gibson, [Financial & Consumer Credit Issues for Older Consumers in Central Victoria](#), 2008, pages 17; 18.

<sup>235</sup> Gibson, [Financial & Consumer Credit Issues for Older Consumers in Central Victoria](#), 2008, page 13.

<sup>236</sup> King et al note that “Social isolation that leaves [seniors] without the opportunity to readily discuss their affairs with friends and contemporaries is also a risk factor for financial elder abuse”. See: C King, J Wainer, G Lowdnes, P Darzins and K Owada, [For love or money: intergenerational management of older Victorians’ assets](#), Protecting Elders’ Assets Study, Monash University, Eastern Health Clinical School, Melbourne, 2011, page 19.

of discussion amongst trusted non-commercial sources of information, such as friends, co-workers and family members. Further:

*In the context of social breakdown theory (Kuypers and Bengston 1973), society's labeling of older persons as less competent is likely to yield uncertainty and low self-esteem, increasing the likelihood older persons may rely on a commercial source that conveys the confidence and certainty they think they are lacking.<sup>237</sup>*

In keeping with this, Dickens et al have noted conversely that an active life characterised by engagement in high levels of routine activities appears to act as a protective factor against financial mistreatment.<sup>238</sup> In their findings, the researchers emphasised the positive effects of two specific routine activities in particular:

- the frequency with which respondents got together socially with friends, family and neighbours, and
- outside-the-home social activity.<sup>239</sup>

Dickens et al observed:

*Individuals who engage in routine activities, such as socialising with their friends in the community, are less likely to experience financial mistreatment. What exactly produces this effect bears closer scrutiny. It could be that such activities reduce opportunities for fraud targeting and victimisation to occur, but they also could expose individuals to a broader network of individuals who provide informal social support that protects them against fraudulent activities that family members of relatives might seek to undertake.<sup>240</sup>*

Additionally, where financially exploitative or abusive behaviours are already underway, regular social engagement offers the opportunity to support early detection and intervention. Accordingly, National Seniors has called for “more programs [to] be developed and promoted to help older people stay healthy and socially engaged”.<sup>241</sup> In a recent, 2012 report on the effects of global financial crisis on ageing baby boomers, it noted:

*Not only are these programs important for the well-being of older people, but in the case of a future financial crisis, they will help older adults prevent or deal with financial stress by remaining active, engaged and socially resilient.<sup>242</sup>*

Similarly, COTA Queensland emphasised:

*There is also evidence that a key factor in financial literacy and financial safety is the ability to gather information from informed media and personal networks. These sources of information can prepare people to deal with scams, which can change at a rapid pace by entrepreneurial criminals who regularly seize opportunities to scam through what can appear to be legitimate sources. Timeliness of information is also important. For example, many people are now aware of telephone scams such as individuals pretending to represent the software company Microsoft claiming to have detected a virus in an individual's computer ...*

<sup>237</sup> GP Moschis, J Mosteller and CK Fatt, ‘Research Frontiers on Older Consumers’ Vulnerability,’ *Journal of Consumer Affairs*, vol. 45, no. 3, 2011, page 472.

<sup>238</sup> K Holfreter, M Reisig, DP Mears and SE Wolfe, [Financial Exploitation of the Elderly in a Consumer Context](#), Final report to the National Institute of Justice, NCJ 245388, March 2014, page 110.

<sup>239</sup> Holfreter et al, [Financial Exploitation of the Elderly in a Consumer Context](#), 2014, page 14.

<sup>240</sup> Holfreter et al, [Financial Exploitation of the Elderly in a Consumer Context](#), 2014, page 17-18.

<sup>241</sup> National Seniors Australia, [‘Older, single women at financial risk’](#), 2012.

<sup>242</sup> National Seniors Australia, [‘Older, single women at financial risk’](#), 2012.



*Non-computer scams can include chain mail and people making false representation on peoples' door-step, such as making false claims of being a tradesperson. People who are socially engaged are more likely to hear about these scams soon after they appear.*<sup>243</sup>

In addition, the Public Advocate has noted:

*Social inclusion is a key factor in minimising the risk of elder abuse, and a network of broad social services to optimise successful family and carer support arrangements is vital.*<sup>244</sup>

While research has evaluated a broad array of different local interventions, increasingly there has been a recognition that successful programmatic efforts to reduce social isolation in older people require understanding and strategic action across multiple levels – that is at the levels of individual, neighbourhood, community and society, as is reflective of the multivariate nature of isolation variables and their interactions.<sup>245</sup> Accordingly, effective strategies must encompass a suite of policy actions with a range of different objectives and distinct target populations, corresponding with the intervention level (e.g. universal initiatives, selective interventions for at-risk population subgroups; and directed initiatives which are targeted at socially isolated populations).<sup>246</sup>

In a broad sense, societal and community-focused efforts might include actions to reduce social inequalities and discrimination against older people, and programs designed to improve the built environment and support the development of age-friendly infrastructure (e.g. including safe footpaths and accessible facilities, implementing age-friendly universal building design principles and universal service obligations).<sup>247</sup>

In this regard, the Committee noted the OPG's recommendation that:

*Investment should be made in infrastructure, and building service provider capacity in regional, rural and remote locations, particularly where there are existing gaps in services such as in the delivery of specialist disability care.*<sup>248</sup>

COTA Queensland, in its 2015 *State Election Priorities* document, suggested such measures might best be adopted by way of the systematic approach to social inclusion embodied in the age-friendly cities and communities framework:

*Given the global challenge of ageing, COTA Queensland believes the World Health Organisation's age-friendly cities and communities framework is a valuable guide for Queensland's political leaders, policy makers, and planners... Communities that sign up to the network signal their commitment to creating an inclusive and accessible environment that benefits an ageing population.*<sup>249</sup>

At a more local level, a wide range of individual and group based interventions have also been employed to address isolation, including:

<sup>243</sup> COTA Queensland, Submission no. 3, pages 5-6.

<sup>244</sup> Public Advocate, [Elder abuse resource directory: A Queensland guide to services, assistance and information](#), Queensland Government, 3rd edition, 2012, page 4.

<sup>245</sup> H Bartlett, [Social Isolation of Older People in Regional Australia: the research agenda](#), Monash University, Presentation (online), 11 May 2010 (downloaded 20 August 2015).

<sup>246</sup> Department of Communities, [Cross-Government Project to Reduce Social Isolation of Older People: Best practice guidelines](#), State of Queensland, 2009, page 5.

<sup>247</sup> Cultural & Indigenous Research Centre Australia, [Comparative Isolation Amongst Older People in the ACT: Final Report](#), 2009, pages 22; 27.

<sup>248</sup> OPG, Submission no. 5 (Supplementary), page 6.

<sup>249</sup> COTA Queensland, [Time for an Age-Friendly Queensland: 2015 State Election Priorities](#), January 6 2015, page 3.

- various training, information sessions and regular activity or meeting groups provided under a range of funded state-wide engagement programs, including the Older People's Action Program, 60 and Better, Older Women's Networks and Time for Grandparents, Women's Link Services and Older Men's groups (including Men's sheds)
- other community support groups facilitating connections and engagement around shared activities (religious, sporting, philanthropic, etc.)
- mentoring schemes, to encourage retaining connections post retirement and ongoing engagement with workforce and community networks, together with opportunities for further learning and skills training
- volunteering programs, to encourage active senior participation in neighbourhood and community life
- technology-based training to support online social networking, communications, and
- seniors' companions and community visitor schemes.<sup>250</sup>

Such activities require coordination with key stakeholder organisations, businesses, local governments and community groups. Importantly, research has identified that the particular success of programs also depends on a range of other factors. Notably, from 2003 to 2009, Queensland engaged in one of the first large scale government initiatives to involve formal evaluation of social inclusion projects with an aim to “identify, develop and disseminate information on innovative, sustainably and community and capacity building responses that reduce social isolation of older people in Queensland”.<sup>251</sup> Carried out across five distinct project phases, the Cross-Government Project to Reduce Social Isolation of Older People led to the development of best practice guidelines advising that programs are most effective when they:<sup>252</sup>

- target specific high-risk groups and individuals and are tailored to their particular personal and cultural needs (e.g. women, caregivers, widowers, cultural or ethnic minorities, lone householders)
- are delivered at a group level and involve peer learning and engagement (though one-to-one interventions can also be important ways to support inclusion of individuals ageing in place)
- are theoretically based and focus on social network-oriented strategies rather than roles or activities
- involve recruitment of individuals from the same neighbourhood, and the active engagement of older people in program management
- are appropriately timed for early intervention and key transition periods, in the recognition that interventions occurring soon after a critical life event or transition point can help prevent isolation
- are appropriately funded and conducted over an adequate period of time, and

<sup>250</sup> National Seniors Australia, ‘[Older, single women at financial risk](#)’, 2012.

<sup>251</sup> Department of Communities, [Cross-Government Project to Reduce Social Isolation of Older People: Best practice guidelines](#), State of Queensland, 2009, page 5.

<sup>252</sup> Bartlett, [Social Isolation of Older People in Regional Australia: the research agenda](#), 2010.

- involve face-to-face support (as although technology can play an important role in reducing isolation, direct personal interactions can allow the development of a more sophisticated understanding of vulnerability and concordant support responses<sup>253</sup>).<sup>254</sup>

### Committee comment

As stated by Queensland's best practice guidelines for programs addressing social isolation, a coordinated response to social isolation requires a multi-disciplinary, cross portfolio response underpinned by a shared commitment and collaborative practices across government agencies and community organisations.

The Committee considers that this should extend to information sharing, aligning and pooling resources, collective goal setting, and agreed protocols and operational procedures.

While fundamental principles of social inclusion are recognised in the current *Positively Ageless* seniors' strategy, the Committee considers it important that they are explicitly recognised and accompanied by concrete and measurable programs and outcomes in future policy and strategy development.

### Recommendation 9

The Committee recommends that the Queensland Government ensure that its whole-of-government seniors' strategy includes an explicit focus on reducing social isolation and fostering the active engagement and participation of seniors in community and social life, in keeping with best practice guidelines.

### Recommendation 10

The Committee recommends that the Queensland Government, in connection with regional councils, conduct inquiries into the policy implications of ageing communities, with a view to joining the WHO Global Age Friendly Cities and Communities Network.

<sup>253</sup> Ms Cellaigh Spike submitted that "the presence of face-to-face support that can travel to victims is really critical". In addition, as previously noted, research conducted by COTA Australia has determined that face-to-face consultation in conjunction with take-away material is the most effective means by which to deliver detailed information to senior Australians. See: Ms Cellaigh Spike, Project Officer – Research and Systems, Elder Abuse Prevention Unit, Uniting Care Community, *Transcript of Proceedings (Hansard)*, Public Hearing, Communities, Disability Services and Domestic and Family Violence Prevention Committee, 20 May 2015, page 12; COTA Australia, [COTA Australia Policy & Position Statements](#), 2012, page 10.

<sup>254</sup> [‘Social isolation a critical issue facing our elderly’](#), Media Release, University of Adelaide, 21 June 2011; H Bartlett, [Social Isolation of Older People in Regional Australia: the research agenda](#), Monash University, Presentation (online), 11 May 2010 (downloaded 20 August 2015); Department of Communities, [Cross-Government Project to Reduce Social Isolation of Older People: Best practice guidelines](#), State of Queensland, 2009; Cultural & Indigenous Research Centre Australia, [Comparative Isolation Amongst Older People in the ACT: Final Report](#), 2009, page 22; 27. A Dickens, S Richards, C Greaves and J Campbell, [‘Interventions targeting social isolation in older people: a systematic review’](#), *BMC Public Health*, vol. 11, 2011, page 666.

## 4. Financial literacy

Financial literacy is increasingly recognised as a core life skill for participating in modern society and sustaining financial wellbeing throughout later life.<sup>255</sup> In keeping with this, while in the past literacy efforts have been focused largely on younger audiences, there is now growing recognition of the value of *lifelong* financial education and support. This is particularly important given the convergence of declining levels of financial ability in later age with increased decision-making requirements associated with managing the transition to retirement and securing appropriate arrangements for aged care.<sup>256</sup>

Submissions highlighted a range of different definitions of financial literacy, as reflects the subtle differences in focus across the economic and policy literature more broadly.

Professor Andrew C. Worthington noted that generally speaking, financial literacy tends to be defined in terms of a combination of mathematical ability or numerical competence and understanding of financial products or concepts.<sup>257</sup> Townsville Community Legal Service, in its submission, suggested the term should be framed more broadly to include an ability to translate such knowledge and understanding into action – that is, as an “ability to make informed judgements and to take effective decisions regarding the use and management of money”.<sup>258</sup> In keeping with this, Dr Cassandra Cross submitted:

*Financial literacy needs to encompass more than a basic grasp of financial skills and knowledge (Huston, 2010). True financial literacy empowers investors to apply knowledge and skills to their own personal financial decisions and importantly, have well-informed choices and result in positive outcomes for their overall financial well-being (Huston, 2010; Australian Securities and Investments Commission (ASIC, 2011)).*<sup>259</sup>

Further, ASIC, which leads and coordinates Australia’s National Financial Literacy Strategy, stated:

*‘Financial literacy’ is defined as a combination of financial knowledge, skills, attitudes and behaviours necessary to make sound financial decisions, based on personal circumstances, to improve financial wellbeing. It means being able to understand and negotiate the financial landscape, manage money and financial risks effectively and avoid financial pitfalls.*<sup>260</sup>

Submitters emphasised that exponential growth in the volume and complexity of financial products in recent years, together with the increased onus on the consumer to take responsibility for their retirement and other savings; mean that such qualities have become especially critical to ensuring seniors are appropriately equipped to make informed decisions about their finances and retain financial autonomy.<sup>261</sup> Dr Jacqueline Drew, for example, noted:

*Well-developed financial literacy skills and knowledge are of growing importance, particularly for the increasing numbers of senior Australians that are choosing to manage their own (often sizeable) retirement savings. The numbers and monies held by self-managed superannuation funds (SMSFs) in Australia continues to grow. APRA (2014) reported the numbers of SMSFs*

<sup>255</sup> ASIC, Submission no. 19, page 4; Taylor and Wagland, ‘[The Solution to the Financial Literacy Problem: What is the Answer?](#)’, 2013, pages 69; 75.

<sup>256</sup> A Lusardi, ‘Financial Literacy and Financial Decision-Making in Older Adults’, *Generations: Journal of the American Society on Ageing* (online), 3 July 2012, <http://www.asaging.org/blog/financial-literacy-and-financial-decision-making-older-adults> (accessed 20 August 2015).

<sup>257</sup> Professor Andrew C. Worthington, Submission no. 4, page 1.

<sup>258</sup> Townsville Community Legal Service, Submission no. 1, page 16.

<sup>259</sup> Dr Cassandra Cross, Submission no. 11, page 2.

<sup>260</sup> ASIC, Submission no. 19, page 4.

<sup>261</sup> S Taylor and S Wagland, ‘[Financial Literacy: A Review of Government Policy and Initiatives](#)’, *Australasian Accounting Business and Finance Journal*, vol. 5, no. 2, page 101.

*grew by 7.1% during the 2013 financial year with \$506B held in SMSFs. This compares to \$907.1B held in APRA regulated superannuation entities.*<sup>262</sup>

ASIC also noted:

*...over the last decade there have been rapid changes in technology and an increasing shift towards the delivery of financial products and services through online and mobile platforms...*

*Financial products and markets are growing in complexity, as is the volume and range of information intended to aid or influence consumer decisions. For some, this can make it harder to assess the validity of information and may result in a feeling of being overwhelmed by too many choices.*

*Greater complexity may increase the likelihood that some retail investors could have insufficient understanding of the risks associated with different products to enable them to make informed investment decisions. Time pressures and over- or under-confidence may also cause consumers to disengage from the process of decision-making or make rushed, poorly thought-out choices.*

*In light of these factors, and particularly since the global financial crisis, financial literacy has gained prominence on the policy agendas of most world economies, with many identifying it as an important complement to financial market regulation, consumer protection and financial inclusion policies.*<sup>263</sup>

Consistent with the theory that financial literacy matters for financial optimisation, a sizeable and growing research literature has identified correlations between financial literacy and a range of financial behaviours and outcomes.<sup>264</sup> Poor financial literacy, for example, has been linked to problems in paying regular, basic bills such as phone or power bills; and has also been found to be associated with negative credit behaviours such as debt accumulation, high-cost borrowing, poor mortgage choice, and mortgage delinquency and home foreclosure.<sup>265</sup> Gallery et al have also cited previous research indicating that in households which lack basic financial knowledge, saving behaviours are dominated by basic rules of thumb;<sup>266</sup> and householders are more likely to get advice from peers or family than to access multiple information sources or professional advisers.<sup>267</sup> Lusardi and Mitchell, among others, have also identified that those who display low financial literacy are less likely to plan for retirement and as a result accumulate much less wealth.<sup>268</sup>

<sup>262</sup> Dr Jacqueline Drew, Submission no. 6, page 2.

<sup>263</sup> ASIC, Submission no. 19, page 5.

<sup>264</sup> JS Hastings, BC Madrian and WL Skimmyhorn, [Financial Literacy, Financial Education, and Economic Outcomes](#), *Annual Review of Economics*, vol. 5, 2013, page 358.

<sup>265</sup> Commonwealth Bank Foundation, [Improving financial literacy: benefits for all Australians](#), Commonwealth Bank Foundation, 2010, page 5; Hastings et al, [Financial Literacy, Financial Education, and Economic Outcomes](#), 2013, page 358.

<sup>266</sup> Gallery et al, [Framework for Assessing Financial Literacy and Superannuation Investment Choice Decisions](#), 2011, page 9.

<sup>267</sup> ANZ, [Adult Financial Literacy in Australia: Full Report of the results from the 2011 ANZ Survey](#), ANZ Social Research Centre, December 2011, page 33. See also: Gallery et al, [Framework for Assessing Financial Literacy and Superannuation Investment Choice Decisions](#), 2011, pages 12; 13

<sup>268</sup> A Lusardi and OS Mitchell, [Financial Literacy: Evidence and Implications for Financial Education](#), *Trends & Issues (TIAA-CREF institute)*, May 2009, page 5.

National Seniors noted:

*Low financial literacy not only translates into difficulties in making investment decisions but also compromises decisions across a range of products and services including utilities, telecommunications, housing and aged care.*<sup>269</sup>

Conversely, studies have identified strong relationships between financial knowledge and capability and the likelihood of engaging in a wide range of positive financial practices including paying bills on time, tracking expenses, budgeting, saving out of a paycheck, managing an emergency fund and setting financial goals.<sup>270</sup> Financial literacy has also been determined to be predictive of investment behaviours including stock market participation, choosing a low fee investment portfolio, and better diversification of investments.<sup>271</sup>

In addition, the Australian Bankers' Association emphasised that having the skills necessary to manage their money and structure their banking and financial affairs can enable seniors to "maintain their financial independence and autonomy, protect themselves from financial risk and limit the need for third party interventions".<sup>272</sup> In keeping with this, National Seniors reported that it "believes there is a direct link between the level of financial literacy possessed by seniors and their ability to protect themselves from scams, exploitation and abuse".<sup>273</sup>

The Committee notes that stakeholders did, however, issue a caveat that the relationship with scams and fraud in particular may be less straightforward. Evidence indicates that financial literacy is not always a protective factor where fraud is concerned and may in fact be associated with higher victimisation.<sup>274</sup> Several explanations have been put forward to account for this, including:

- a 'knowing-doing gap', such that investors may know theoretically how to avoid fraud but fail to apply this knowledge to protect themselves
- issues of overconfidence ('one standard deviation increase in overconfidence in financial knowledge increases the odds of falling victim to fraud by 38 percent'),<sup>275</sup> and
- incidence of low-persuasion or social literacy amongst financially literate individuals.<sup>276</sup>

Accordingly, Cross notes "the financial literacy of individuals, especially seniors, is important but is not the only means by which to improve financial outcomes for seniors".<sup>277</sup> In keeping with this, a range of supplementary activities to improve financial decision-making are also considered in other sections of this report; and particularly as part of the Committee's consideration of protections from fraud and scams, which may necessarily require more specific behavioural education components and resources.

Ultimately, as stated by ASIC, though "financial literacy is not a panacea":<sup>278</sup>

*Financially literate consumers and investors are more likely to make effective financial decisions and less likely to choose unsuitable products and services, hence increasing their overall level of financial protection.*<sup>279</sup>

<sup>269</sup> National Seniors Australia, Submission no. 18, page 1.

<sup>270</sup> Hastings et al, '[Financial Literacy, Financial Education, and Economic Outcomes](#)', 2013, page 358.

<sup>271</sup> Hastings et al, '[Financial Literacy, Financial Education, and Economic Outcomes](#)', 2013, page 358.

<sup>272</sup> ABA, Submission no. 17, page 6.

<sup>273</sup> National Seniors Australia, Submission no. 18, page 1.

<sup>274</sup> Dr Jacqueline Drew, Submission no. 6, pages 3-4; Dr Cassandra Cross, Submission no. 11, page 3.

<sup>275</sup> Dr Jacqueline Drew, Submission no. 6, pages 4-5.

<sup>276</sup> Dr Cassandra Cross, Submission no. 11, page 7; Dr Jacqueline Drew, Submission no. 6, page 5.

<sup>277</sup> Dr Cassandra Cross, Submission no. 11, page 3.

<sup>278</sup> ASIC, Submission no. 19, page 14.

<sup>279</sup> ASIC, Submission no. 19, page 4.



#### 4.1 Current levels of financial literacy

As with other jurisdictions, COTA Queensland submitted that “there is currently a lack of detailed knowledge on the extent of financial literacy among seniors and the population generally in Queensland”.<sup>280</sup> Gallery et al note that empirical research is largely limited to broad population surveys aimed at measuring very basic financial literacy indicators; and can often be based on subjective measures of respondents' self-assessment of ability, understanding, attitudes and behaviour with respect to financial products and issues of financial control.<sup>281</sup> In such scenarios, respondents tend to self-rate their financial abilities to be higher than their actual capabilities according to objective tests of financial literacy.<sup>282</sup> However, these studies still support longitudinal tracking of attitudes and skill confidence at the very least; and are also progressively being complemented by an increasing array of multidimensional variables of financial understanding and aptitude, and more robust methodological approaches.<sup>283</sup>

International research generally indicates that financial literacy tends to fall each year after 60; though overconfidence about financial knowledge also increases after 60, serving to heighten risks of mismanagement.<sup>284</sup> Within the Australian context, the leading long-term study of financial literacy levels is the national survey of adult financial literacy conducted by ANZ at regular intervals since 2003; the most recent survey of which was conducted in 2014 and released in May 2015. Among their key findings, the ANZ studies revealed that older Australians are more likely to perform well on variables measuring their monitoring of finances, planning ahead, and sense of financial control relative to other age groups.<sup>285</sup>

COTA Queensland has emphasised that the reports also highlight that “older people differ somewhat to younger age groups by being more aware of the amount they have in their bank account”.<sup>286</sup> However, when it comes to seniors' actual financial knowledge and numeracy, and their choice of financial products – that is, “the extent of comparison shopping for financial products and services” – the 2011 and 2014 ANZ surveys alike suggested that seniors' performance can be relatively weaker.<sup>287</sup> For example, in the 2014 study, individuals aged 65 years and over recorded a mean financial knowledge/numeracy index score of 75.3, compared to a population mean score of 89.8 and a significant 96.6 for those aged 55 to 64 years.<sup>288</sup> Further, when it came to choosing financial products,

<sup>280</sup> COTA Queensland, Submission no. 3, page 5.

<sup>281</sup> Gallery et al, [‘Framework for Assessing Financial Literacy and Superannuation Investment Choice Decisions’](#), 2011, page 9;

<sup>282</sup> Gallery et al, [‘Framework for Assessing Financial Literacy and Superannuation Investment Choice Decisions’](#), 2011, page 9;

<sup>283</sup> N Gallery, C Newton and C Palm, [‘Framework for Assessing Financial Literacy and Superannuation Investment Choice Decisions’](#), *Australasian Accounting, Business and Finance Journal*, vol. 5, no. 2, 2011, page 9; ANZ, [ANZ survey of adult financial literacy in Australia: Full report of the results from the 2014 ANZ survey](#), ANZ Social Research Centre, May 2015, pages 2-8.

<sup>284</sup> J Rooney, [Addressing Financial Abuse of Seniors through Financial Literacy](#), Presentation, Financial Literacy and Consumer Education, Financial Consumer Agency of Canada, March 26, 2013, page 6; Gallery et al, [‘Framework for Assessing Financial Literacy and Superannuation Investment Choice Decisions’](#), 2011, pages 10-11.

<sup>285</sup> ANZ, [Adult Financial Literacy in Australia: Full Report of the results from the 2011 ANZ Survey](#), 2011, page 9.

<sup>286</sup> COTA Queensland, Submission no. 3, page 5.

<sup>287</sup> ANZ, [Adult Financial Literacy in Australia: Full Report of the results from the 2011 ANZ Survey](#), 2011, pages 7; 115; 7. ANZ, [ANZ survey of adult financial literacy in Australia: Full report of the results from the 2014 ANZ survey](#), 2015, pages 48; 75; 94.

<sup>288</sup> ANZ, [ANZ survey of adult financial literacy in Australia: Full report of the results from the 2014 ANZ survey](#), 2015, page 112.

“scores also tail off for those aged 65 years or more”; with their overall index score of 27.0 on this measure ranking higher only than the score for those aged 18 to 24 years, and notably below the adult average of 31.0.<sup>289</sup>

ASIC highlighted that it also conducts its own targeted research in the Australian Financial Attitudes and Behaviour Tracker (The Tracker), which is similarly focussed on the five indicative behaviours of financial literacy identified in the 2011 ANZ Survey (and also in the National Financial Literacy Strategy). ASIC’s submission noted:

*Consistent with the ANZ Survey findings, the findings of the Tracker suggest that, across certain categories, some older Australians demonstrate more financially literate behaviours and attitudes compared to some younger Australians.*

*For instance, results from ASIC's 2014 survey of adult Australians suggest that those aged 55 and over were more likely to keep track of their finances closely (including their superannuation balances) and try to stay informed about money matters and finance than their younger counterparts.*

*Nevertheless, the 2014 Tracker results for the senior respondents also revealed that:*

- *62.5% did not have a 3 to 5 year financial plan in place;*
- *77% did not have a 15 to 20 year financial plan in place;*
- *50% had investments other than their own home;*
- *But, 39% of older respondents hadn't heard of the concept of a "risk/return trade off" and 23% agreed that they had heard of the it but didn't understand it; and*
- *24% had not heard of the concept of "diversification".*

*So, while recent survey results suggest that some older Australians may score reasonably well in relation to certain aspects of financial literacy when compared to their younger counterparts... the data also demonstrates potential challenges for seniors in the areas of long term financial planning and understanding key investment concepts.*

*When viewed collectively, the ANZ Surveys and ASIC Tracker illustrate that there is significant variation in the levels of financial literacy amongst older Australians and highlight some particular areas of vulnerability.<sup>290</sup>*

National Seniors also noted vulnerabilities highlighted in its own financial literacy research:

*...with 51 per cent of respondents aged 40 and older answering incorrectly to a basic question which was developed to test the understanding of the relationship between asset classes and risk.<sup>291</sup>*

Importantly, the results of various surveys also make it clear that the relatively positive overall scores for seniors relative to other age and population groups fail to capture the notable variability across the population. This variability includes both a sizeable proportion of seniors with strong knowledge and

<sup>289</sup> ANZ, [ANZ survey of adult financial literacy in Australia: Full report of the results from the 2014 ANZ survey](#), 2015, page 134.

<sup>290</sup> ASIC, Submission no. 19, page 7.

<sup>291</sup> National Seniors Australia, Submission no. 18, page 1.



skills, and an equally significant proportion of older Australian respectively who fall in the lowest or second lowest quintiles in terms of overall adult financial literacy.<sup>292</sup>

Professor Worthington's submission highlighted study results indicating that within the seniors group and across the population more broadly:

*Financial literacy is found to be highest for persons aged between 50 and 60 years, professionals, business and farm owners, and university/college graduates. Literacy is lowest for the unemployed, females, and those from a non-English speaking background with a low level of education.*<sup>293</sup>

Caxton Legal Centre Inc., similarly, submitted:

*Older persons display significant variability in levels of financial literacy but the clients who most commonly present to the SLASS are generally financially disadvantaged, on fixed incomes, and have limited financial literacy. ..Such findings are consistent with other research which indicated financial literacy is dependent on gender, age, and language. Older women in particular have been identified as having little experience of handling financial affairs as their husbands in many instances have controlled the larger financial decisions and as a result lack the confidence or experience in handling money decisions. This perspective is supported by research and a Victorian study of the legal needs of older people showed 72% of respondents who indicated they had problems with financial decisions were female.*<sup>294</sup>

The 2014 ANZ survey results also highlighted that in almost half (48 per cent) of all adult couple households, one member of the couple takes sole responsibility for financial management, risking potential vulnerability in the event of a separation from or impairment or incapacitation of the responsible partner.<sup>295</sup>

## 4.2 Improving financial literacy

Submitters were in broad support of moves to improve financial literacy across the State. National Seniors stated that "fundamentally, the State Government should encourage and provide Queenslanders with the opportunity to improve their financial literacy at any life stage".<sup>296</sup> Similarly, Townsville Community Legal Service called for the Committee to recommend "that financial literacy be included in any education and awareness campaign arising out of this inquiry"; in keeping with previous recommendations of the House of Representatives Standing Committee on Legal and Constitutional Affairs in its 2007 report *Older People and the Law*.<sup>297</sup> Additionally, Caxton Legal Centre Inc. stated that it "strongly supports increased community education addressing improved financial literacy and capability of older people...".<sup>298</sup>

The Committee notes that a number of financial literacy initiatives are already in place in Queensland.

<sup>292</sup> ANZ, [Adult Financial Literacy in Australia: Full Report of the results from the 2011 ANZ Survey](#), 2011, pages 7; 115; 7. Queensland Parliamentary Library research published in 2005 also highlighted that in the 2003 ANZ Financial Literacy Survey, a significant 27% and of retirees respectively fell in the lowest quintile and 20% in the second lowest quintile in terms of overall levels or scores of adult financial literacy. See: R Giskes, [Financial Literacy in Queensland: Bankruptcy Trends and Government Initiatives](#), Queensland Parliamentary Library, Research Brief no. 2005/02, page 23.

<sup>293</sup> Professor Andrew C. Worthington, Submission no. 4, page 1.

<sup>294</sup> Caxton Legal Centre Inc., Submission no. 15, page 10.

<sup>295</sup> ANZ, [ANZ survey of adult financial literacy in Australia: Full report of the results from the 2014 ANZ survey](#), 2015, page 35.

<sup>296</sup> National Seniors Australia, Submission no. 18, page 1.

<sup>297</sup> Townsville Community Legal Service, Submission no. 1, pages 3; 18.

<sup>298</sup> Caxton Legal Centre Inc., Submission no. 15, page 3.

For example, the Department submitted:

*The Queensland Government's Seniors website at [www.qld.gov.au/seniors](http://www.qld.gov.au/seniors) provides a range of financial information including; cards and concessions, where to get urgent financial counselling and help, 'A guide to retiring'; retirement planning checklist, scams and fraud, managing your money; mortgage relief loans and finding lost superannuation.*<sup>299</sup>

Importantly, these online resources connect Queensland seniors with a more comprehensive suite of initiatives coordinated by ASIC under the National Financial Literacy Strategy.<sup>300</sup> The centrepiece of these efforts is ASIC's MoneySmart program, which provides a 'dedicated program of free and impartial financial literacy tools and resources...many of which are specifically targeted at seniors'.<sup>301</sup> ASIC notes the program aims 'to provide people with easy-to-understand money management guidance and information from a trusted, central reference point, tailored to key life stages'.<sup>302</sup> The MoneySmart website includes resources such as:

*Online calculators:*

- *Budget planner - helps users manage their income & expenses;*
- *Reverse mortgage calculator - demonstrates how lump sum and/or regular income drawdowns affect the equity in a home over time;*
- *Retirement planner - estimates retirement income from super and the age pension;*
- *Super and pension age calculator - tells users at what age they can access super and what age they are eligible for the age pension;*
- *Account-based pension calculator - estimates how long an account-based pension will last;*

*Online content including:*

- *A section about "Superannuation and retirement" with information on retirement planning and income sources in retirement (e.g. reverse mortgages);*
- *A section for "Over 55s" covering money, health, housing, paying for your funeral, wills, power of attorney, aged care and other relevant issues;*
- *A "Life events" section with money tips to help users facing big financial or life decisions such as dealing with illness, divorce or separation, losing a partner, money musts before you pass on etc...*<sup>303</sup>

ASIC submitted that in addition to these various online tools, it also provides a range of financial publications for consumers (including brochures, guides, factsheets, budget planners and sample documents), "especially for people who do not wish to, or cannot, access information via the Internet".<sup>304</sup>

<sup>299</sup> Correspondence from the Department, 4 May 2015, page 2.

<sup>300</sup> A National Financial Literacy Stocktake Survey completed in 2013 identified that the majority of financial literacy initiatives were delivered at a national level; and where initiative were delivered at the state and territory level, Queensland accounted for less than 5 per cent of these efforts. See: ASIC, [National Financial Literacy Stocktake Survey: Report](#), National Financial Literacy Strategy, Australian Government and ASIC (ASIC report no. 375), 2013, page 4.

<sup>301</sup> ASIC, Submission no. 19, page 7.

<sup>302</sup> ASIC, Submission no. 19, pages 7-8.

<sup>303</sup> ASIC, Submission no. 19, pages 9-10.

<sup>304</sup> ASIC, Submission no. 19, page 10.

The Commission noted:

*In 2013/14, we distributed more than 550,000 copies of our printed publications nationally, including to organisations in Queensland servicing the needs of seniors such as Beaucare Aged and Disability Services.*<sup>305</sup>

In addition, ASIC reported undertaking an array of promotions and advertising campaigns and stakeholder engagement and partnership activities “which, although not always directly targeting seniors, are nevertheless relevant to (and often accessed by) them”.<sup>306</sup>

The Committee noted that some submitters were highly supportive of existing financial literacy initiatives. For example, ATSILS noted:

*...We also strongly support the Indigenous ‘Money Smart’ program run by the Australian Securities and Investments Commission. This program has created a wide variety of culturally appropriate resources for Indigenous people and undertakes some community legal education throughout Australia. Rather than ‘reinventing the wheel’, we would strongly encourage supporting the Money Smart program to undertake more community legal education and promotion of consumer rights in Queensland.*<sup>307</sup>

However, the Committee also noted significant concerns raised both in the literature and in stakeholder submissions that financial literacy campaigns and programs may have limited success in improving financial decision-making, or translating into sustained changes in behaviour.<sup>308</sup> That is, because the problems financial literacy seeks to address are multifaceted, improving people’s knowledge or ability to assess options will not automatically improve the quality of their financial decisions.<sup>309</sup> Researchers have identified that what should be taught may not be explicitly financial capability, but also higher level thinking skills, and techniques that may help them to recognise and neutralise psychological biases and limitations that thwart their decision-making.<sup>310</sup>

When it comes to more general education campaigns, program resonance may be enhanced by the use of social marketing techniques to deliver simple financial rules of thumb messages that promote single, do-able behaviours; as opposed to potentially bewildering consumers with information and choice, leading to decision-making inertia.<sup>311</sup> Further, incentive-based programs such as ASIC’s

<sup>305</sup> ASIC, Submission no. 19, page 11.

<sup>306</sup> Correspondence from the Department, 4 May 2015, page 2.

<sup>307</sup> ATSILS, Submission no. 16, page 3.

<sup>308</sup> Australian Securities and Investments Commission, [Financial literacy and behavioural change](#), ASIC report 230, March 2011, pages 4; 48.

<sup>309</sup> ASIC’s 2013 report on *Financial literacy and behavioural change* reported that: “Behavioural studies and ASIC’s own consumer and investor research identifies a range of related barriers that prevent people from making good financial decisions, including information and choice overload, complexity and uncertainty, time factors and pressures, over (and under) confidence, self-control and framing [how information is presented]”. See: ASIC, [Financial literacy and behavioural change](#), 2011, page 32.

<sup>310</sup> J West, [‘Financial Literacy Education and Behaviour Unhinged: Combatting Bias and Poor Product Design’](#), Griffith Business School Discussion Papers: Finance, no. 2012-01, 2012, page 1; D De Meza, B Irlenbusch and D Reyniers, [‘Financial capability: A behavioural economics perspective’](#), *Consumer Research*, no. 69, Financial Services Authority, London, July 2008, page 69. See also Dr Cassandra Cross, Submission no. 11, page 3. These issues are discussed more explicitly in the Chapter 6.

<sup>311</sup> ASIC, [Financial literacy and behavioural change](#), 2011, page 56.

matched savings program, Saver Plus, offer opportunities to support the establishment of new, more fiscally-sound and forward-looking behavioural patterns.<sup>312</sup>

In addition to these methodological considerations, some stakeholders pointed to issues in program framing and delivery. For example, Professor Worthington noted that initiatives are too often directed at broad audiences, with “little evidence of financial literacy programs specifically targeting the needs of seniors”.<sup>313</sup> This is despite widespread national and international recognition that “understanding what information is relevant to various segments of retail investors and their preferred methods of delivery is crucial for the success of investor education and financial literacy programs”.<sup>314</sup> Accordingly, Queensland Aged and Disability Advocacy Inc. (QADA) called for the development and funding of education programs in the area to be better “tailored towards older people and the financial decisions that they face”, including with regard to financial decisions involving:<sup>315</sup>

- retirement and superannuation planning
- housing (including granny flat arrangements and home equity products)
- contracted care or financial arrangements for age care, and
- wills and bequests.<sup>316</sup>

Such an approach is also in keeping with best practice “life-stage” approaches to influencing decision-making behaviour, as outlined by ASIC:

*This means providing appropriate information in the right way at the right time to solve an immediate problem or inform a financial decision. Over time, these 'teachable moments' open the door for other skill development and expand knowledge and capability.*<sup>317</sup>

In line with evidence that targeting specific groups “is likely to be more-effective than one-size-fits all programs”,<sup>318</sup> Dr Jacqueline Drew pointed to a need to “better identify and prioritise groups and/or areas that require urgent attention within the financial literacy context”.<sup>319</sup> To facilitate such a targeted approach, Dr Drew proposed that policymakers draw from the operational policing practice of hot spots policing, which allows for the proactive identification of vulnerable groups and/or hot spot areas which have lower levels of financial literacy. Dr Drew submitted:

*It could be applied, across multiple criteria, to identify and guide decisions on the type and content of financial literacy education that is most needed and importantly, who is most in need of financial literacy... [this] identification of vulnerable groups will assist in resolving the classic dilemma of resource allocation decisions, that is, getting the right resources (which are scarce), to the right people at the right time (Drew, 2013).*<sup>320</sup>

<sup>312</sup> ASIC, [Financial literacy and behavioural change](#), 2011, pages 57; 67-68; R Russell, M Stewart and F Cull, [Saver Plus: A decade of impact](#), School of Economics, Finance and Marketing, RMIT University, February 2015, page 14.

<sup>313</sup> Professor Andrew C. Worthington, Submission no. 4, page 2.

<sup>314</sup> Board of the International Organisation of Securities Commissions (OICV-IOSCO), [Strategic Framework for Investor Education and Financial Literacy](#), Consultation Report, CR03/14, May 2014, page 13.

<sup>315</sup> QADA, Submission no. 20, page 2.

<sup>316</sup> QADA, Submission no. 20, pages 2-3.

<sup>317</sup> ASIC, Submission no. 19, page 8.

<sup>318</sup> OICV-IOSCO, [Strategic Framework for Investor Education and Financial Literacy](#), 2014, page 13.

<sup>319</sup> Dr Jacqueline Drew, Submission no. 6, page 2.

<sup>320</sup> Dr Jacqueline Drew, Submission no. 6, page 7.

In keeping with such a targeted approach, Caxton Legal Centre Inc. noted that:

*There is a need for increased response to the special needs of CALD communities and Indigenous and Torres Strait Islander communities, where financial and English literacy may be especially poor and cultural differences, for example around the often limited role of women in family decision-making may render them especially vulnerable in later years.*<sup>321</sup>

Additionally, the Townsville Community Legal Service noted that the financial literacy of seniors' substitute decision-makers is of crucial importance;<sup>322</sup> though perhaps currently somewhat overlooked. Accordingly, it recommended that the Committee investigate "ways to improve the competence and financial literacy of substitute decision-makers appointed under law in Queensland".<sup>323</sup> This was also in keeping with the experience of EAPU operators Uniting Care Community, who submitted that "targeted education programs with a focus on financial protections such as Enduring Power of Attorney support increasing financial safety and literacy of Queensland seniors".<sup>324</sup>

Professor Worthington also highlighted that while use of "older" ATM<sup>325</sup> and EFTPOS<sup>326</sup> technologies is reasonably well spread amongst seniors (albeit decreasing with age), take-up rates of "newer" telephone and internet banking technologies are significantly lower, such that "a consumer aged 18-24 years is more than three times likelier to use EFTPOS than one aged 60-69 years".<sup>327</sup> Professor Worthington noted that this "suggests that financial literacy for senior needs improvement most in high-technology areas and this is where they are also currently most susceptible to scams, etc".<sup>328</sup>

With regards to program delivery, National Seniors called for education efforts to recognise and reflect the fact that "many seniors still find it difficult to access information online and have a learning style which requires more direct forms of communication".<sup>329</sup>

In keeping with this, Caxton Legal Centre Inc. recommended the operation of financial literacy workshops for older Queenslanders:

*... may be undertaken in collaboration with local government seniors' programs or potentially via collaborations with banks and industry (an example of how this was tackled through an initiative in Illinois – where a community partnership was formed with Allianz, to provide grants to support their financial literacy workshops for seniors. These workshops are intended to educate seniors about the increasing problem of elder financial abuse and offer guidance on steps they can take to protect their finances).*<sup>330</sup>

These suggestions also accorded with research evidence suggesting many people acquire financial knowledge and skills primarily through experience, with various evaluative studies particularly highlighting the benefits of integrating new knowledge through practice-based learning techniques

<sup>321</sup> Caxton Legal Centre Inc., Submission no. 15, page 3.

<sup>322</sup> Townsville Community Legal Service, Submission no. 1, page 18.

<sup>323</sup> Townsville Community Legal Service, Submission no. 1, pages 3; 19.

<sup>324</sup> UnitingCare Community, Submission no. 14, page 8.

<sup>325</sup> Automated Teller Machine.

<sup>326</sup> Electronic Transfer at Point of Sale.

<sup>327</sup> Professor Andrew C. Worthington, Submission no. 4, page 1.

<sup>328</sup> Professor Andrew C. Worthington, Submission no. 4, page 1.

<sup>329</sup> National Seniors Australia, Submission no. 18, page 2.

<sup>330</sup> Caxton Legal Centre Inc., Submission no. 15, page 13.

and activities, including role-play or simulation exercises; and incorporating opportunities for peer or group sharing and interactions.<sup>331</sup>

In terms of international best practice approaches, the Committee noted QADA's recommendation that state literacy efforts could take a lead from approaches adopted in Canada, where a seniors-specific financial literacy strategy was launched in 2014. The strategy included:

*... the financial literacy tools for older low-income women developed in Canada (Canadian Center for Elder Law, Background Paper Financial Abuse of Seniors: An Overview of Key Legal Issues and Concepts, March 2013 at page 19) or the 'Protect Yourself!' training package which utilises a peer education model to increase financial literacy for older adults (Canadian Center for Elder Law, Background Paper Financial Abuse of Seniors: An Overview of Key Legal Issues and Concepts, March 2013 at page 20). This package is also known as Financial Literacy 101. Education programs could be integrated into activity schedules for senior's organisations, community centres, retirement villages and aged care facilities.*<sup>332</sup>

In highlighting the suite of Canadian initiatives, QADA CEO Mr Geoff Rowe particularly drew attention to the potential of the peer education training package, noting that "when you are talking about older people they want to talk to someone that they trust, that they understand and that has lived some of the experience".<sup>333</sup>

### Committee comment

While there are a wide range of informational resources and online learning tools available to seniors federally under the National Financial Literacy Strategy, evidence submitted to the Committee suggests there is clear scope to improve the efficacy of program delivery based on emerging best practice principles.

The Committee is concerned that the current approach to financial literacy in Queensland may be characterised by an overreliance on the provision of resources supporting the development of financial knowledge and understanding only, such that salient messages be lost amongst overwhelming detail, and may not be translated into improvements in analysis of financial options or in fiscal behaviour. As the Financial Literacy Foundation has noted:

*Simply providing comprehensive and well intentioned education resources will not be adequate. There is no shortage of quality resources available already to consumers with an active interest in building their money skills (FLF, 2007a, p. xii).*<sup>334</sup>

Accordingly, the Committee is convinced of a need to explore further practice-based and peer learning approaches, to help bridge capability-behaviour gaps, reinforce salient messages and instil confidence in seniors to put their knowledge into action. Such measures should necessarily be accompanied with by broader public education and awareness activities engaging simple, norm-altering social marketing techniques directed at addressing biases and improving decision-making in relation to key life-course events.

In addition, the Committee considers that there are clearly opportunities to improve the efficacy of current program options through the adoption of more specific, targeted interventions directed at

<sup>331</sup> EW Taylor, EJ Tisdell and KS Forté, 'Teaching financial literacy: a survey of community-based educators, *International Journal of Consumer Studies*, vol. 36, no. 5, September 2012, page 537.

<sup>332</sup> QADA, Submission no. 20, page 2.

<sup>333</sup> Mr Geoff Rowe, Chief Executive Officer, Queensland Aged and Disability Advocacy Inc., *Transcript of Proceedings (Hansard)*, Public Hearing, Communities, Disability Services and Domestic and Family Violence Prevention Committee, 3 June 2015, page 6.

<sup>334</sup> ASIC, [Financial literacy and behavioural change](#), 2011, page 48.

those groups of Queensland seniors who are most at risk, in partnership with key community groups and stakeholders. Among those singled out by submitters as standing to benefit from more tailored interventions are older women, Indigenous and CALD Queenslanders, many of whom may be particularly disadvantaged in terms of their ability to access the largely self-directed program options due to decreased access to communication mediums or technical aptitude.

The Committee acknowledges that, as UnitingCare Community submitted, “although face to face sessions are an effective way to impart information, this type of response is limited by the size, diversity and geographical spread of Queensland’s older population and aged care workforce”.<sup>335</sup>

The Committee considers, however, that the adoption of a “hotspot” or other methodological approach to the allocation of financial literacy and educational programs to the most vulnerable individuals may, as Dr Jacqueline Drew submitted, help support the allocation of funding to “the right resources, the right people, at the right time” and “more effective coordination of all stakeholders within the financial literacy context”.<sup>336</sup> QADA’s commendation of the package of literacy initiatives adopted in Canada under that jurisdiction’s senior-specific financial literacy strategy was of particular interest to the Committee, together with the suggestion that such a package may be “integrated into activity schedules for senior’s organisations, community centres, retirement villages and aged care facilities”.<sup>337</sup>

**Recommendation 11**

The Committee recommends that the Queensland Government explore options to improve the efficacy of current financial literacy efforts through the incorporation of more interactive, practice-based program delivery methods and the informed development of more specific, targeted interventions for the State’s most vulnerable seniors and the particular financial decisions with which they are faced.

<sup>335</sup> UnitingCare Community, Submission no. 14, page 2.

<sup>336</sup> Dr Jacqueline Drew, Submission no. 6, page 8.

<sup>337</sup> QADA, Submission no. 20, page 2.



## 5. Support for independent financial decision-making

While financial literacy efforts may be a key component of any strategy to support seniors' financial autonomy and wellbeing, such measures must be accompanied by a range of broader decision-making support mechanisms. This is especially important given:

- financial literacy shortfalls persist among subsets of the senior population
- financial capability does not always translate into sound economic action or outcomes, particularly amid the wide range of often competing messages and complexity surrounding most financial decisions,<sup>338</sup> and
- educative efforts may be constrained by cognitive decline in later age.<sup>339</sup>

### 5.1 Financial planning

Stakeholders widely emphasised that seniors face a broad range of legal, financial and social issues associated with retirement; health and longevity; and estate planning; which often call for considered reflection, family consultation and deliberation.<sup>340</sup> Given the likelihood that events outside one's control will determine the timing of many of these life transitions and may cut short the deliberative processes; advanced financial preparation can be critical to effective, informed decision-making.<sup>341</sup> In keeping with this, Lusardi and Mitchell have highlighted evidence that those who report engaging in planning tend to accumulate more wealth, not only among the rich (the third wealth quartile), but also "for those in the bottom of the wealth distribution".<sup>342</sup> More specifically:

*...of the least wealthy group, those who said that they plan accumulated more than \$10K above their non-planner counterparts; in the third quartile, planners had over \$40K more.*<sup>343</sup>

Despite this, research published by Agnew et al indicates that only a small minority of Australians have engaged in detailed planning around exiting the workforce, financial management, bequest provision and activities during retirement, with a significantly larger proportion failing to plan for any number of key aspects of retirement.<sup>344</sup> Survey results published by National Seniors Australia have also highlighted that large proportions of the population continue to underestimate the length of time for which they will be retired.<sup>345</sup> These findings are in keeping with a global survey of retirement attitudes across 15 countries compiled by HSBC, which found that while Australians on average expect to spend

<sup>338</sup> ASIC, [Financial literacy and behavioural change](#), 2011, page 32.

<sup>339</sup> L Xu and B Zia, [Financial Literacy around the World: An Overview of the Evidence with Practical Suggestions of the Way Forward](#), World Bank Development Research Group, Policy Research Working Paper no. 6107, June 2012, page 11.

<sup>340</sup> See, for example: ABA, Submission no. 17, page 1.

<sup>341</sup> J Agnew, H Bateman and S Thorp, [Work, money, lifestyle: Plans of Australian retirees](#), Australian School of Business Working Paper No. 2012ACTL15, University of New South Wales, January 2013, page 2.

<sup>342</sup> A Lusardi and OS Mitchell, [The Roles of Planning, Financial Literacy, and Housing Wealth](#), Paper prepared for presentation at 2006 Carnegie-Rochester Conference on Public Policy, University of Rochester, April 21-22, 2006, page 16.

<sup>343</sup> Lusardi and Mitchell, [The Roles of Planning, Financial Literacy, and Housing Wealth](#), 2006, page 16.

<sup>344</sup> Agnew et al, [Work, money, lifestyle: Plans of Australian retirees](#), 2013, page 2.

<sup>345</sup> National Seniors Australia, in a 2013 report on the findings of a survey of its members, highlighted that only 17% of seniors not yet retired reported that they expect to support themselves for 25 years or more in retirement, despite the fact that "as people continue to live longer, with improvements in health and medicine, a retirement of at least 25 years is increasingly likely for a majority of Australians". See: National Seniors Australia and Challenger, [Retirees Needs and Their \(In\)tolerance for Risk](#), March 2013, page 2.



23 years in retirement, their money will run out after just 10 years, leaving them on the age pension.<sup>346</sup> The funding gap or shortfall of 13 years was significantly larger than the overall seven-year average across the group of countries surveyed, and the longest funding gap in Asia.<sup>347</sup> Tilse et al have also identified that despite efforts to improve uptake of advanced care planning arrangements of Australians aged 18 to 54, only 14% had prepared an advanced directive regarding the management of their future medical treatment, while 30% had a financial Enduring Power of Attorney (EPOA),<sup>348</sup> and 59% had a will.<sup>349</sup>

A number of stakeholders saw a particular role for the government in supporting greater cultures of future planning around key life decisions. In addition to partnering with the Federal Government to promote and support planning via literacy efforts and associated informational tools and assistance, and as a complement to in-built planning incentives or contractual mechanisms in Federal superannuation and aged care legislation; the ABA emphasised that it is also “incumbent on Government to raise awareness of the importance of making sure people have in place arrangements to suit their circumstances and needs, including a will, power of attorney, and other estate planning arrangements”.<sup>350</sup>

At a public hearing in Brisbane on 3 June, Public Guardian Mr Kevin Martin stated:

*I think there is an obligation upon the government to try to get a series of community education mechanisms going whereby we encourage people to make these provisions for themselves and encourage people to address the issues that they are inevitably going to face as they age.*<sup>351</sup>

The Committee noted the submission of the Public Trustee that it is “committed to providing advice and support to seniors particularly in the area of future planning”; and that its staff currently “attend to many hundreds of community based education forums speaking to the issue of the nature and value of having planning documents in place – principally enduring powers of attorney, wills and advanced health directives”.<sup>352</sup> The Public Trustee noted that such documents are a “useful, indeed socially necessary instrument and part of an appropriate future planning exercise by all adults but particularly seniors”.<sup>353</sup> To support the uptake of such arrangements the Public Trustee has, since 1916, provided a will-making service which is free to all seniors (and all others), and which “avoids intestacies (the distribution of deceased estates according to the provisions of the *Succession Act 1991*) and provides

<sup>346</sup> J Collett, ‘Australia’s retirement savings gap among the world’s biggest’, *Sydney Morning Herald* (online), 19 January 2015, <http://www.smh.com.au/money/super-and-funds/australias-retirement-savings-gap-among-the-worlds-biggest-20150119-12t2l0.html#ixzz3hH1gUAae> (accessed 30 July 2015).

<sup>347</sup> Collett, ‘Australia’s retirement savings gap among the world’s biggest’, 2015.

<sup>348</sup> An EPOA is a formal document which gives another individual the authority to make personal and or financial decisions if the person (principle) loses capacity to make decisions for themselves. See: Queensland Government, Power of attorney, *Power of attorney and making decisions for others*, webpage, last updated 30 July 2015, <http://www.qld.gov.au/law/legal-mediation-and-justice-of-the-peace/power-of-attorney-and-making-decisions-for-others/power-of-attorney/> (accessed 20 August 2015).

<sup>349</sup> B White, C Tilse, J Wilson, L Rosenman, T Strub, R Feeney & W Silvester, ‘Prevalence and predictors of advance directives in Australia’, *Internal Medicine Journal*, vol. 44, no. 10, October 2014, page 977.

<sup>350</sup> ABA, Submission no. 17, page 1.

<sup>351</sup> Mr Kevin Martin, Public Guardian, *Transcript of Proceedings (Hansard)*, Public Hearing, Communities, Disability Services and Domestic and Family Violence Prevention Committee, 3 June 2015, page 13.

<sup>352</sup> Public Trustee, Submission no. 7, page 6.

<sup>353</sup> Public Trustee, Submission no. 7, page 10.

an appropriate opportunity for Queenslanders to determine how their estate is to be distributed”.<sup>354</sup> Further:

*The Public Trustee also very much encourages seniors to give consideration to executing an enduring power of attorney which as a statutory form of agency and appoints another or others to make decisions for the (senior) person.*

*An enduring power of attorney is an important planning instrument and whilst it might take effect upon signing or at some later point it at least will have effect if the person (principal) loses capacity to make decisions for themselves.*

*An enduring power of attorney can relate to personal or financial matters or both.*<sup>355</sup>

The Public Trustee’s submission highlighted that “as an appropriate adjunct to the provision of will and enduring power of attorney making services [the Public Trustee] offers advice to those concerned about planning for their future” through its 16 regional officers, outreach services, Centrelink offices and through the Queensland Government Agents program; and by way of a visiting service to hospitals or private homes for seniors who are unwell or not ambulatory. This supports the agency’s preparation of in excess of 25,000 wills annually and more than 3,000 powers of attorney.<sup>356</sup>

The Public Guardian, Mr Kevin Martin acknowledged these Public Trustee activities, including public relations and education processes conducted in conjunction with the EAPU, noting: “there has been some good work done, particularly in some of the cohorts of the seniors, in encouraging people to address these issues and make these necessary preparations”.<sup>357</sup> However, Mr Martin called for a shift to a more life-course approach to planning to support early orientation and establishment to such behaviours. More specifically, Mr Martin stated:

*We, and I personally, would encourage every person once they reach the age of 18 years to make enduring instruments that will protect them if they ever lose capacity. People need a will at the age of 18, the age of adulthood. They need in my view an enduring power of attorney to cover the potentiality that they lose capacity, and they need an advance health directive to enable them to determine what healthcare decisions will be made for them should they suffer a terminal or fatal illness. All too often we in our society do not accept that death is inevitable. We tend to ignore it. We also tend to think when we are 18 years of age that we are invincible. I have always argued for the necessity for the government to run a well-funded education program, both as part of the leaving school syndrome and also for the community as a whole, to encourage people to exercise their rights to make those decisions for themselves. If they do not make those decisions for themselves through enduring instruments, they are left with organisations such as mine and the Public Trustee, the statutory organisations, to have to make those decisions, which fundamentally is wrong. Statutory bodies should not be making personal decisions for individuals.*

*I do know in my discussions with the health department that they are encouraging people on admission into the public hospital system to have an enduring power of attorney in place, and that is increasingly becoming possible. We also know through our work with nursing homes et cetera that, as people are introduced into the nursing home area, the nursing homes are in effect not requiring but strongly encouraging the family and the individuals who are going*

<sup>354</sup> Public Trustee, Submission no. 7, page 5.

<sup>355</sup> Public Trustee, Submission no. 7, page 5.

<sup>356</sup> Public Trustee, Submission no. 7, page 5.

<sup>357</sup> Mr Kevin Martin, Public Guardian, *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 13.

*into the nursing home, if they have capacity, to do enduring powers of attorney and to make AHDs [Advanced Health Directives]...*

*...I think it is a question of encouragement on a lifetime basis of people to face their frailties, face the inevitabilities of life and exercise their rights as citizens to make provision in advance to devise solutions which they are happy with. That avoids a lot of the problems that can occur.*<sup>358</sup>

Additionally, Mr Martin noted:

*We have been encouraging through the department to introduce legislative changes to make the making of EPOAs and AHDs a far easier and simpler process than exists at the moment—given that the legislation is a sign of the product of the thoughts of the 1990s and particularly of an oversensitivity about issues of euthanasia, which AHDs were regarded as a precursor to by certain elements when we first introduced them there.*<sup>359</sup>

### Committee comment

The Committee considers that a strengthened Government commitment to encouraging the development of cultural norms and behaviours supportive of long-term financial planning activities has the potential to deliver significant benefits to Queenslanders in terms of enhanced individual financial autonomy and control. The Committee is encouraged by many of the current efforts of the Public Trustee and other agencies in this regard, but considers that a more coordinated, whole of government approach may equip agencies to better meet these objectives, including through way of:

awareness campaigns and education targeting social taboos about discussing capacity issues and frailty, and conveying benefits of financial and estate planning and personal/family provisions

exploring new options for integrating will making, powers of attorney and advanced care provision within existing financial education programs across the life course

training and leveraging partnerships with service agencies to support consistent referral or assistance at key contact points (including medical and other service providers), and

simplification of paperwork and administrative processes associated with formal planning documents.

### Recommendation 12

The Committee recommends that the Queensland Government develop a coordinated, whole-of-government strategy to encourage long-term financial planning and pro-active independent decision-making, including improved uptake of powers of attorney, advanced care directives and will making.

## 5.2 Financial counselling and advice

Even for an individual with sound financial understanding and plans, Lusardi and Mitchell have emphasised that the consumer who must save for retirement faces a “heavy computational burden to ‘get it right’ with their financial decision-making”.<sup>360</sup> After all, in seeking to formulate an optimal consumption or saving plan, one must “develop expectations regarding possible future time paths of a host of economic and demographic variables”; before filtering these competing factors into a chosen

<sup>358</sup> Mr Kevin Martin, Public Guardian, *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 14.

<sup>359</sup> Mr Kevin Martin, Public Guardian, *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 14.

<sup>360</sup> Lusardi and Mitchell, [‘The Roles of Planning, Financial Literacy, and Housing Wealth’](#), 2006, page 1.

plan which must then also be implemented.<sup>361</sup> It should not be surprising then that even informed individuals and households can make investment mistakes or fail to fully account for unanticipated economic shocks; or that discrepancies between ideal (planned) and observed behaviour might have variously minor or serious consequences.<sup>362</sup>

This is particularly the case given that studies have shown that seniors are overwhelmed by both the volume of financial products and information available, and the difficulty in assessing the validity of this information and related investment options.<sup>363</sup> Notably, Townsville Community Legal Service highlighted that legislative definitions of financial matters hint at the potentially confounding array of decision seniors may confront:

*For example, the list of “financial matters” in the Powers of Attorney Act 1998 at Schedule 2, Part 1:*

*1 Financial matter*

*A financial matter, for a principal, is a matter relating to the principal’s financial or property matters, including, for example, a matter relating to 1 or more of the following—*

- a) paying maintenance and accommodation expenses for the principal and the principal’s dependants, including, for example, purchasing an interest in, or making another contribution to, an establishment that will maintain or accommodate the principal or a dependant of the principal;*
- (b) paying the principal’s debts, including any fees and expenses to which an administrator is entitled under a document made by the principal or under a law;*
- (c) receiving and recovering money payable to the principal;*
- (d) carrying on a trade or business of the principal;*
- (e) performing contracts entered into by the principal;*
- (f) discharging a mortgage over the principal’s property;*
- (g) paying rates, taxes, insurance premiums or other outgoings for the principal’s property;*
- (h) insuring the principal or the principal’s property;*
- (i) otherwise preserving or improving the principal’s estate;*
- (j) investing for the principal in authorised investments;*
- (k) continuing investments of the principal, including taking up rights to issues of new shares, or options for new shares, to which the principal becomes entitled by the principal’s existing shareholding;*
- (l) undertaking a real estate transaction for the principal;*
- (m) dealing with land for the principal under the Land Act 1994 or Land Title Act 1994;*

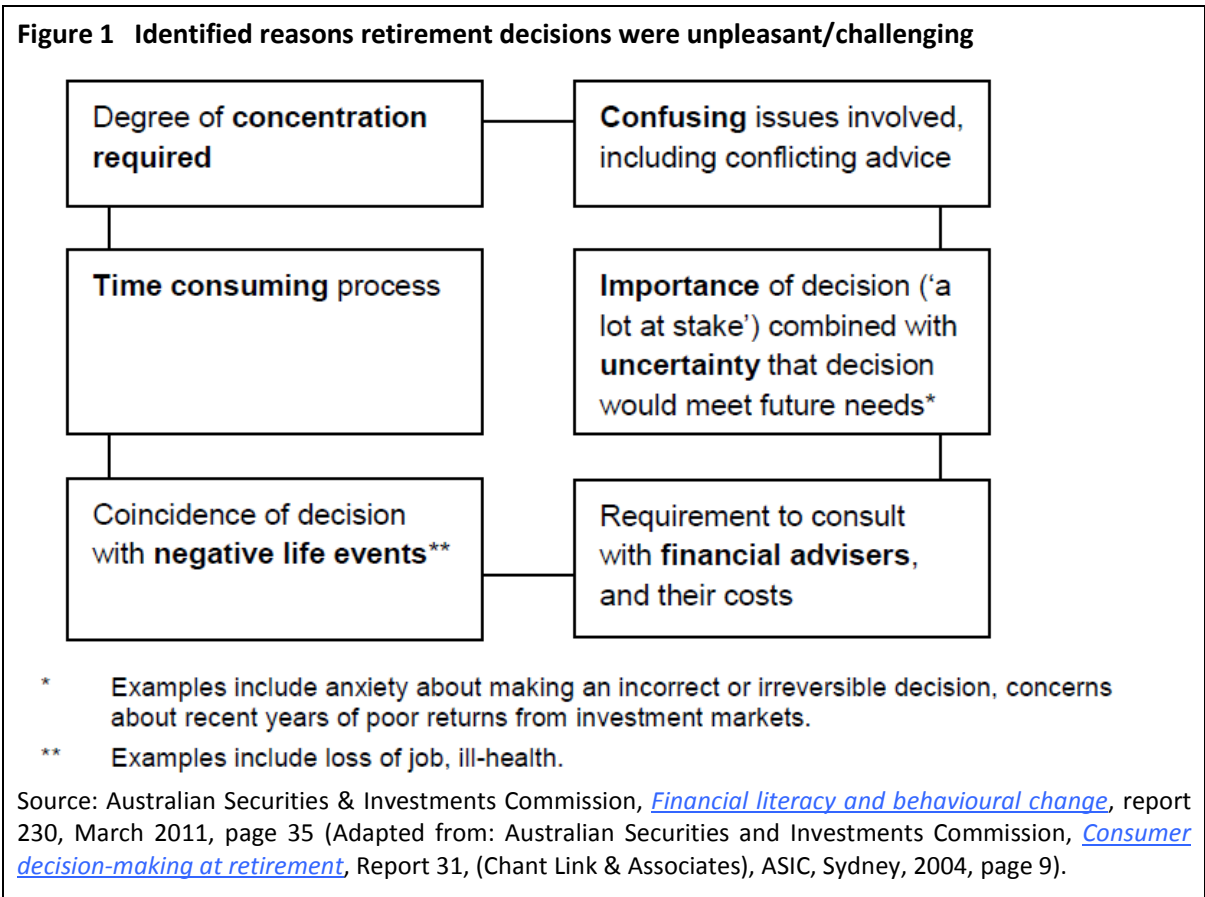
<sup>361</sup> Lusardi and Mitchell, [‘The Roles of Planning, Financial Literacy, and Housing Wealth’](#), 2006, page 1.

<sup>362</sup> Lusardi and Mitchell, [‘The Roles of Planning, Financial Literacy, and Housing Wealth’](#), 2006, pages 1-2.

<sup>363</sup> J Fear, [Choice overload: Australians coping with financial decisions](#), Discussion Paper no. 99, The Australia Institute, Canberra, May 2008, page 2; ASIC, [Financial literacy and behavioural change](#), 2011, page 56. L Xu and B Zia, [Financial Literacy around the World: An Overview of the Evidence with Practical Suggestions of the Way Forward](#), World Bank Development Research Group, Policy Research Working Paper no. 6107, June 2012, page 11.

- (n) undertaking a transaction for the principal involving the use of the principal’s property as security (for example, for a loan or by way of a guarantee) for an obligation the performance of which is beneficial to the principal;
- (o) a legal matter relating to the principal’s financial or property matters;
- (p) withdrawing money from, or depositing money into, the principal’s account with a financial institution.<sup>364</sup>

Retirement research published by ASIC has highlighted that difficulties dealing with this complex array of potential financial decisions are also typically heightened by their intersection with certain circumstantial or environmental drivers, time pressures, levels of uncertainty, and other personal or emotional influences on their decision-making context (see Figure 1).



Accordingly, stakeholders emphasised the critical role of financial counselling and advice services to help mitigate these challenges and support people as they make decisions in often difficult emotional contexts.<sup>365</sup>

As COTA Queensland, for example, noted in its submission:

<sup>364</sup> Townsville Community Legal Service, Submission no. 1, pages 14-15.

<sup>365</sup> See, for example: QADA Submission no. 20, page 3; LAQ, Submission no. 6, page 3; Caxton Legal Centre Inc., Submission no. 15, pages 10-11; 16; QCOSS, Submission no. 8, page 2; COTA Queensland, Submission no. 3, page 9.

*... seniors need easy access to services to help individuals see through the often complex maze of investments that can trap them into bad investments, which Lowndes et al. (2009, p.9) refer to as 'prevention through optimal management'.<sup>366</sup>*

Stakeholders highlighted particular vulnerabilities or shortcomings in seniors' decision-making leading to growing debt burdens and unserviceable liabilities as a result of confusion and mismanagement across a number of key product or decision areas, including reverse mortgages, credit contracts, consumer directed care packages, third party guarantees, and wills and EPoAs.

Issues relating to seniors' assessment of potentially fraudulent investment schemes or practices are considered in more detail in Chapter 6.

### 5.2.1 Reverse mortgages, credit contracts and debt issues

For those with money tied up in a home, financial products such as reverse equity mortgages are increasingly being promoted to older people as a means of helping to fund the rising costs of retirement. In 2012, the Australian Housing and Urban Research Institute (AHURI) reported that the incidence of home equity withdrawal had increased from 12 per cent of older home owners in 2001 to 18 per cent of home owners in 2010.<sup>367</sup> Additionally, in a Reverse Mortgage Survey conducted by Deloitte for Senior Australians Equity Release (SEQUAL) for the year to December 2013, it was revealed there were approximately 42,435 such loans nationwide, up from 27,898 in December 2006; and representing an outstanding market size of \$3.56 billion (compared to \$1.51 billion in 2006).<sup>368</sup>

The Productivity Commission has highlighted that these products can serve to support seniors' financial independence and have an important role to play in promoting "ageing in place" amid escalating age-related costs, including health expenses.<sup>369</sup> However, some seniors may take up such arrangements without a full understanding of the compounding effect of interest and other charges associated with the offers or the potential for the value of their assets to be eroded over time, exposing them to uncomfortable levels of risk.<sup>370</sup> It has also been identified that such equity stripping loans are often taken out on the advice of mortgage brokers who operate in an "insufficiently regulated" industry, and who may not be providing correct and fulsome information or encouraging seniors to get independent advice.<sup>371</sup>

Legal Aid Queensland (LAQ), in its submission, outlined a number of case study examples of some such issues. In the first of these scenarios, a senior in her late sixties approached LAQ for assistance regarding a reverse mortgage entered into by her husband nearly two decades earlier; and which she was concerned about managing in light of her husband's deteriorating health and the possibility he may soon be placed in aged care. LAQ's submission explained that reverse mortgages are generally payable on the death of the borrower; when the property is sold; or when the borrower no longer resides in the property (they do not require any payments until one of these events occurs, though the outstanding balance continues to increase as interest is charged).<sup>372</sup> As a result, because the client

<sup>366</sup> COTA Queensland, Submission no. 3, page 9.

<sup>367</sup> R Ong, T Jefferson, G Wood, M Haffner and S Austen, [Housing equity withdrawal: uses, risks and barriers to alternative mechanisms in later life](#), Australian Housing and Urban Research Institute, AHURI Final Report no. 217, October 2013, page 2.

<sup>368</sup> The average loan size in the year to December 2014 was \$85,881. See: J Hickey, [Deloitte Reverse Mortgage Survey](#), Deloitte, December 2013, page 23.

<sup>369</sup> Productivity Commission, [Caring for Older Australians](#), Productivity commission Inquiry Report no. 53, 28 June 2011, Chapter 8.2 ('Drawing on housing equity to pay for care costs'), esp. pages 111; 116.

<sup>370</sup> W Pitt, [Submission by the Queensland Department of Communities, Disability Services and Seniors to the House of Representatives Inquiry into older people and the law](#), Inquiry into older people and the law, House Standing Committee on Legal and Constitutional Affairs, 2006, page 1.

<sup>371</sup> Gibson and Rochford, 'Emerging Consumer Credit Issues for Older Australians', 2008, page 94.

<sup>372</sup> LAQ, Submission no. 9, page 4.

“Mrs Q” was not listed as a borrower under the loan or recorded as a joint owner of the property, she faced the real prospect of having to sell her home to make the reverse mortgage payment if her husband was placed in aged care. LAQ noted:

*Mr. Q entered into a reverse mortgage 18 years ago and borrowed \$30,000.00. Mr. Q was in his seventies at the time and Mrs. Q was under fifty years of age.*

*...When [Mrs Q] sought assistance the outstanding balance of the loan was over \$100,000.00... She could not afford to repay the reverse mortgage without the house being sold. LAQ argued that the reverse mortgage was unfair as the proceeds of the loan were paid to a third party; that the terms of the loan meant that if Mr. Q needed to go into aged care, Mrs. Q would be forced to sell the property and the loan paid out. Given that Mrs. Q was under 50 years of age at the time the mortgage was entered into it was a real possibility that Mr. Q would need care before she did. It was clear that Mr. Q did not understand how the loan operated.*

*After negotiation, the bank agreed to reduce the amount owing to \$30,000 and accept repayments which Mrs. Q would be able to sustain.<sup>373</sup>*

LAQ’s submission noted that Mrs Q was referred to LAQ by a financial counsellor, without the assistance of whom she would have had difficulty accessing LAQ’s services. The financial counsellor was also critically able to assess whether the new payment arrangement proposed was sustainable.<sup>374</sup>

The second of LAQ’s case studies detailed a scenario in which LAQ helped a gentleman facing unfair enforcement of a reverse mortgage contract:

*In 2006 Mr. S borrowed approximately \$50,000 secured by his home to repay a debt. Mr. S was 54 years of age at the time. In 2008, Mr. S fell into arrears with payments. The lender obtained judgment in 2009 for a total of \$48,000.*

*The lender accepted post judgment payments for a period of 4 years. In 2013 over a period of approximately 6 months Mr. S missed 6 weekly payments or a total of approximately \$750.00.*

*The lender sought to rely on the judgment to take possession of the property.*

*Mr. S, who was reliant on a disability support pension, sought assistance from a local financial counsellor to negotiate a new payment arrangement. The financial counsellor referred the borrower for legal advice and assistance as the borrower did not have any legal right to ask for a variation of the contract because the lender had obtained a judgment.*

*If the lender had taken possession of the property, Mr. S would have been evicted and, given the location of the property in a flood prone area, there is a real likelihood that the property would have been sold for a very low value.*

*Mr. S’s insurance premium had also increased to \$4000 per annum which he was unable to pay, constituting a further breach of his loan agreement.*

*LAQ raised the legal issues with the lender. The lender agreed to enter into a variation agreement which allowed Mr. S to remain in his home. The repayments were reduced to an amount which Mr. S could sustain on his income. He was also able to obtain comprehensive insurance with another provider for an amount of \$600.00 per year though this policy did not*

<sup>373</sup> LAQ, Submission no. 9, page 4.

<sup>374</sup> LAQ, Submission no. 9, page 5.



*provide ‘flood cover’. This meant that he was no longer in breach of any of the terms and conditions of his agreement with the lender.*<sup>375</sup>

In this scenario, the LAQ noted that the financial counsellor once again acted as the critical intermediary linking the client with LAQ’s services, and also assessed and helped guide the negotiation of a repayment arrangement that could be sustainably met on Mr S’s income.<sup>376</sup>

Further, Caxton Legal Centre Inc. highlighted the following case of “Mrs D”:

*Mrs D, an 80 year old female aged pensioner was taken from hospital after cancer treatment by her son and taken to a financial institution and then a solicitor’s office where she signed a Transfer for half of her home to her grandson and a mortgage for the full value of the home. She received no financial advice or independent legal advice. She does not clearly recall signing the documents as she was heavily medicated at the time due to her cancer treatment. She was assured it was a “short term loan” for a month. Twelve months later she was advised she was in arrears with her mortgage and the mortgage now was in excess of the value of her home. She did not know she had a mortgage. SLASS wrote to the financial institution requesting the financial due diligence file that should have been undertaken when writing the mortgage. The financial institution refused to cooperate. SLASS made an application to the Financial Ombudsman who requested the parties make representations for their consideration. The financial institution agreed (without accepting liability) to release our client’s home as security for the mortgage and release the mortgage entirely.*<sup>377</sup>

Burns has emphasised that many of these problems are not unique to reverse mortgages in the sense that inadequate disclosure mechanisms, dishonest broker advice or poor consumer financial literacy also feature in a range of debt arrangements.<sup>378</sup> However:

*...problems with information asymmetry and poor consumer understanding are exacerbated in the reverse mortgage context because reverse mortgages are still relatively novel, they have some unique features and some of the potential borrowers are arguably the least equipped to appreciate the consequences of taking out a reverse mortgage.*<sup>379</sup>

In the non-housing sector, management of credit cards and high interest loan arrangements also continue to present challenges. Generally speaking, such sources of credit can play an important role in smoothing consumption between income periods, particularly in response to sudden health issues or disability related costs.<sup>380</sup> In addition, research has indicated that those aged 65 years or older are typically among those most likely to ensure that the full balance of their credit card is paid each

<sup>375</sup> LAQ, Submission no. 9, page 5.

<sup>376</sup> LAQ, Submission no. 9, page 5.

<sup>377</sup> Caxton Legal Centre Inc., Submission no. 15, page 14.

<sup>378</sup> F Burns, [‘The evolving statutory regulation of reverse mortgages in Australia’s ‘risk society’](#), *Monash University Law Review*, vol. 39, no. 3, 2014, page 613.

<sup>379</sup> F Burns, [‘The evolving statutory regulation of reverse mortgages in Australia’s ‘risk society’](#), 2014, page 613.

<sup>380</sup> JR Bray, ‘In the Red and Going Grey? Wealth and Debt as Australians Approach Age Pension Eligibility Age and Retirement’, Crawford School Research paper no. 04/2013, Australian National University, 1 October 2013, page 9.

month.<sup>381</sup> However, surveys confirm that it is not only mortgage debt that Australians are increasingly taking into retirement but also growing credit card liabilities.<sup>382</sup> Notably, results of the 2014 Australian Credit Card Industry survey indicated that older respondents were on the whole more likely to have multiple credit cards; and that those in the pre-retirement age group of 45 to 54 had the most overall debt and figured most prominently among those with credit card debt between \$8,001 and \$10,000 and over \$10,000.<sup>383</sup> For seniors facing unmanageable debt burdens, situations may easily escalate and are not likely to be resolved without professional intervention to help them regain control of their financial situation.<sup>384</sup> LAQ provided a particular example highlighting the critical role legal and financial support services can play in this regard:

*Mr. K was a 78 year old pensioner who suffers from a severe disability following illness. Mr. K presented with multiple issues. One of those issues concerned a credit card with EG which Mr K had no money to pay out of his pension. Despite this, Mr. K felt company EG was harassing him. LAQ assisted Mr. K in negotiating with EG which resulted in EG agreeing not to pursue the debt on compassionate grounds.*<sup>385</sup>

Stakeholders also highlighted considerable confusion about the nature of third-party guarantees, which are leaving seniors open to exploitation and indebtedness. Caxton Legal Centre Inc, for example, highlighted the case of client “Mrs A”:

*Mrs A was a 63 year old woman on a Disability Support Pension who suffered from a debilitating condition severely affecting her mobility. She owned a modest house in an outlying suburb worth about \$260,000.00 which was adapted for her disability and was fully paid off. When Mrs A's daughter asked her mother to act as guarantor for a business loan to help the daughter into a franchise, Mrs A agreed, believing that her total exposure would be \$11,000.00...The bank did not explain the nature of the guarantee to Mrs A, who as a result of lack of financial literacy and poor overall literacy, did not understand the bank statements and eventually the legal letters from the bank's legal advisers which followed upon the loan repayments falling into arrears. Mrs A had received a letter requiring her to leave her home as a result of a default judgement which was read to her by a concerned friend. In this case SLASS worked with the Caxton Legal Centre Consumer Law team to have the default judgement set aside, and Mrs A was able to stay in her home. However, the impact of Mrs A's poor literacy skills and low levels of general literacy made her an easy victim for sharp lending practices as she consistently maintained that at no time had the consequences of signing a guarantee been fully explained to her, and SLASS/Caxton found her a credible witness.*<sup>386</sup>

<sup>381</sup> Results of a survey conducted by Sweeney Research for Consumer Affairs Victoria found 73% of respondents aged 65 years and over pay the full amount of their credit card bill by the due date. This is significantly higher than rates of on-time repayment among any other age subgroups (e.g. for the next best performing subgroups 63% (55-64 years) and 56% (45-54 years) state that they took the approach of paying the full amount owing by the due date). Results also indicated that 18% of the 65+ age subgroup reported they pay a proportion of the balance by the due date; and 5% reported they pay the minimum payment amount by the due date. See: Sweeney Research, [A Report on Unsolicited Credit Card Limit Increase Offers](#), Consumer Affairs Victoria, Reference no. 18372, July 2009, page 17.

<sup>382</sup> *Australian Credit Card Industry Survey 2014*, Creditcard.com.au, 2014, webpage, <https://www.creditcard.com.au/australian-credit-card-industry-survey-2014-b/> (accessed 20 August 2015).

<sup>383</sup> *Australian Credit Card Industry Survey 2014*, Creditcard.com.au, 2014.

<sup>384</sup> Caxton Legal Centre Inc., Submission no. 15, page 10.

<sup>385</sup> LAQ, Submission no. 9, page 6.

<sup>386</sup> Caxton Legal Centre Inc., Submission no. 15, page 11.

Caxton Legal Centre Inc. highlighted research suggesting that older Queenslanders from culturally diverse backgrounds may be particularly vulnerable to such risks due to certain culturally engrained notions of familial support, and perceived obligations to provide financial assistance to family members, sometimes without proper regard for the viability of the arrangement.<sup>387</sup>

Broader concerns were also expressed about the general indebtedness and need for crisis interventions and support for older farm households in Queensland. Notably, Reserve Bank of Australia data published by the ABS revealed that collective Australian rural bank debt reached a new peak of \$60.7 billion in December 2014,<sup>388</sup> with “the geographic sectors with increased indebtedness correlat[ing] closely to those sectors that are feeling the effects of ongoing dry seasonal conditions – such as western and northern Queensland”.<sup>389</sup>

Seniors are overrepresented among farmers, with the ABS reporting that the median age of farmers has increased to 53 years compared to a median age of 40 for the rest of the workforce,<sup>390</sup> and a recent, 2014 study funded by the Rural Industries R&D Corporation further determining that “since 1991 the population of farmers aged over 65 has increased by 55%”.<sup>391</sup> LAQ has reported that “the service has been busy assisting drought affected farmers and primary producers”<sup>392</sup> and in the 2014 calendar year the Farm and Rural Legal Service undertook 63 farm debt mediations.<sup>393</sup>

The Committee notes that in each of these common debt scenarios, legal and financial advisors play a crucial role in supporting seniors to negotiate appropriate arrangements to prevent default and minimise further losses; as well as helping them develop a more fiscally sustainable approach to the management of their finances in the future.

### 5.2.2 Housing and aged care options

Older Queenslanders are often confronted with difficult financial decisions surrounding arrangements for their accommodation and aged care. QADA emphasised that for some seniors, these decisions may be far more complicated than those they have been required to make at other stages in their life, and may also come at a time when the person is in a period of crisis:

*...for example, following a hospital admission or the death of a spouse, where the person is experiencing some level of cognitive decline (such as the initial stages of memory loss) and/or*

<sup>387</sup> Caxton Legal Centre Inc., Submission no. 15, page 10.

<sup>388</sup> Reserve Bank of Australia, cited in Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES), [Australian farm survey results, 2012-13 to 2014-15](#), Commonwealth of Australia (Department of Agriculture), March 2015, page 40.

<sup>389</sup> Deloitte, ‘What do farm cash incomes and debt trends mean for your business?’, *Agribusiness Bulletin* (online), 2015, <http://www2.deloitte.com/au/en/pages/consumer-business/articles/what-do-farm-cash-incomes-debt-trends-mean-for-your-business.html> (accessed 20 August 2015). The 2013-14 ABARES *Farm Survey* figures also revealed the average level of debt increased by 4 percent in southwest Queensland; and in the Gulf cattle country of north Queensland, the number of borrowers who have missed loan repayments for more than 90 days rose from 1.9 per cent to 3.4 per cent over the year. See also: S Neales, ‘Farmers forced off their land fight back in Queensland,’ *The Australian* (online), 6 December 2014, <http://www.theaustralian.com.au/news/inquirer/farmers-forced-off-their-land-fight-back-in-queensland/story-e6frg6z6-1227146447933> (accessed 20 August 2015).

<sup>390</sup> M Keogh, ‘Farmers are getting older but it’s not a problem,’ *AGForum* (online), 11 October 2013, [http://www.farminstitute.org.au/blog/Ag\\_Forum/post/farmers-are-getting-older-but-its-not-a-problem/](http://www.farminstitute.org.au/blog/Ag_Forum/post/farmers-are-getting-older-but-its-not-a-problem/) (accessed 20 August 2015).

<sup>391</sup> Australian Government, Rural Industries Research & Development Corporation, ‘[Study finds that Australia’s farmer population is ‘competitively young’](#)’, Media Release, 16 July 2014.

<sup>392</sup> Legal Aid Queensland, [Annual Report 2013-14](#), LAQ, 2014, page 21.

<sup>393</sup> LAQ, Submission no. 9, page 4.

*where the person no longer has access to those who they would have previously relied on for support in making complex decisions.*

*This may be because their spouse or another close friend or relative has passed away or is in poor health. As a result, there is a real need to ensure that older people can access appropriate supports and advice when facing these decisions.*<sup>394</sup>

This might include deciding between whether to make arrangements to allow them to age in place and/or settle on one of an array of assisted living facilities across a spectrum of care packages and levels of independence and care intensity. For those seeking to age in place, this might equally involve a complex matrix of considerations and arrangements in securing a housing “downsize” and/or arranging the implementation of appropriate mobility aides and other functional supports – no easy task given an observed shortage of affordable age-appropriate housing options, particularly for renting pensioners.<sup>395</sup>

Notably, within this broad subset of housing and care-related decisions, stakeholders especially highlighted emerging challenges surrounding the negotiation of in-home care arrangements and contracts to enter an aged care facility; or issues surrounding “granny flats” and informal care arrangements secured with family members.

For example, QADA pointed to reports of problems encountered by seniors with regard to contracts and agreements for Consumer Directed Care (CDC) Home Care Packages.<sup>396</sup> A product of recent Federal aged care reforms, CDC packages are a new way of delivering services that gives consumers greater control over their own lives by allowing them to make choices about the types of care and services they access and the delivery of those services.<sup>397</sup> Under a CDC approach, consumers are encouraged to identify goals – which could include independence, wellness and re-ablement – which form the basis of their Home Care Agreement and care plan.<sup>398</sup> The consumer ultimately decides the level of involvement they wish to have in managing their package, which could range from engagement in all aspects of the package, including co-ordination of care and services, to a less active role in decision-making and management of the package. The provider must also participate in ongoing monitoring and conduct formal re-assessments (at least every 12 months) to ensure that the package continues to be appropriate for the consumer.<sup>399</sup> While the promotion of choice in care options is admirable, QADA noted of the CDC packages:

*...many older people who contact QADA describe difficulties in understanding lengthy contracts and agreements which have clearly drafted by the legal representatives of those offering the package. Those contacting QADA also have concerns about terms within those contracts in particular, about terms relating to administration and case management fees. In some instances, older people are being asked to sign contracts in which such fees consume 46% of the total funds available to the older person for their care.*<sup>400</sup>

<sup>394</sup> QADA, Submission no. 20, page 3.

<sup>395</sup> QCOS, [Cost of Living Report – Special Edition: The cost of living and pensioner households](#), 2014, page 14; Australian Government, Department of Social Services, [Home Care Packages Programme Guidelines](#), Commonwealth of Australia, July 2014, page

<sup>396</sup> QADA, Submission no. 20, pages 3-4.

<sup>397</sup> Department of Social Service, [Developing a care plan: Information for Home Care Package providers](#), Information Sheet, Commonwealth of Australia, March 2015, page 1.

<sup>398</sup> Department of Social Service, [Developing a care plan: Information for Home Care Package providers](#), Information Sheet, Commonwealth of Australia, March 2015, page 1.

<sup>399</sup> Australian Government, Department of Social Services, [Home Care Packages Programme Guidelines](#), Commonwealth of Australia, July 2014, pages 12; 26.

<sup>400</sup> QADA, Submission no. 20, page 4.

Where seniors are looking to make alternative care arrangements with their family, QADA CEO Mr Geoff Rowe also noted:

*...in relation to the aged care reform that we are seeing... because of the huge bonds that are required under the new arrangements, we are seeing families who are offering—demanding, requiring—that they continue to provide for their father or mother rather than going into aged care.*<sup>401</sup>

In addition, a number of stakeholders drew attention to scope for seniors to suffer financial detriment due to a granny flat arrangement going awry.<sup>402</sup> Many of these issues appear to stem from decisions that “are not necessarily reflecting the will of that individual, but more the desire of the family member not to lose their inheritance to the aged care system”;<sup>403</sup> and which are considered in more detail in this report’s examination of mechanisms to protect seniors from financial abuse.

Further, as noted earlier in this report (see Chapter 3.3), retirement village and manufactured home contracts have also been identified as a site of significant confusion and potential exploitation; as contributed to the commissioning of the current reviews of the *Retirement Villages Act 1999* and *Manufactured Homes (Residential Parks) Act 2003*.

### 5.3 Implications for support services

As previously noted, financial literacy and/or access to information do not necessarily translate to sound economic decision-making or outcomes, particularly given that choices are often emotionally charged and affected by family dynamics, time pressures and informational demands; and may also be scuppered by adverse life developments and their environmental effects.<sup>404</sup> Further, efforts to improve financial aptitude are essentially long-term policy actions, which must inevitably be supplemented by more immediate forms of support. As emphasised by Ms Vivienne Campion, Manager, Seniors Legal and Support Service at Caxton Legal Centre Inc.:

*Financial literacy is particularly lacking in certain kinds of older people...clients for whom English is a second language; older women, for cultural reasons and again I think that has been mentioned. If they are in that group particularly of the older old—80 to 85 plus—often they have grown up with engendered relationships where they did not take part or they were not allowed to take part or it was assumed that they would never take part in financial decision-making. Therefore, actually requiring them suddenly to acquire this literacy is going to be hard work.*<sup>405</sup>

Further, Caxton Legal Centre Inc.’s submission noted:

*SLASS submits that a two-pronged attack is required – the need for education and financial literacy is essential, but there must be effective assistance to those who still lack financial literacy or are too frail to undertake the actions that are required to protect their interests.*<sup>406</sup>

<sup>401</sup> Mr Geoff Rowe, CEO, QADA, *Transcript of Proceedings* (Hansard), Public Hearing, 3 June 2015, pages 6-7.

<sup>402</sup> QADA, Submission no. 20, page 2; Townsville Community Legal Service, Submission no. 1, page 21; Hervey Bay Seniors Legal and Support Service, Submission no. 12, page 3; See: Ms Cellaigh Spike, EAPU, *Transcript of Proceedings* (Hansard), Public Hearing, 20 May 2015, page 9.

<sup>403</sup> Mr Geoff Rowe, CEO, QADA, *Transcript of Proceedings* (Hansard), Public Hearing, 3 June 2015, pages 6-7.

<sup>404</sup> JM Collins, ‘Financial advice: A substitute for financial literacy?’, *Financial Services Review*, vol. 21, no. 4, Winter 2012, page 307.

<sup>405</sup> Ms Vivienne Campion, Manager, Seniors Legal and Support Service, Caxton Legal Centre Inc., *Transcript of Proceedings* (Hansard), Public Hearing, Communities, Disability Services and Domestic and Family Violence Prevention Committee, 3 June 2015, page 10.

<sup>406</sup> Caxton Legal Centre Inc., Submission no. 15, page 16.

In keeping with this, in response to aforementioned decision-making challenges and vulnerabilities, stakeholders widely emphasised the critical role of financial advice and counselling services, both by way of:

- helping seniors to take charge of their financial decision-making, by assisting them to negotiate the complex financial choice landscape, and plan, well in advance, for the financial consequences of retirement, ageing generally and other associated life events,<sup>407</sup> and
- early and crisis intervention, to help seniors who are already, or beginning to experience financial difficulties, to regain control of their financial situation and protect and enforce their legal and financial rights.<sup>408</sup>

The academic literature points to financial counselling and advice services fulfilling five key roles in such scenarios:

- **offering information** – that is, regardless of their experience and expertise, individuals will stop searching for information when the marginal cost equals the marginal benefit; whilst financial professionals may acquire expertise on a technical topic and deliver greater informational returns on their search
- **defusing biases that lead to common mistakes** – e.g. addressing optimism biases that feed expectations of unrealistic returns, or may prompt consumers to hold on to losing stocks or investments for too long in the hope or assumption that things will turn around
- **facilitating cognition** – that is, detecting consumers' cognitive errors
- **overcoming affective issues** – that is, supporting individuals to make decisions in emotional contexts, including helping them to overcome feelings of insecurity, validating past decisions, and helping avoid taking financial actions under duress, and
- **mediating joint decision-making** – that is, playing the role of a third-party mediator who can help couples or families make decisions collaboratively.<sup>409</sup>

With regards to proactive advice mechanisms in particular, Caxton Legal Centre Inc. acknowledged that a number of agencies or organisations currently provide various informational resources and referral pathways. Foremost among these measures is the Government's seniors website, which is intended to act as hub or "one-stop-shop" linking seniors to information and resources, together with a Seniors Enquiry Line which, for the cost of a local call, "gives Queensland seniors, their family, friends, grandparents and carers access to information on topics of interest to seniors".<sup>410</sup> The Enquiry Line website states that:

*One call will put you in touch with information on: concessions, social activities, household assistance, retirement accommodation, financial and legal matters, health, education, transport and many other issues.*<sup>411</sup>

<sup>407</sup> Mr Kevin Martin, Public Guardian, *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 14; Mr Mark Tucker-Evans, Chief Executive Officer, Council on the Ageing, *Transcript of Proceedings (Hansard)*, Public Hearing, Communities, Disability Services and Domestic and Family Violence Prevention Committee, 3 June 2015, page 16.

<sup>408</sup> LAQ, Submission no. 9, page 3 (see also case studies); LAQ; Caxton Legal Centre Inc., Submission no. 15, page 16.

<sup>409</sup> JM Collins, Financial advice: A substitute for financial literacy?, *Financial Services Review*, vol. 21, no. 4, Winter 2012, page 307.

<sup>410</sup> UnitingCare Community, *Seniors Inquiry Line*, Queensland Government, website, 2014, <http://www.seniorsenquiryline.com.au/> (accessed 20 August 2015).

<sup>411</sup> UnitingCare Community, *Seniors Inquiry Line*, 2014.



Service operator UnitingCare Community submitted that since January 2007, Seniors Enquiry Line has responded to approximately 105,000 enquiries.<sup>412</sup> Seniors Enquiry Line also conducts various information sessions for seniors' groups.

In addition to these offerings, Caxton Legal Centre Inc. noted that other relevant services include Brisbane City Council (BCC) directory links to aged care services in Queensland; the Centrelink Financial Information Service (FIS); the Office of Fair Trading's web and phone resources, and particularly:

- the UnitingCare Community Financial First Aid line, which acts as a free telephone advice service offering assistance setting up a money management program, and referrals for free, face-to-face consultations with a financial counsellor, and
- the Salvation Army's Moneycare Financial Counselling service, which offers a range of self-help tools, and counselling for those in financial difficulty either in person, or over the phone for those in remote locations.<sup>413</sup>

Additionally, the Committee notes that the Park and Village Information Link (PAVIL), provided by Caxton Legal Centre Inc. offers:

*...a specialist service providing free information and legal assistance for residents and prospective residents of retirement villages and manufactured home parks in Queensland. Assistance is prioritised to focus on older people, including groups of residents. The service will also provide substantial community legal education and law reform, and undertake limited case work.*<sup>414</sup>

Submitters pointed to a range of program shortfalls and overlaps across many of these services, however; emphasising a need for information to be more manageably concentrated and accessible, and various service gaps addressed.

For example, Caxton Legal Centre Inc. noted that:

- none of the BCC referral pathways target assistance with general advice and support for financial decision-making, although some organisations provide systemic advocacy, (COTA, Office of Public Advocate) and some provide personal advocacy for specific situations (Carers Qld, QADA)
- while free and open to anyone, whether or not they are in receipt of social security benefits, the Centrelink FIS "does not provide investment recommendations" and "long delays are often experienced assessing the service", and
- "the Queensland government website redirects clients to a national financial counselling website. Instructions for finding appropriate sources of financial planning require considerable online research".<sup>415</sup>

In addition, UnitingCare Community noted of the Seniors Enquiry Line that in addition to lengthy call waiting queues and difficulties with automated voice responses and telephone menus:

*Clients of the Seniors Enquiry Line also complain that they are often not listened to, they are not given time to explain their situation and feel dismissed by call centre services which are on tight turnaround times to respond to enquiries. Older people may have speech or hearing difficulties which may not be considered by call centre staff. A further vulnerability for older*

<sup>412</sup> UnitingCare Community, Submission no. 14, page 2.

<sup>413</sup> Caxton Legal Centre Inc., Submission no. 15, page 15.

<sup>414</sup> Caxton Legal Centre Inc., *Park and Village Information Link*, website, 2015, [https://caxton.org.au/park\\_village\\_information.html](https://caxton.org.au/park_village_information.html) (accessed 20 August 2015).

<sup>415</sup> Caxton Legal Centre Inc., Submission no. 15, page 15.



*people is that they may be socially isolated and unable to seek the assistance of family to support them to access services, in particular financial, and thus need the opportunity to be listened to, understood and referred appropriately.*<sup>416</sup>

In response to these service deficits or vulnerabilities, a number of stakeholders called for the establishment of a more coordinated, round-the-clock telephone and internet helpline and referral service, integrating information encompassing the wide range of **financial and housing and aged care** matters that seniors may face. For example, QADA noted that in addition to retirement and debt-management advice:

*...increased access to independent financial advice for older people entering residential aged care would be extremely beneficial. This should be made available free of charge or at a subsidised cost where an older person is unable to access commercial services. Determining the best way to fund residential aged care can be confusing and overwhelming particularly when many seniors have no family to assist and are struggling with the change of having to enter into a residential aged care facility. Having access to independent financial advisors at the entry stage would assist seniors to understand what decision is best for them. Unfortunately, for many, they are either unaware of the ability to access such a service or cannot afford it and therefore adhere to the advice of the facility, which may not be in their best interest.*<sup>417</sup>

The Department explained that it has looked to ease access to advice by consolidating resources for seniors into a “one-stop shop” on its website. However, National Seniors submitted that there remains an outstanding need for a resourced and “dedicated phone line for seniors seeking financial information” – in particular,<sup>418</sup> noting:

*...the Federal Government has recently withdrawn support for the National Information Centre on Retirement Investments (NICRI) which previously provided older Australians with invaluable independent financial information and education programs including a dedicated phone line.*<sup>419</sup>

The OPG likewise called for the “establishment of an agency which on a 24 hour basis can provide all persons with advice as to their obligations under all forms of financial or other arrangements”;<sup>420</sup> with ATSILS also advocating for the inclusion of a “free, independent, culturally competent advice line for Aboriginal and Torres Strait Islander people on financial products”.<sup>421</sup>

In echoing these calls, COTA Queensland looked to single out the United Kingdom’s (UK) part government-sponsored “FirstStop” service as providing an “excellent model with helping seniors on housing and financial matters”.<sup>422</sup> COTA Queensland noted that the online service:

*...provides British seniors an easy to access service, either by telephone or the internet, where they can ask for advice or referral to an independent financial advisor. These independent financial counsellors can advise individuals on matters such as ‘financial products’ and other Investments.*<sup>423</sup>

<sup>416</sup> UnitingCare Community, Submission no. 14, page 2.

<sup>417</sup> QADA, Submission no. 20, pages 3-4.

<sup>418</sup> National Seniors Australia, Submission no. 18, page 2.

<sup>419</sup> National Seniors Australia, Submission no. 18, page 2.

<sup>420</sup> OPG, Submission no. 5, page 8.

<sup>421</sup> ATSILS, Submission no. 16, page 6.

<sup>422</sup> COTA Queensland, Submission no. 3, page 9.

<sup>423</sup> COTA Queensland, Submission no. 3, page 9.

Further:

*FirstStop is also dedicated to helping seniors in other ways that make it a worthy model, such as a one-stop-shop for finding eldercare, accommodation and assisted living services.*<sup>424</sup>

In addition to the FirstStop service, which has reportedly been operating effectively in its provision of independent advice around housing and financial decisions “for a number of years”;<sup>425</sup> COTA Queensland CEO Mr Mark Tucker Evans suggested that Queensland might also draw from the experience of a service run by COTA in Western Australia “that is funded by the state government that assists people to make those well-informed decisions”.<sup>426</sup>

QADA also suggested that the development of any comprehensive suite of measures should necessarily include exploring opportunities to aid consumers in their negotiation of lengthy CDC contracts. In this regard, QADA recommended the development of general agreements for CDC with standard terms to reduce complexity and aid consistency:

*We suggest that a general agreement with standard terms be required to be utilised across the sector. Similar to the General tenancy agreement (Form 18a) required under the Residential Tenancies and Rooming Accommodation Act 2008 (Qld), this would decrease the complexity of decisions that older people need to make in relation to CDC Packages. We suggest that this would greatly assist older people to understand the standard terms of the agreement and to identify special terms that may vary from provider to provider. This would also assist legal and financial advisers to provide advice to older people at a lower fee than that required for a non-standard agreement. This is something that QADA is currently advocating for with the Federal Minister.*<sup>427</sup>

In addition, QADA noted that:

*... financial hardship applications to the Department of Social Services to reduce income tested fees for Home Care Packages are lengthy and complex. QADA has been called on to assist older people to complete this paperwork and suggests that many older people may not be able to complete that paperwork without assistance. QADA suggests that this process is unnecessarily complex and as such, provides a barrier to independent decision-making by older people.*<sup>428</sup>

While acknowledging that aged care provisions are Federal issues, QADA CEO Mr Rowe highlighted the State’s duty to help educate its citizens in this regard:

*I am aware that is a Commonwealth responsibility and perhaps outside the jurisdiction of the committee, but I guess I am raising this matter because as older people need to be educated, they need to understand what are fair and reasonable charges. These are matters that we as an organisation have taken and are taking up with the federal minister.*<sup>429</sup>

The Committee noted that such criticisms were consistent OPG calls for greater obligations on service providers to “simplify all contractual documentation into Plain English”.<sup>430</sup> However, it also noted Mr

<sup>424</sup> COTA Queensland, Submission no. 3, page 9.

<sup>425</sup> Mr Mark Tucker-Evans, CEO, COTA, *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 15.

<sup>426</sup> Mr Mark Tucker-Evans, CEO, COTA, *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 15.

<sup>427</sup> QADA, Submission no. 20, page 4.

<sup>428</sup> QADA, Submission no. 20, page 4.

<sup>429</sup> Mr Geoff Rowe, CEO, QADA, *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 7.

<sup>430</sup> OPG, Submission no. 5 (Supplementary), page 8.

Rowe's submission that another solution to these challenges "would be to provide further funding to community legal services providing legal advice to older people about these contracts".<sup>431</sup>

Many of the issues associated with carer payments, granny flats and third party loan agreements reflect a broader vulnerability associated with informal arrangements, shaped often by notions of entitlement and influenced also by the principle of advancement. In this regard, the Hervey Bay SLASS also confirmed:

*The most common form of financial abuse Hervey Bay SLASS encounters involves an adult family member, carer or other relative asking the senior for a "loan" on the basis they will pay it back when they can or on the happening of a specific event which doesn't eventuate. Such "loans" are often for the purpose of making a large purchase of some sort, home renovations or for the payment of bills.*

*Often the motivation for the older person making the "loan" is their strong desire to help out their family members or as a result of threats made to isolate them if they don't comply (e.g. place them in a nursing home; no longer visit them; restrict access to grandchildren). When the older person seeks repayment of the money, the family member claims it was a gift or they subject the older person to psychological abuse. In most cases the recipient of the loan is not in a financial position to repay the money anyway or does not want to take on a bank loan or external finance to pay it back. More often than not, the relationship between the older person and the family member/s breaks down as a result of the older person seeking to recover the money.*<sup>432</sup>

The Committee notes that the Townsville Community Legal Service stated in this regard that:

*There is significant support to look at formalizing family agreements to limit or ameliorate their potential for financial abuse.*

*There is also an unexplored issue of whether the financial sector should require the implementation of family agreements in addition to independent legal advice before implementing financial decisions by family members that might pose risks of financial abuse, for example re-mortgaging, refinancing, reverse equity loans etc.*<sup>433</sup>

In a broader sense, as a complement to efforts to simplify paperwork and improve access to financial, housing and care related information and related independent financial advice; submitters also highlighted the need for financial counselling and legal services to be sufficiently resourced to enable them to meet the burgeoning numbers of referrals they are facing.

Submitters widely commended the "synergetic and cooperative"<sup>434</sup> work of financial counsellors, the Seniors Enquiry Line (including the EAPU) and the Seniors Legal and Support Service in mutually referring and helping clients to resolve financial issues and avoid litigation and bankruptcy (as documented by a range of various case studies cited in this report). However, they also noted that financial counselling services in Queensland "are substantially under-funded and services are unable to meet existing demand, putting many vulnerable seniors at risk".<sup>435</sup> Caxton Legal Centre Inc., for example, noted:

*The Financial Counsellors Association of Queensland is a small association run by volunteers. Unfortunately all state funding of financial counselling ended on 30 June 2013. The*

<sup>431</sup> QADA, Submission no. 20, page 4.

<sup>432</sup> Hervey Bay Seniors Legal and Support Service, Submission no. 12, page 1.

<sup>433</sup> Townsville Community Legal Service, Submission no. 1, page 22.

<sup>434</sup> Townsville Community Legal Service, Submission no. 1, page 20.

<sup>435</sup> QCOS, Submission no. 8, page 2.

*Commonwealth provided funding in time to offer some new positions for the retrenched financial counsellors but the impact of the loss of qualified counsellors was felt across the community sector.*<sup>436</sup>

COTA Queensland CEO Mr Mark Tucker-Evans also testified that:

*We are concerned that both at the state and federal levels there has been a cutback on financial counsellors at a time when people—not just older people, but particularly older people—are becoming much more vulnerable. We will see some major changes that will come into effect in aged care on 1 July, where people will need to make co-payments. In some parts of Queensland, that has not been the case. Some charities and certainly some government services in the past have provided those free of charge. Already we are hearing that some older people are not taking up those services because they cannot afford them. There is really a need for some independent financial counselling services. There has been a growth industry in for-profit financial counselling services, but we are hearing fees of \$5,000 for some of that advice. Many older people will not be able to afford that. Some support for financial counselling would be very welcome.*<sup>437</sup>

Further, LAQ submitted with regards to financial counsellors that:

*In the 2013-14 financial year approximately one third of the legal advices provided by LAQ's Consumer Protection Unit were provided to clients referred to LAQ by a financial counsellor or were telephone advices provided to a financial counsellor for relaying to a client of the counsellor.*

*In the 2014 calendar year the Farm and Rural Legal Service undertook 63 farm debt mediations. The majority of clients were referred to this service by rural financial counsellors...*

*Due to increased demand for its Farm and Rural Legal Service, LAQ is conducting a \$150,000 pilot to expand services in 2015-16...*

*It is submitted that funding for financial and rural counselling services should be maintained at current levels because of the significant benefit these services provide to seniors and other vulnerable consumers seeking assistance to protect and enforce their financial and legal rights.*<sup>438</sup>

In addition, Caxton Legal Centre Inc. and QADA called for the establishment of “a financial counselling and advisory service ancillary to the Public Trustee for older Australians with capacity but with other frailties”,<sup>439</sup> to minimise risks of exploitation whilst simultaneously supporting seniors' right to financial autonomy. As QADA noted, such a service could stand to encourage education and support of vulnerable individuals to manage their finances and wellbeing in accordance with their wishes, as opposed to the potentially premature operation of substitute decision-making provisions – “a legal response which disempowers the individual”.<sup>440</sup>

<sup>436</sup> Caxton Legal Centre Inc., Submission no. 15, page 10.

<sup>437</sup> Mr Mark Tucker-Evans, CEO, COTA, *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 16.

<sup>438</sup> LAQ, Submission no. 9, page 4.

<sup>439</sup> Caxton Legal Centre Inc., Submission no. 15, page 2.

<sup>440</sup> Mr Geoff Rowe, CEO, QADA, *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 7.

**Committee comment**

The Committee notes that submissions highlighted that while key agencies currently provide a significant volume of material to support seniors' informed and independent decision-making processes, this information could stand to be more effectively packaged and delivered for ease of access and navigation.

While the Department's moves to consolidate web materials into a single, one-stop-shop are promising, the Committee acknowledges consistent sentiment that current offerings would benefit from improved integration of housing and aged care advice in particular; and from increased resourcing for telephone-based referral and support. In addition, the Committee notes opportunities for the Queensland Government to collaborate with the Federal Government on options to reduce administrative complexity surrounding aged care contracts and improve consumer education about individual rights and options in this regard.

Further, the Committee considers that improved resourcing of the independent financial advice services provided by financial counsellors, often in concert with the SLASS, is required to ensure Queensland seniors are able access the independent advice they need to help them navigate financial setbacks or issues and determine a sustainable fiscal plan for their future. Such moves accord with what was a resounding theme of submissions – as QADA CEO Mr Geoff Rowe noted:

*...older people need the opportunity to talk through their financial issues. They need advice sessions rather than just information and referral.*<sup>441</sup>

The Committee considers that moves to encourage the formalisation of family agreements also stand to play an important role in protecting seniors' assets by acting as both a valuable education and discussion point surrounding family members or other parties' expectations, and by ensuring the terms of agreements are clearly understood.

**Recommendation 13**

The Committee recommends that the Queensland Government investigate the establishment of a dedicated, 24-hour financial advice helpline, drawing on the model provided by the UK FirstStop service.

**Recommendation 14**

The Committee recommends that the Queensland Government work in partnership with Federal counterparts to explore options to reduce the complexity of aged care related contracts and educate consumers about fair and reasonable charges and contract conditions.

**Recommendation 15**

The Committee recommends that the Queensland Government reinstate funding for financial counselling in Queensland, and investigate ways to better facilitate vulnerable seniors' access to and uptake of free and independent financial advice.

<sup>441</sup> Mr Geoff Rowe, CEO, QADA, *Transcript of Proceedings* (Hansard), Public Hearing, 3 June 2015, page 7.

**Recommendation 16**

The Committee recommends that the Queensland Government explore options to encourage the formalisation of family agreements.

## 6. Online vulnerabilities and fraud

As a result of rapid developments in cyber technology and a growing diversification of the digital economy in recent years, Australians are now conducting an increasing array of their daily activities and interactions online.

The immediacy and global nature of online exchanges, and their convergence with new technologies such as smartphones and portable tablets, offer senior Australians greater means of access to family and friends, education and health services, shopping, and business and financial services.

Stakeholders and submitters highlighted that these new or expanded avenues of interaction stand to not only deliver a range of positive benefits in terms of enhanced communication and service access and reduction of social isolation; but also to increase seniors' exposure and vulnerability to a host of cyber-enabled financial crimes and sophisticated fraudulent techniques.

### 6.1 Seniors' engagement with online technologies

In 2012-13, the ABS reported that 46 per cent of Australians aged 65 and over were internet users, and among those aged 55 to 64 years, usage stood at over 75 per cent.<sup>442</sup> Further, a Federal Parliamentary Joint Select Committee on CyberSafety reported in 2013:

*While many senior Australians may have been reluctant to venture into the cyber world initially, seniors are now the fastest growing online user group in the country.*<sup>443</sup>

In keeping with this, figures highlighted by ASIC in its submission revealed:

*Ninety two per cent of adult Australians used the internet in the six months to May 2014. While younger people (18-44) are the most active digital citizens, older people (65 and over) are catching up, with 68% going online in this period.*<sup>444</sup>

COTA Queensland noted that seniors are:

*... increasingly using technologies such as computers and smart-phones for shopping online and staying in touch with family and friends through social media networks, such as Facebook. They are also now being encouraged to interact with Government through these devices. With many seniors first becoming exposed to computers in their 40s through work and younger family members, there is now a growing and exponential number of people in this age group who are becoming enthusiastic users of digital technologies. Their general knowledge of technology as a group, therefore, is increasing as computer-age people move into the senior age group.*<sup>445</sup>

However, in concert with seniors "increasingly embracing the digital life",<sup>446</sup> COTA Queensland also pointed to concerns about the variance in skill levels and identification and understanding of risks and safe practices across the senior population. Specifically, COTA Queensland noted, "some evidence

<sup>442</sup> Australia Bureau of Statistics, 'Personal Internet Use,' 8146.0 – Household Use of Information Technology, Australia, 2012-13, ABS (online), 25 February 2014, <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/8146.0Chapter32012-13> (accessed 20 August 2015).

<sup>443</sup> House of Representative Joint Select Committee of Cyber-Safety, *Cybersafety for Seniors: A Worthwhile Journey*, Inquiry into Cybersafety for Senior Australians, Second Interim Report, Parliament of the Commonwealth of Australia, Commonwealth of Australia, 2013, page ix.

<sup>444</sup> ASIC, Submission no. 19, page 5.

<sup>445</sup> COTA Queensland, Submission no. 3, page 7.

<sup>446</sup> ASIC, Submission no. 19, page 5.



suggests that knowledge gaps can arise with retirement, potentially increasing their exposure to cybercrime".<sup>447</sup>

Although many seniors may be advanced and savvy users of the internet, others may have limited knowledge about how it operates or how to stay safe online. Dr Cassandra Cross submitted that:

*...not all seniors are comfortable or confident in using the internet. Many seniors do not understand the technology and therefore are unable to take simple steps to protect themselves in terms of having virus protection for their computer, maintaining regular updates of their software, and security settings on their social media accounts. There is a level of trust placed in the internet which is not accurate, as well as a misunderstanding that the internet is never truly anonymous or private, particularly when sharing photos and updates. In some circumstances this can lead to a person exposing themselves and their vulnerabilities to potential offenders. There is also a lack of understanding around identity crime. As previously stated, many victims [of fraud] have conducted their own research and what they perceived to be due diligence on the person or company that they were involved with. They were not able to understand that simply because the person or the company may exist, they were not actually communicating with that genuine identity.*<sup>448</sup>

Further, COTA Queensland stated:

*...evidence provided by the Australian Institute of Criminology that older Australians especially, have difficulties managing their online security and people over the age of 65 are 'more likely to be victims of online financial fraud than any other age group' (2012, p.4). This group is also more likely to fall victim to scams such as lottery scams and may become more exposed to other kinds of scams because of age-related changes, such as a changing financial and superannuation situation, and changing psychological and social circumstances (2012, p.37).*<sup>449</sup>

Muscat et al have suggested that the recorded fraudulent activities generally fall into one of four categories:

- pretending to sell goods which the seller does not have, and taking money in advance
- supplying goods or services which are of a lower quality than those paid for, or failing to supply the goods and services sought
- persuading customers to buy something they do not really want through oppressive marketing techniques, and
- disguising one's identity in order to perpetrate a fraud.<sup>450</sup>

Further, the ABS categorises these activities as one of either identity fraud or a consumer scam. Identity fraud, it notes, involves:

*... the theft of a personal details without a person's consent. The person's name, date of birth, address, financial details or other personal details are then used to engage in fraudulent*

<sup>447</sup> COTA Queensland, Submission no. 3, page 7.

<sup>448</sup> Dr Cassandra Cross, Submission no. 11, page 7.

<sup>449</sup> COTA Queensland, Submission no. 3, page 8.

<sup>450</sup> G Muscat, M James and A Graycar, '[Older People and Consumer Fraud](#)', *Trends & issues in crime and criminal justice*, no. 220, Australian Institute of Criminology (AIC), March 2002, page 1.

*activities, such as conducting business, purchasing goods, withdrawing cash, opening accounts, taking out loans or avoiding criminal liability.*<sup>451</sup>

This type of fraud includes identity theft and credit or bank card fraud and often draws on a range of sophisticated technological devices and procedures to provide unauthorised access to electronic communications and data, which can be used to withdraw funds from the victim's bank account.<sup>452</sup> Some of these techniques, as described by the UK Sentencing Council, include:

- **phishing**—when consumers are tricked into transmitting financial information to a fraudulent website where the information is later housed for use in fraudulent activities (including spam emails, “SMiShing” and “Vishing” via SMS<sup>453</sup> and phone interactions)
- **pharming**—in which victims' computer systems are compromised via hacking or malware, or where software redirects victims to fake websites where they are asked to enter their details
- **skimming**—where personal information is ‘skimmed’ from plastic cards by devices covertly attached to card readers, and
- **malware**—when malicious software such as viruses are used or installed on computers in order to alter functions within programs and files (including keylogging viruses, which monitor keyboard strokes to capture login details or passwords for bank accounts).<sup>454</sup>

A consumer scam in contrast involves some degree of consent by deception. The ABS defines a consumer scam as ‘a fraudulent invitation, request, notification or offer, designed to obtain someone's personal information or money or otherwise obtain a financial benefit by deceptive means’.<sup>455</sup>

There are many different types of consumer scams, although almost all involve the use of ‘advance fee’ schemes entailing unsolicited invitations promising some benefit or reward will be provided in return for assistance and the payment of a fee in advance of receiving the benefit or reward. This includes:

- the infamous Nigerian or West African frauds, in which assistance is sought to move stolen funds from Africa to a safe country in return for a proportion of the capital sum, and
- lottery fraud, inheritance schemes and romance fraud, which all feature the common element of a requirement to transfer funds to the offender in return for receipt of lottery winnings, an inheritance, or a promised romantic relationship, respectively.<sup>456</sup>

Further, Cross et al note that still other types of fraud simply employ the internet as a medium to perpetrate traditional frauds, “such as investment fraud, market manipulation, or Ponzi scheme, which offer impossibly high returns on funds invested with dividends paid out of capital received for investment from other victim investors”.<sup>457</sup>

<sup>451</sup> Australian Bureau of Statistics, ‘Key Concepts’, 4528.0 – Personal Fraud, 2010-11, ABS (online), 19 April 2012, <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/F47A16E816EB3220CA2579E40012054D?open=document> (accessed 20 August 2015).

<sup>452</sup> ABS, ‘Key Concepts’, 4528.0 – Personal Fraud, 2010-11, 2012.

<sup>453</sup> Short Message Service.

<sup>454</sup> Kerr et al cited in C Cross, RG Smith and K Richards, ‘Challenges of responding to online fraud victimisation in Australia’, *Trends & issues in crime and criminal justice*, no. 474, May 2014, page 2.

<sup>455</sup> ABS, ‘Key Concepts’, 4528.0 – Personal Fraud, 2010-11, 2012.

<sup>456</sup> Cross et al, ‘Challenges of responding to online fraud victimisation in Australia’, 2014, page 1.

<sup>457</sup> Cross et al, ‘Challenges of responding to online fraud victimisation in Australia’, 2014, page 1.

These consumer scams, which often involve the use of social engineering techniques to engage the victim, were a particular focus of the Committee's investigations.

## 6.2 Prevalence and impacts of consumer scams

Submitters emphasised that seniors are not the only demographic who are vulnerable to financial cyber-crimes, and generally speaking, are not overrepresented in consumer fraud statistics on the whole.<sup>458</sup> However, this may reflect the fact that older people are less likely to be victims of crime generally – as in fact, consumer fraud (including scams) remains the crime that seniors are most likely to experience.<sup>459</sup> Muscat et al have reported that for older Australians, consumer fraud has been found to occur 2.2 times more frequently than assault, 2.4 times more frequently than theft, and 13 times more frequently than robbery.<sup>460</sup>

A number of surveys have sought to quantify the nature and extent of exposure and victimisation to consumer fraud over recent years.

The Australian Competition and Consumer Commission (ACCC), in its most recent report on *Targeting Scams* (released May 2015), identified that in 2014, reports of financial losses arising from scams activity totalled \$81.8 million, of which just over \$18 million in losses were incurred in Queensland.<sup>461</sup> However, this is "likely to reflect only a fraction of the financial losses" incurred, due to significant levels of underreporting.<sup>462</sup>

ASIC noted that scam delivery by phone (telephone calls and text messages) continued to be the most common method of targeting the public (accounting for 51.7 per cent of the delivery methods recorded).<sup>463</sup> This was in keeping with submitter comments noting the continued pre-eminence of telephone and door-to-door sales frauds, due to seniors' lesser internet access. For example, QADA noted that:

*The feedback that we received through ... information sessions, as well as through intake calls to QADA, has been that the older person's key concern was not online or internet based vulnerabilities but pressure from unsolicited phone calls and home visits. Older people have spoken to QADA about tradespeople coming to their door and offering services. The services may or may not be scams but there can be a lot of pressure on the person to make an instant decision, to the point of driving them to an ATM to withdraw money for a deposit. Older people have also described scenarios of door to door salespeople selling equipment intended to meet the needs of frail older people.*<sup>464</sup>

The Hervey Bay SLASS also submitted:

*In the almost 8 years that the Hervey Bay SLASS has been operational, the incidence of seniors seeking assistance from our service due to online or internet-based scams has been minimal.*

<sup>458</sup> Dr Cassandra Cross, Submission no. 11, page 6; Assistant Commissioner Paul Stewart, Queensland Police Service, Transcript of Proceedings (Hansard), Public Hearing, Communities, Disability Services and Domestic and Family Violence Prevention Committee, 20 May 2015, page 2.

<sup>459</sup> Temple, 'Older people and credit card fraud', 2007, page 1.

<sup>460</sup> Muscat et al, 'Older People and Consumer Fraud' 2002, page 3.

<sup>461</sup> Australian Competition & Consumer Commission, [Targeting scams: Report of the ACCC on scams activity 2014](#), Queensland Government, May 2015, pages 1; 67.

<sup>462</sup> ACCC, [Targeting scams: Report of the ACCC on scams activity 2014](#), 2015, page 4.

<sup>463</sup> ASIC, Submission no. 19, page 12.

<sup>464</sup> QADA, Submission no. 20, page 4.

*This is probably largely owing to the low level of computer literacy of older seniors, especially those aged over 70.*<sup>465</sup>

However, the ACCC survey also emphasised the continued ascent of online delivery methods as a favourite approach among scammers, growing to 46.5 per cent in 2014. Among internet-using seniors in particular, research published by internet security firm McAfee in 2013 revealed that nearly one in five Australian internet users aged 50-75 years – dubbed “silver surfers” – in the study – had been victims of online fraud, including theft of credit card and bank details, email scams or online purchase scams.<sup>466</sup>

ASIC noted that in terms of seniors’ particular vulnerabilities and victimisation levels:

*The results of the ACCC survey also indicate that those aged 55 years and over account for 24% of the conversion rate amongst the adult population sample, i.e. 24% of seniors who reported a scam, also reported a loss.*

*These findings accord with the Australian Institute of Criminology (AIC) 2013 report that found the over 65s category reported the highest percentage of scam victimisation (22%) over a period of six months from January 2013. In that report, “victims” were defined as respondents who had provided their personal details and/or suffered a financial loss as a result of replying to a scam invitation.*

*Similarly, the results of another study conducted by the AIC into consumer fraud found that, generally, older age groups were more likely to respond positively to scams, e.g. the 55 to 64 year age group was more likely to respond positively to financial advice scams.*<sup>467</sup>

The ACCC survey noted that “the most damaging scams in terms of monetary loss continue to be those scams previously categorised as advance fee fraud and dating and romance scams”.<sup>468</sup> QPS Detective Superintendent Brian Hay (Fraud and Cyber Crime Group, State Crime Command) also highlighted a huge representation of older Australians amongst those falling victims to romance-related scams:

*Where we saw in 2006 male dominated victimology and business investment being the greatest fraud; that is now transferred to romance fraud, which accounts for about 90 per cent of the money that we see going to Ghana and Nigeria. Just as indicators, we are talking about, I think, \$1.5 million a month to those two countries. Ninety per cent of that would be romance fraud related. Women are now the biggest victim group and seniors are over represented.*<sup>469</sup>

QPS research has documented that these types of fraudulent email request scams can lead to a deterioration of victims’ physical health and wellbeing, including depression; with other agencies also reporting secondary impacts such as housing stress and hardship, emotional trauma, loss of confidence in other people, and marital or relationship problems.<sup>470</sup>

<sup>465</sup> Hervey Bay Seniors Legal and Support Service, Submission no. 12, page 1.

<sup>466</sup> ‘Older Australians found to be the latest vulnerable victims online’, PRWIRE (online), 11 November 2013, <http://prwire.com.au/pr/40213/older-australians-found-to-be-the-latest-vulnerable-victims-online> (accessed 20 August 2015).

<sup>467</sup> ASIC, Submission no. 19, page 12.

<sup>468</sup> Australian Competition & Consumer Commission, *Targeting scams: Report of the ACCC on scams activity 2014*, Queensland Government, May 2015, page 1.

<sup>469</sup> Detective Superintendent Brian Hay, Fraud and Cyber Crime Group, State Crime Command, Queensland Police Service, *Transcript of Proceedings (Hansard)*, Public Hearing, Communities, Disability Services and Domestic and Family Violence Prevention Committee, 3 June 2015, page 3.

<sup>470</sup> Queensland Police Service, cited in Cross et al, ‘*Challenges of responding to online fraud victimisation in Australia*’, 2014, page 3.

Stakeholders also sought to emphasise the significant and devastating impacts of these crimes, both only financially and for seniors' emotional and physical wellbeing. Dr Cassandra Cross summarised some of these consequences as follows:

*By the sheer virtue of their age, the ability of an older person to recover and recoup any financial losses is minimal. Many older victims I have spoken to as part of my research were financially well off and comfortable prior to their victimisation, but in the aftermath of fraud, they become reliant on a government pension and benefits, and struggled to make ends meet. Several older victims have lost their houses and report issues of homelessness, in addition to struggling to pay bills and meet daily living costs. Some have foregone medical care based on the costs and their limited income. There is also an additional impact for older fraud victims, in terms of fraud acting as an indicator for diminished capacity. The majority of older victims will not disclose their fraud victimisation to family or friends, based on a perceived fear of how the family will react. Many feel guilty for having lost their child/ren's inheritance. Others are afraid that they will be disowned by family and lose access to grandchildren. There is also the prospect of losing physical and financial independence from well-meaning children seeking to protect their parent/elder from future victimisation.<sup>471</sup>*

In addition, Dr Cross revealed:

*Almost every victim that I have spoken to has experienced some sort of emotional distress. Many have experienced depression. For some it is not necessarily very serious and it is for a very short period of time. The losses may not have had a huge impact on them. It has been a really bad time for them but they have been able to move on and recover. However, on the flip side there are other victims who are emotionally devastated by what has happened and they experience severe depression and there is the isolation, because in a lot of circumstances the offender has isolated the person from friends and family. Particularly if friends and family know that the person is sending money and they do not agree with it, it creates barriers between the victim and family and friends. That is a specific technique used by the offender to isolate that person...*

*We spoke to people who contemplated taking their own lives. There are some people who moved house. They felt so threatened that the offender knew so much about them that they actually physically packed up and changed their lives and they changed jobs. It has a significant impact, and we do not recognise that in terms of offering any support because they have not experienced a violent crime as such...<sup>472</sup>*

Detective Superintendent Hay similarly recounted impacts revealed to him by members of the State's fraud victim support group:

*We are talking about people who were once self-funded retirees on private health cover now financially destitute on the public purse for the rest of their lives, generally suffering from the signs of depression or on some sort of medication for the stress and the trauma that they have endured and now on the public health system for the rest of their lives.*

*On that point, I remember we asked the group—we had to speak openly about these things—the question, 'Who has considered suicide?' Nearly every person put up their hand. It was quite shocking. I said, 'Well, who has attempted suicide?' I would suggest that we still had about 80 per cent of the room with their hands up and then some people started talking and one woman up to three times, because there is nowhere for them to turn. They do not make*

<sup>471</sup> Dr Cassandra Cross, Submission no. 11, page 6.

<sup>472</sup> Dr Cassandra Cross, Lecturer, Faculty of Law, School of Justice, Queensland University of Technology, *Transcript of Proceedings (Hansard)*, Public Hearing, Communities, Disability Services and Domestic and Family Violence Prevention Committee, 15 July 2015, page 8.

*a complaint to the police. They are not treated as a victim of crime. They are isolated from their families and support networks. They are proud people who have been financially independent but now they are completely financially destitute with no hope of recovery for the rest of their years and they are embarrassed. There is that fear of losing independent financial control, which is quite harrowing for them as well. I know that I do not paint a pretty picture, because it is very ugly.*<sup>473</sup>

One Queensland “survivor” privately testified to the Committee of her experience that:

*... No-one wants to know you, particularly your family. Your family alienates you terribly. In fact, I still have trouble with my family over it. That is the hardest thing, because your family know you are being scammed. You know you are being scammed but you do not want to admit... the scammers are so clever they keep pulling you in... it does take a terrible toll on people, because so many people have spent their whole life's savings and then it is taken from them...it is an emotional ordeal.*<sup>474</sup>

ATSILS also submitted:

*From ATSILS perspective, the issue of seniors being scammed is bigger than just considering what can be done for those who are legally, or commonly, considered seniors. Aboriginal and Torres Strait Islander families are often strongly financially interdependent, which means that scams on seniors impact on the whole family.*<sup>475</sup>

### 6.3 Risk factors for victimisation

A range of specific factors have been identified as serving to mark seniors out as particularly attractive targets for scammers. This includes:

- their relative accessibility – that is, being detached from the labour market, they are more likely to be home during the day or potentially be more open to receive contact or make time for correspondence
- social isolation factors, which may make them more eager to socialise, even with strangers
- assumptions relating to their large share in the nation's wealth
- unfamiliarity with internet conventions, or cyber safety measures, and
- perceptions that they may have declining mental abilities and or a dependence on others.<sup>476</sup>

As Dr Cross explained:

*Many older persons are seen to be vulnerable in three ways. The first is through the ageing process, whereby older persons are understood to have diminished physical and cognitive capacity. This views older persons as easy targets purely as a result of their age. The second*

<sup>473</sup> Detective Superintendent Brian Hay, QPS, *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 2.

<sup>474</sup> Confidential, *Transcript of Proceedings (Hansard)*, Private Hearing, Communities, Disability Services and Domestic and Family Violence Prevention Committee, 15 July 2015.

<sup>475</sup> ATSILS, Submission no. 16, page 2.

<sup>476</sup> K Lyell, 'Police warn online scammers target elderly people', *ABC News* (online), 30 August 2011, <http://www.abc.net.au/news/2011-08-30/police-warn-online-scammers-target-elderly-people/2861804> (accessed 20 August 2015); National Seniors Australia, *Submission to the Parliament of Australia House of Representatives Inquiry into Older People and the Law*, House of Representatives Joint Standing Committee on Legal and Constitutional Affairs, December 2006, page 5; Dr Cassandra Cross, Submission no. 11, page 6.



*vulnerability is social, whereby older persons are seen to be physically isolated from family and friends. The majority of studies which examine the issue of older fraud victims are premised upon the factors of loneliness and isolation as contributing factors to fraud victimisation. The third vulnerability is financial. Many seniors are lucrative targets, as they have access to superannuation, life savings, have strong lines of credit, and generally own assets (such as property). From an offender's perspective, this is an appealing prospect. While there is limited evidence to support the success of these perceived vulnerabilities, there is a strong argument to be made on the fact that seniors are more likely to be targets of fraud.*<sup>477</sup>

Beyond this general rationale, research has also identified a range of personal characteristics which may increase an individual seniors' vulnerability to fraud, with lessons for preventative efforts.

Importantly, stakeholders emphasised to the Committee that contrary to conventional wisdom that victims may have poor financial literacy or computing skills; many victims are highly competent individuals with a successful business history behind them. In fact, sound financial knowledge or understanding may serve to increase an individual's vulnerability – particularly where an individual may be looking to increase their income to better support themselves during retirement.

Dr Cross stated:

*I can certainly assure the committee from the many victims I have spoken to that in some circumstances they are highly educated, high functioning, very successful individuals who in all other aspects of their lives have had no problems whatsoever. It is just this one decision that they have made which has ultimately led to a fairly disastrous outcome.*<sup>478</sup>

Dr Jacqueline Drew further explained this complicated relationship as follows:

*A number of reasons for the relationship between financial literacy and fraud victimisation have been proposed. The NASD [National Association of Securities Dealers, Inc.] (2006) highlighted the 'knowing-doing gap'. This captures the notion that even though investors may know theoretically how to avoid fraud, they fail to apply this knowledge to protect themselves and avoid fraudulent schemes. Further explanation is the 'expert snare' (NASD, 2006). This involves overconfidence of the investor in their own investment abilities, skills and decisions. Gamble et al (2012, p. 3) calculated that 'one standard deviation increase in overconfidence in financial knowledge increases the odds of falling victim to fraud by 28 percent'. A third explanation provided by NASD (2006) was labelled 'low persuasion literacy'. Whilst financial literacy increases knowledge and skills in investment, it does not typically address the psychological persuasion tactics used by fraud perpetrators.*<sup>479</sup>

Notably, somewhat in keeping with notions of "low persuasion literacy", a number of other studies have also confirmed that dimensions of social vulnerability are most likely to factor in increasing risks of victimisation for seniors. For example, research conducted by a specialist Consumer Fraud Research Group based in the United States identified that people who have experienced negative life events – such as medical problems, difficulties with finances, employment problems, loss of a spouse, or conflict with friends or neighbours – are more likely to be victims of fraud.<sup>480</sup>

<sup>477</sup> Dr Cassandra Cross, Submission no. 11, page 6.

<sup>478</sup> Dr Cassandra Cross, Lecturer, Faculty of Law, School of Justice, Queensland University of Technology, *Transcript of Proceedings (Hansard)*, Public Hearing, Communities, Disability Services and Domestic and Family Violence Prevention Committee, 15 July 2015, page 6.

<sup>479</sup> Dr Jacqueline Drew, Submission no. 6, page 4.

<sup>480</sup> The Consumer Fraud Research Group, [Investor Fraud Study Final Report](#), Report prepared for WISE Senior Services and the NASD Investor Education Foundation, 12 May 2006.



Other studies also emphasised that individuals who participate in fewer routine activities outside their homes – one measure of “social isolation” – face an increased likelihood of being a victim of fraud.<sup>481</sup> In this regard, Caxton Legal Inc. highlighted the experiences of “Mrs E” as a client of their services:

*Mrs E was 72, and had been left comfortably provided for with a property and other assets worth \$400,000.00 upon her husband’s death. She began an online relationship with a scammer in a strong belief that he was genuine. Mrs A confessed to SLASS that she didn’t get on with her 2 children and was very lonely, and that the online relationship had given her back an interest in life. SLASS provided counselling and linked Mrs A into community organisations, but she had already lost over \$200,000.00. Mrs A admitted that she missed the online relationship and was keeping up occasional contact despite the danger.*

*In this case Mrs E’s children became increasingly concerned about the impact of the scamming losses and begged their mother to stop all contact. However SLASS was aware that while loneliness was a significant factor, the additional factor was the hope that the client felt that the online relationship could change her life, and that the losses she incurred seemed less important for a time than preserving that hope. Loneliness and social isolation are potent factors in facilitating abuse.*<sup>482</sup>

Holfreter et al have further identified that low self-control or engagement in greater amounts of remote or internet purchasing are also “robust predictors of various types of fraud targeting and victimization”.<sup>483</sup>

## 6.4 System responses to fraud

### 6.4.1 Underreporting of victimisation

Despite reports identifying it as the crime seniors are most likely to experience, and the range of debilitating effects and secondary lifestyle and family consequences it can incur, submitters widely emphasised that responses to fraud remain constrained by the fact that it is highly underreported.

For example, Detective Superintendent Brian Hay stated:

*I had been in a fraud environment for a couple of years and you hear these myths about Nigerian fraud but I had never actually seen a case file. So I got my intel people to check: ‘Do we have any complaints about Nigerian fraud?’ They came back and said, ‘We’ve got nothing.’ We had some colleagues who we work with at the national level and I asked them for data on transfers of cash to Nigeria. There was a list of names brought back to me and I picked a block and said, ‘Contact these people.’ There were 26 names on the list. I asked, ‘Could you please ask them why did they send money to Nigeria?’ They came back and 25 of the 26 were victims of fraud. They had lost in total \$7.2 million. Some had been sending money in excess of 10 years. I was shocked—not one complaint. I said, ‘Go through the rest of the list.’ We contacted 139 people—134 people were victims, with losses in excess of \$18 million. Again, none had made complaints to police. We did a similar thing three years later. We contacted 200 people and asked, ‘Why did you send money to Nigeria?’ One hundred and eighty-four were victims. They had lost in excess of \$21 million. Sadly, the situation possibly*

<sup>481</sup> Holfreter et al, [Financial Exploitation of the Elderly in a Consumer Context](#), 2014, pages 131-132.

<sup>482</sup> Caxton Legal Centre Inc., Submission no. 15, page 17.

<sup>483</sup> Holfreter et al, [Financial Exploitation of the Elderly in a Consumer Context](#), 2014, pages 131-132.

*has improved to some extent, but I would be reluctant to say because there is not enough data to ascertain what it is.*<sup>484</sup>

Dr Cross similarly highlighted that “fraud consistently has one of the lowest reporting rates of all crime types and online fraud is even lower”.<sup>485</sup> Among the many contributing factors, Dr Cross noted, were:

*... the inability of victims to recognise their involvement in a fraudulent situation, the shame and stigma associated with this crime type, and a lack of knowledge on where to report.*<sup>486</sup>

With regards to the dynamics of recognising they may be a victim of fraud in the first place, Dr Cross submitted:

*... A lot of them do not realise that they are being victimised because they believe in the legitimacy of the situation they are in or the relationship they are in. So it is very difficult, then, for a person who does not realise they are being defrauded to then go to the police and say, ‘I’m a victim of crime.’ It is just not going to happen.*<sup>487</sup>

ATSILS also noted that in many cases “money scammed or defrauded is not retraceable so many people perceive little incentive in taking legal action”.<sup>488</sup>

#### 6.4.2 System response challenges

While cyber security is largely a federally regulated domain in Australia, Queensland's *Criminal Code Act 1899* includes a range of offence provisions for fraudulent acts which criminalise dishonestly obtaining advantage or benefit, pecuniary or otherwise from another person.<sup>489</sup> Despite these provisions, however, as Cross et al have noted:

*In the case of online fraud however, the majority of victims are defrauded by an overseas-based offender. When a victim residing in Australia is defrauded by an overseas-based offender, state and federal police agencies can offer only limited assistance. They may take details of a complaint from the victim and forward it to the relevant policing authority overseas; however, it is then at the discretion of that police agency whether or not action will be taken. As a consequence, the majority of online fraud victims do not have their cases investigated by police and therefore are not in a position to make use of the services and procedures available to complainants of other types of crime. This can lead to immense frustration on the part of victims, who feel powerless at the seemingly arbitrary nature of criminal justice agencies to deal with their complaint.*<sup>490</sup>

These challenges were similarly outlined by QPS Assistant Commissioner Paul Stewart, who stated:

*It is by nature a crime that occurs in a virtual world, a borderless crime, which makes law enforcement and investigating extremely challenging. Offenders can be based anywhere in*

<sup>484</sup> Detective Superintendent Brian Hay, QPS, *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, pages 1-2.

<sup>485</sup> Dr Cassandra Cross, Submission no. 11, page 10.

<sup>486</sup> Dr Cassandra Cross, Submission no. 11, page 10.

<sup>487</sup> Dr Cassandra Cross, QUT, *Transcript of Proceedings (Hansard)*, Public Hearing, 15 July 2015, pages 5-6.

<sup>488</sup> ATSILS, Submission no. 16, page 4.

<sup>489</sup> See, for example, Chapters 36 and 37 of the Act, which pertain to “Stealing” and “Offences analogous to stealing”.

<sup>490</sup> Cross et al, [‘Challenges of responding to online fraud victimisation in Australia’](#), 2014, page 4.

*the world, the transactions involved can occur over multiple jurisdictions and securing a prosecution can be costly and quite complex.*<sup>491</sup>

Submissions provided by Dr Cassandra Cross revealed that fraud victims consistently draw attention to significant shortfalls with regard to both their experience reporting crime and the regulatory and system responses that follow.

Dr Cross noted:

*Fraud is unique in that there are a number of agencies that victims can report to, including law enforcement, consumer protection, government, non-government and civil organisations which could potentially take a complaint. This can be very difficult for victims to navigate and is not helped by agencies who are unwilling to take a complaint from a victim, instead referring them to another agency. This is termed the “merry-go-round” effect and is an immense source of anger and frustration for victims in trying to make a complaint.*<sup>492</sup>

As a result, in many instances, victims may look to alternative online reporting mechanisms such as the ACCC's SCAMwatch following negative experiences reporting to police and other regulatory agencies. The downside of this, Dr Cross noted, is that once the report is made, there is not necessarily a systematic referral mechanism or any clear indication to the individual in question as to whether there will be any action taken in response to the report:

*I guess what came through very strongly were the negative experiences that every victim had in trying to report to police, consumer protection, banks or other industries. People went to SCAMwatch because it was an online reporting forum where there was no human screening and they could not be turned away, so there are opportunities there.*

*However, the expectations are still there in terms of their report initiating action and an investigation, and when this does not occur, there is even greater disillusionment with what has happened. Victims report feeling retraumatised by the system in addition to the fraud victimisation in and of itself.*<sup>493</sup>

In addition, while all victims of crime have the right to be treated with courtesy, compassion and respect, many victims have characterised their response experience as sufficiently lacking in these qualities. For example, Cross's 2013 examination of the experiences of 85 senior fraud victims in Queensland found:

*... victims of online fraud are often characterised as being greedy and gullible individuals who are responsible for their own victimisation. Similarly, Button, Lewis and Tapley's (2009b) UK research found that many online fraud victims face a lack of empathy and understanding when they recount their victimisation to officials in the criminal justice system and meet with negative and derogatory responses.*

*From a policing perspective and from other agencies there needs to be a recognition that this actually is a crime and that it does have an impact. After talking to victims in the recent study I can say that some of the treatment they experienced from agencies was just appalling. We are certainly not advocating in our current research that police or other agencies need to do more, because realistically it is not going to happen. Victims have sent money overseas. They are not going to get the money and they are not going to get an investigation. But certainly it is around the delivery of the message—being able to acknowledge the person, acknowledge*

<sup>491</sup> Assistant Commissioner Paul Stewart, QPS, *Transcript of Proceedings* (Hansard), Public Hearing, 20 May 2015, page 2.

<sup>492</sup> Dr Cassandra Cross, Submission no. 11, page 9.

<sup>493</sup> Dr Cassandra Cross, Submission no. 11, page 9.

*that the victim exists, acknowledge that what has happened is really terrible and it has had an impact, and being truthful, realistic and upfront with that person around the fact that an investigation is not going to happen but to refer that person on to some sort of support.*<sup>494</sup>

Further, when it comes to the actual prosecution, which is rare, Townsville Community Legal Service identified that:

*...When they do [occur] the Courts tend to highlight the vulnerability of older persons. Whether this has the requisite deterrent effect is unclear. We submit any deterrence value is undermined by the scarcity of legal action....*<sup>495</sup>

What victims are experiencing, according to Dr Cross, is “a large amount of dissatisfaction in not getting a response, being blamed for their victimisation, having it trivialised or being told, ‘You are not actually a victim’”.<sup>496</sup> Dr Cross submitted that the sum effect of these conditions is that “it is easy to argue that fraud victims are invisible in the criminal justice system”.<sup>497</sup>

Drawing lessons from these challenges, however, it was also emphasised that “there are significant opportunities which exist to improve the response to fraud victims, particularly seniors, to assist in their recovery and seek to restore their overall wellbeing”.<sup>498</sup>

First and foremost, submitters identified that improved training of police and consumer protection agencies could support more empathetic and appropriate service responses. Dr Cross stated:

*It is acknowledged that fraud, particularly in the online context, poses significant challenges for law enforcement. However this is not always directly communicated to victims in an empathetic manner. Much can be done by all agencies within the fraud justice network to improve their interactions with victims, by treating the victim with respect and empathy and by giving a timely and accurate account of what, if anything, can be done about their case. This would be greatly valued by all fraud victims.*<sup>499</sup>

In terms of confusion regarding online reporting systems, Detective Superintendent Brian Hay noted that the commencement of the Australian Cybercrime Online Reporting Network (ACORN) from November 2014 could address some of these issues. Detective Superintendent Hay submitted that ACORN offers preventive advice as well as generating reports in what is “a very efficient process” that “takes and reduces the burden of frontline police officers to understand some of these cyber issues”.<sup>500</sup> The Committee heard that consumer contacts with ACORN might also offer an opportunity for an early referral to victims support groups or services.<sup>501</sup>

### 6.4.3 Post-incident support

Victim support services were recognised by stakeholders as crucial measures in helping those affected to come to terms with their experience and receive support to facilitate their emotional and financial recovery, particularly given the limited scope for legal redress or other recompense in such scenarios.

<sup>494</sup> Dr Cassandra Cross, QUT, *Transcript of Proceedings (Hansard)*, Public Hearing, 15 July 2015, page 9.

<sup>495</sup> Townsville Community Legal Service, Submission no. 1, page 9.

<sup>496</sup> Dr Cassandra Cross, QUT, *Transcript of Proceedings (Hansard)*, Public Hearing, 15 July 2015, page 8.

<sup>497</sup> Dr Cassandra Cross, Submission no. 11, page 10.

<sup>498</sup> Dr Cassandra Cross, Submission no. 11, page 10.

<sup>499</sup> Dr Cassandra Cross, Submission no. 11, pages 9-10.

<sup>500</sup> Detective Superintendent Brian Hay, Fraud and Cyber Crime Group, State Crime Command, Queensland Police Service, *Transcript of Proceedings (Hansard)*, Public Hearing, Communities, Disability Services and Domestic and Family Violence Prevention Committee, 3 June 2015, page 4.

<sup>501</sup> Confidential, *Transcript of Proceedings (Hansard)*, Private Hearing, 15 July 2015, page 5.

Dr Cross noted that despite the documented negative consequences of fraud for financial and personal wellbeing, victims of fraud (and other financial crimes) are precluded from accessing assistance under the State's *Victims of Crime Assistance Act 2009*. As Dr Cross identified:

*While the definition of victim in this act recognises harm and injury of all kinds, there are specific provisions which limit any support exclusively to victims of violent crime. This means that fraud victims are not able to access financial support for any counselling of financial counselling that they may need to assist in their recovery.*<sup>502</sup>

As a corollary of this "exception", Dr Cross noted that victims are also generally excluded from other related measures designed to promote victim participation and recovery. In particular, Dr Cross highlighted that:

*...processes such as victim impact statements are irrelevant to these circumstances and most victims will not get any closure or sense of justice. This can add to the overall frustration and anger felt by the majority of victims.*<sup>503</sup>

Dr Cross submitted that the State's current review of the *Victims of Crime Assistance Act 2009* provides an opportunity to improve government recognition of victims of nonviolent crime, as befitting evidence that "victims of fraud suffer consequences that some researchers deem to be just as severe as those who experience violent crime".<sup>504</sup>

While acknowledging that extension of any comprehensive financial relief or equivalent (to violent crime) inclusion in a payout regime is not likely to be financially practicable, Dr Cross submitted that:

*Certainly I would advocate that victims of nonviolent crime should be acknowledged in the legislation to receive access to things like counselling or financial counselling, because for a lot of seniors in particular the ability to recoup any losses that they have suffered is minimal...*

*If you are a victim of fraud, if you have lost everything, if you have been subject to abuse within your relationship, then, despite the fact that it was fraudulent, the effects of that crime are very real for you...*

*There are seniors who were very comfortable and who had set themselves up very well, then been defrauded in whatever context and are then left with nothing. They are then reliant on government pensions and benefits, and a lot of them cannot afford the lifestyles that they had. They cannot afford medical care. Some talked about the choice between medical care and food. They cannot provide for any dependants. I think financial counselling is something that the committee perhaps can look at in terms of being able to provide those services to victims of fraud to try and put them back on a path where they can self-sustain and move forward.*<sup>505</sup>

<sup>502</sup> Dr Cassandra Cross, Submission no. 11, page 10.

<sup>503</sup> Dr Cassandra Cross, Submission no. 11, page 10.

<sup>504</sup> Dr Cassandra Cross, QUT *Transcript of Proceedings (Hansard)*, Public Hearing, 15 July 2015, page 8.

<sup>505</sup> Dr Cassandra Cross, QUT *Transcript of Proceedings (Hansard)*, Public Hearing, 15 July 2015, page 8.

Importantly, Detective Superintendent Hay emphasised that in addition to financial counselling, general counselling and support options and associated referral mechanisms can also be crucial to minimising further victimisation and ensuring the exploitative arrangement is finally halted, as identification of a fraud does not inevitably result in its conclusion:

*...I should point out that 76 per cent of people and business investment continued to send money after we told them it was a fraud, because they believe. They are in a mindset—some of these people have been living this dream for 10 years. The last thing they want is an ugly copper to turn up on their doorstep or to phone them and say, 'Everything you have hoped and wished for is not going to come true.' Many had spent the kids' inheritance. They had borrowed money against their house. They had taken out additional mortgages. They had borrowed from friends. They are in a position where they just could not give up that dream and they continued to send money. That is something we see constantly—all the time.*<sup>506</sup>

Similarly, Dr Cross noted:

*From a victim's perspective, if you have been involved for such a long period of time, if you have lost so much money, if you have defended this decision and this person and this situation to all friends and family for such a long period of time, then to come to the realisation that it is fraud, that nothing is there, that you actually have lost all of this money, I think is harder to cope with than the victimisation itself... They just refuse to believe in the reality of the situation because I think that is probably more damaging to them than this thought that 'I know 99 per cent this is fraud, but there is this one per cent chance that something could come through down the track'.*<sup>507</sup>

Detective Superintendent Hay, Dr Cross, and a confidential submitter all confirmed the benefits of the QPS's dedicated victim support group, which has been running since 2010.<sup>508</sup> Dr Cross noted of the support group that:

*...this provides a vitally important safe environment for victims to share their experiences with those who understand. However, it is limited to a narrow geographic area, whereas fraud victimisation is not.*<sup>509</sup>

Given these geographical challenges, the Committee was informed of the promise of an initiative employed in Canada to support victims via telephone, and which also includes early intervention victim outreach efforts and advice. The Committee heard that:

*Canada has what is called SeniorBusters. It is a telephone counselling service. There are a group of volunteers who are seniors themselves. They work out of the Canadian Anti-Fraud Centre. They receive referrals from the Canadian Anti-Fraud Centre in terms of victims who have reported fraud or family members who have reported a vulnerable older person.*

*SeniorBusters basically does, I guess, the support in a different sense. A SeniorBusters volunteer will call up an older person. They will talk to them. They will say, 'We know that you have made contact with the antifraud centre, that you have reported this. Is there anything else that you want to tell me about it? How are you going? Is there any support that you need?' Essentially, I think it is just that open communication in terms of an empathetic listener—someone who is non-judgemental, non-threatening—who is a senior themselves.*

<sup>506</sup> Detective Superintendent Brian Hay, QPS, *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 2.

<sup>507</sup> Dr Cassandra Cross, QUT *Transcript of Proceedings (Hansard)*, Public Hearing, 15 July 2015, page 9.

<sup>508</sup> Detective Superintendent Brian Hay, QPS, *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 2; Dr Cassandra Cross, Submission no. 11, page 10; Confidential, *Transcript of Proceedings (Hansard)*, Private Hearing, 15 July 2015, page 2.

<sup>509</sup> Dr Cassandra Cross, Submission no. 11, page 10.

*So the victim feels quite comfortable in talking to them. That gives a lot of victims that ability to openly tell somebody what has happened which, for some victims, is all that they need. They need the acknowledgement that it has happened.*

*I certainly think that model of using specially trained volunteers and telephone support could be implemented within Queensland. Certainly ACORN—the Australian Cybercrime Online Reporting Network—could provide that mechanism in terms of referral. So people who make an ACORN report, I think—it might be my naivety—could act as a mechanism in terms of referring that to a support service if that was available. That would certainly overcome some of the geographical boundaries that appear in terms of having face-to-face support.<sup>510</sup>*

### Committee comment

The Committee acknowledges that the policing and enforcement of online fraud and consumer scams evidently pose significant challenges for responding agencies. However, the significant difficulties encountered by victims in their reporting to and engaging with key agencies indicates there is clear scope for continued development of internal programs and training to support improvements in victim response.

Further, given the significant ramifications of this type of financial crime for those affected, the Committee considers that opportunities to facilitate early referral and engagement in victim support groups and financial and general counselling should be encouraged, to help reduce scope for further losses and facilitate victims' financial and emotional recovery.

### Recommendation 17

The Committee recommends that the Queensland Government engage with the Queensland Police Service and other key financial sector and consumer protection agencies in support of more comprehensive training for frontline staff in culturally appropriate and sensitive responses to victims of fraud.

### Recommendation 18

The Committee recommends that the Queensland Government explore options for improved support for Queensland seniors who are victims of fraud, including:

- partnering with key agencies to establish built-in mechanisms for referral to personal and financial counselling and victim support groups
- increased resourcing for victim support groups in high victimisation areas, including dedicated telephone counselling and referral options as employed in Canada
- consideration of options for statutory provision of non-financial assistance mechanisms in the *Victims of Crime Assistance Act 2009*.

## 6.5 Early detection and prevention

While system responses to reported fraud play a crucial role in halting and penalising criminal exploitation; stakeholders emphasised early detection and educative or awareness initiatives may offer the best chance of protecting Queensland seniors from the serious financial and other adverse impacts of fraud victimisation, especially given the limited scope for legal recourse in such matters.

<sup>510</sup> Confidential, *Transcript of Proceedings (Hansard)*, Private Hearing, 15 July 2015, pages 4-5.



From a fraud detection standpoint, Dr Cross noted:

*There are some very innovative approaches that are actually happening within Australia in terms of using financial intelligence to proactively identify likely victims of fraud. That is using financial intelligence, using financial transactions between states here in Australia and certain known hotspot countries such as West Africa at the moment. The police—in some states it is in combination with consumer protection, or the ACCC are doing it at a national level. They then send a letter to potential victims to say, ‘We know you’re sending money to a particular place. We believe it is likely that you could be a victim of fraud.’ That is in its early days. I think there is certainly potential in that approach. It overcomes the barrier of victims not realising that they are being defrauded and it also opens up a safe space for the person to engage with the police or with consumer protection.<sup>511</sup>*

In this regard, Dr Cross also suggested:

*Having been to London, I am pretty sure there is a pilot program at the moment with the Metropolitan Police Service and with banks in a particular area. If an older person comes in and wants to withdraw a large amount of money or do an unusual transaction, the bank staff will sit the person down and they will actually call someone from the police to come down. They will then have a bit of a discussion just to check why they are doing it if it is unusual, to try to reduce the likelihood that the transaction does go ahead and is later found to be fraudulent.<sup>512</sup>*

While such activities may be promising from a detection standpoint, however; stakeholders emphasised that education and awareness were the most important protective mechanism – not only in terms of preventing fraud, but also in addressing barriers to reporting.

Dr Cross noted:

*One of the problems is that once there is trust and a rapport established between the victim and the offender it is very difficult for anybody—friends, family, law enforcement as a third party—to come in and break that. I think we need to be able to have open discussions about this in a non-threatening way. We need to be able to talk about fraud and not just talk about it in terms of greedy, silly people who have kind of lost their marbles as such. We need to be able to have a conversation where we acknowledge that everybody has a vulnerability and where we can acknowledge that the offenders are highly skilled and tech savvy and they are able to hit on a weakness or a vulnerability.<sup>513</sup>*

Stakeholders identified that support for computer literacy is an important ingredient in this educative mix. COTA Queensland cited the Australian Human Rights Commission’s argument “that cyber security for seniors is an emerging human rights issue and that governments must make every effort to ensure that older Australians are able to exercise their right to take part in a digitized society”.<sup>514</sup> However:

*Even where seniors have acquired computer literacy, the ever-changing nature of the digital world means that their knowledge dates at an alarming rate. As a result, many seniors tend to have knowledge gaps about the application of cyber security, and they are particularly vulnerable to myths and scams.<sup>515</sup>*

<sup>511</sup> Dr Cassandra Cross, QUT, *Transcript of Proceedings (Hansard)*, Public Hearing, 15 July 2015, page 6.

<sup>512</sup> Dr Cassandra Cross, QUT, *Transcript of Proceedings (Hansard)*, Public Hearing, 15 July 2015, page 7.

<sup>513</sup> Dr Cassandra Cross, QUT, *Transcript of Proceedings (Hansard)*, Public Hearing, 15 July 2015, page 9.

<sup>514</sup> COTA Queensland, Submission no. 3, page 7.

<sup>515</sup> House of Representative Joint Select Committee of Cyber-Safety, *Cybersafety for Seniors: A Worthwhile Journey*, Inquiry into Cybersafety for Senior Australians, Second Interim Report, Parliament of the Commonwealth of Australia, Commonwealth of Australia, 2013, page 2.

In line with this, QPS Detective Superintendent Brian Hay submitted:

*As human beings, we have not yet developed all of those skills attuned to how to pick up the nuances on a computer screen. We are devoid of the social defence skills and our instincts, if you wish. We have something called text. We grew up on a diet of believing what we read, because that is the way we learn and how we grow is through reading. So our natural propensity is to believe what we read. What makes the written word more toxic is that if someone says, 'I love you,' you go back and read it again and again and you reinforce that. That is why we see people absolutely falling head over heels in love or committed to a passion, or a hope, or an ambition, so much more readily because they are devoid of their natural protective abilities and they believe it and they constantly reinforce it. We have a large group in the community who are very lonely. A fraudster will reach out 20 times a day when they may not see their siblings or their family 20 times a time. So we are doing a lot of work.*

*We support national cyber safety week. My view of the cyber environment is that we still have to grow culturally. We still see it as a little bit of the wild west— that you can go online and get away with things that would you not ordinarily do. If I could put this to you as an example. I walked into this room and you laid eyes on me and you started to form an opinion—'He has a head like a beaten favourite. I wouldn't trust this bloke. He looks dodgy.' Your instinct says, 'No way would I trust this bloke.' That is built of all the physical attributes—sight, sound, smell, touch. You call it instinct, but it is actually a cognitive function subconsciously working, sometimes not subconsciously, but making an assessment from the get-go. It is all based on the physical. But when you go into the online world and you sit in front of a computer screen, you are devoid of all of those skills.<sup>516</sup>*

Somewhat similarly, other submitters noted that financial literacy, whilst increasing knowledge and skills in investment, does not typically address the dynamics of these social interactions or the psychological persuasion tactics used by fraud perpetrators.<sup>517</sup> Dr Cross stated:

*I think the way that we target education and prevention is not necessarily the most effective. For example, we give people a lot of information. We tell them about all the different ways they can be approached. We tell them not to send money to Nigeria. We tell them not to send money via Western Union. We tell them all these very specific things. What happens then is that the offenders will change how they do business. So the victim will not be asked to send money to Nigeria; they will be asked to send money to Malaysia. The victim will not be asked to send it via Western Union; they will be asked to send it via a bank-to-bank transfer.*

*A lot of the victims I have spoken to have knowledge about fraud. They have levels of financial literacy. The issue that we need to try to combat—and I do not have the answer for this; if I did, the world would be a better place. What we need to try to combat is the social engineering techniques that offenders are using to manipulate and exploit individuals—seniors included—into parting with personal details or with money.<sup>518</sup>*

In keeping with this, Drew and Cross provide a number of educative crime prevention recommendations:

*Increased awareness of the value of their personal information and how this can be used by offenders is needed by investors. This may serve to deter some individuals from providing this type of information without due consideration and as such, act as [a] protective factor in*

<sup>516</sup> Detective Superintendent Brian Hay, QPS, *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 4.

<sup>517</sup> Dr Jacqueline Drew, Submission no. 6, page 4.

<sup>518</sup> Dr Cassandra Cross, QUT, *Transcript of Proceedings (Hansard)*, 15 July 2015, pages 6-7.

*reducing the exposure risk of these individuals to being profiled and targeted by fraud perpetrators.*

*Increased awareness regarding the dangers in transferring monies overseas, a tactic often used in financial fraud (ACC and AIC, 2012), is needed by investors. Monies sent offshore as part of an investment reduces the ability of financial institutions, police and/or regulators to recover funds with recovery difficult and highly unlikely (Button, Lewis & Tapley, 2009).*

*In sum, investors need to actively gain and then apply knowledge of persuasion and social engineering tactics beyond the application of their financial knowledge and skills to protect themselves against fraud. The financial literacy curriculum should consider the use of a general framework that can be used taught and used by investors to discriminate between approaches used by legitimate and fraudulent investment companies and/or operators (Sagarin, Cialdini, Rice & Serna, 2001). Experiential teaching methodologies should be used to assist investors to adapt their learnings across different situations, given the evolving and ever-changing tactics of fraud offenders.<sup>519</sup>*

Importantly, it was suggested that any broad awareness and information campaigns should necessarily be accompanied by more comprehensive information and advice services, particularly given the sophisticated manner in which many consumer scams are carried out. In this regard, submitters commended the “Savvy Seniors” consumer protection guide and internet resource provided to seniors by the South Australian Government.<sup>520</sup>

QADA, OPG, and ATSILS, who each noted a more significant rate of telephone and door-to-door fraudulent contacts within their service populations, called for the introduction of legislatively enforced “cooling off periods”, to “allow clients time to seek advice or assistance on prior to being bound by the contract, and ...reduce instances of unfair bullying tactics being used to push people into unfair contracts”.<sup>521</sup>

### **Committee comment**

Submissions received by the Committee highlighted a range of opportunities and promising options to support improved awareness of fraud and build seniors' knowledge and discernment of techniques and methods employed.

This should necessarily include a focus on cybersafety to support seniors to engage actively with online technology, and financial literacy exercises may also be of use. However, submissions also impressed on the Committee the need to improve the sophistication of education programs and campaigns to target social engineering techniques or particular human actions that precipitate a scam scenario, and around which simple preventive messages may be framed. Further, the Committee noted that informational efforts of other jurisdictions to help support seniors in their discernment of questionable practices early on, also stand to round out and consolidate the state's suite of preventive mechanisms.

### **Recommendation 19**

The Committee recommends that the Queensland Police Service explore further opportunities to leverage financial sector partnerships and technological systems to trace questionable or irregular transactions and identify early intervention opportunities.

<sup>519</sup> Dr Jacqueline Drew, Submission no. 6, pages 5-6.

<sup>520</sup> See, for example: COTA Queensland, Submission no. 3, pages 4; 6.

<sup>521</sup> ATSILS, Submission no. 16, page 5.

**Recommendation 20**

The Committee recommends that the Queensland Government continue to support seniors' positive engagement with computing and internet technologies, through computer literacy and cyber-safety education programs and resources.

**Recommendation 21**

The Committee recommends that the Queensland Government develop a fraud prevention and awareness campaign based on best practice evidence, to reduce barriers to reporting and build resilience to social engineering techniques.

**Recommendation 22**

The Committee recommends that the Queensland Government consider the introduction of a comprehensive telephone and advice service in relation to consumer protection and scams, modelled on the "Savvy Seniors" program developed in South Australia.

## 7. Support for seniors requiring financial protection

### 7.1 Federal provisions and partnerships

Commonwealth and State legislation, enforcement agencies and ancillary support organisations offer Queensland seniors a range of different statutory protections and assistance to prevent their financial exploitation or abuse. These mechanism also help to safeguard their financial wellbeing more broadly via preventive or corrective interventions.

Foremost among the legislative measures are:

- provisions governing financial products and their administration, including payment systems and transaction processes, requirements for consumer disclosure and due diligence and other ethical practices, together with concordant criminal sanctions for transgressions
- a range of consumer protections to support fair trading and associated enforcement provisions
- state based legislative provisions addressing financial crimes, particularly including elder abuse and resulting agency responses, and
- protective administrative arrangements to facilitate appropriate decision-making for vulnerable individuals who lack capacity to carry out their financial decisions.

While regulation in the first of two of these four areas is essentially a Federal responsibility, submitters highlighted a range of possible opportunities for the Queensland Government to coordinate with its Federal partners and agencies to help promote an improved protective response.

Chief among the vulnerabilities to exploitation in the financial service sector are issues surrounding the quality of financial advice and credit and mortgage products, which are regulated under a suite of financial sector and consumer legislation and associated regulations and instruments.

Notably, recent financial system inquiries have highlighted sufficient deficiencies in financial counsellors' explanations of contracts to consumers prior to signing and borrowing.<sup>522</sup> Gibson and Rochford have also noted that "the most common issues raised by older complainants to the Financial Industry Complaints Service appear to be complaints about inappropriate financial advice".<sup>523</sup> Such dangers have also been highlighted by a string of home grown financial failures which hit some senior investors particularly hard – including the failures of Westpoint (2006), Storm Financial (2009), Trio/Astarra2 (2009) and Banksia (2012).<sup>524</sup> As noted by COTA Queensland, "whilst most consumers may assume that advisors are acting in their best interests, events such as the Storm collapse show this is not always the case".<sup>525</sup>

ASIC highlighted that results of the 2014 ANZ survey of financial literacy in Australia revealed trust in recommendations made by financial professionals has declined since 2011, with 48 per cent of the

<sup>522</sup> See: Parliamentary Joint Committee on Corporations and Financial Services, Corporations Amendment (Future of Financial Advice) Bill 2011 and Corporations Amendment (Further Future of Financial Advice Measures) Bill 2011, *Inquiry Report*, February 2012; R St John (The Australian Government, The Treasury), [Compensation arrangements for consumers of financial services: Future of financial advice](#), Commonwealth of Australia, 2012; The Australian Government, The Treasury, [Financial Systems Inquiry: Final Report](#), Commonwealth of Australia, November 2014.

<sup>523</sup> Gibson and Rochford, 'Emerging Consumer Credit Issues for Older Australians', 2008, page 80.

<sup>524</sup> National Seniors Australia, [Submission to the Financial Systems Inquiry](#), Financial Systems Inquiry, Commonwealth of Australia, March 2014, page 14.

<sup>525</sup> COTA Queensland, Submission no. 3, page 10.

surveyed population agreeing they would trust a financial professional and accept what was recommended, compared to 51 per cent previously.<sup>526</sup>

This is of concern, ASIC notes, as when delivered appropriately, financial advice:

*...can lead to individual financial gains, individual psychological benefits and economy-wide fiscal and competitive improvements. More confident and informed investors and financial consumers can also lead to greater competition and efficiency in financial markets, and improved financial products and services.*<sup>527</sup>

ASIC noted, that recent legislative changes have gone some way to addressing these issues, including Federal *Future of Financial Advice (FOFA)* reforms which imposed:

- requirements that financial advisers act in the best interests of their clients and in keeping with three new conduct obligations, and
- a ban on conflicted forms of remuneration.<sup>528</sup>

Included in the reform package was a prospective prohibition on commission-based or volume-based payments for the distribution of and advice about retail investment products. In addition, ASIC notes, the *FOFA* package of reforms provides “an expansion to the powers and remedies available to ASIC to act when financial advisers act in breach of their legal obligations”.<sup>529</sup>

Despite these efforts to strengthen Australia’s financial and prudential regulatory framework and improve the integrity of the financial advice sector; a number of organisations have highlighted that ‘problems of quality and conflict of interest persist’.<sup>530</sup>

COTA Queensland raised particular concerns about ongoing issues surrounding scaled advice and opt-in provisions in the sector. Scaled advice refers to targeted advice which is limited in scope. As COTA Queensland explained:

*Some examples of scaled advice underline our concerns, such as a couple agreeing to receive advice on planning for retirement, without reference to any debts, when they had two real estate mortgages. Although scaled advice can be attractive to clients, because it is cheap and easily available, it is not objective and can result, for example, in individuals agreeing to advice without reference to mortgages. COTA accepts they should have the choice but suggests that clients need to be fully informed about the implications of limited advice. Moreover, COTA maintains concern that this type of advice can erroneously assume an equal knowledge between advisers and clients. Whilst COTA accepts that individuals have the right to choice it suggests that clients need to be fully informed about the implications of limited advice.*<sup>531</sup>

COTA Queensland supported opt-in arrangements for renewed agreements between individuals and their financial advisors, maintaining that it should be a requirement for consumers to renew their arrangement with their financial adviser every two years, as an important consumer protection.<sup>532</sup> Specifically, COTA noted:

*The opt-in provision can help to ensure that providers keep in contact with consumers, require them to up-date contact details and trigger periodic reviews. It should also encourage consumers to look at their financial goals and seek updated advice when circumstances*

<sup>526</sup> ASIC, Submission no. 19, page 14.

<sup>527</sup> ASIC, Submission no. 19, page 14.

<sup>528</sup> ASIC, Submission no. 19, page 15.

<sup>529</sup> ASIC, Submission no. 19, page 15.

<sup>530</sup> National Seniors Australia, [Submission to the Financial Systems Inquiry](#), 2014, page 7.

<sup>531</sup> COTA Queensland, Submission no. 3, page 10.

<sup>532</sup> COTA Queensland, Submission no. 3, page 10.

*change. It may also give them the impetus to shop around for advice and therefore promote competition and potentially reduce the cost of advice. It may also give an opportunity for people who have taken scaled advice to move to getting more holistic advice. COTA does not accept that this opt in model is onerous on providers or that it carries high compliance costs. From our discussions with a number of people in the financial advice industry it would appear that current industry best practice is to do regular reviews, and discussion of fees is part of such a review. The opt-in provision is another way of ensuring that providers are continuing to act in the best interests of their clients and optimising the advice.*<sup>533</sup>

Accordingly, COTA has called for the Queensland Government to “give full consideration and support for its concerns regarding financial advisors acting in the best interests of seniors, scaled advice and opt-in provisions”.<sup>534</sup>

In terms of consumer credit, a uniform national regulatory regime came into effect from 1 July 2010, in support of a consistent approach Australia-wide.<sup>535</sup> This was shortly followed by a full transfer of responsibility for consumer protection and fair trading to the Commonwealth from 1 January 2011, as consolidated into a uniform *Australian Consumer Law* (ACL). National regulator ASIC plays a key role in the enforcement of each regime, coordinating with the ACCC in cooperation with Queensland’s Office of Fair Trading with regard to consumer protection-related credit matters.<sup>536</sup>

The *National Consumer Protection Credit Act 2009* (Cth) contains requirements for persons who are involved in consumers obtaining credit contracts or consumer leases to be licensed and to comply with responsible lending requirements (this includes both credit providers and lessors, and other persons such as finance brokers).<sup>537</sup> It also includes the *National Credit Code* (Schedule 1 of the Act), which contains the specific requirements in relation to the entry into, terms of, and enforcement of credit contracts and consumer leases.

ASIC notes that the additional protections for consumers contained within the ACL (and associated legislation and regulatory instruments) include:

- a licensing regime that imposes minimum standards of conduct for credit industry participants
- responsible lending obligations, which mandate that credit licensees must make inquiries into a consumer’s objectives and financial situation and verify their financial situation, and
- a requirement that lenders must also comply with the *National Credit Code*, which includes extended coverage (now encompassing lending to invest in residential property) and greater access to assistance for borrowers in financial difficulty.

<sup>533</sup> COTA Queensland, Submission no. 3, page 11.

<sup>534</sup> COTA Queensland, Submission no. 3, page 11.

<sup>535</sup> Australian Securities & Investments Commission, ‘Credit’, *Regulatory Resources*, webpage, last updated 6 March 2015, <http://asic.gov.au/regulatory-resources/credit/> (accessed 20 August 2015); Financial Rights Legal Centre, *Does the National Credit Law Apply?*, Factsheet, Financial Rights Legal Centre, 2014, page 1.

<sup>536</sup> See Office of Fair Trading and ACCC Memorandum of Understanding and Office of Fair Trading and ASIC Memorandum of Understanding, available at: Queensland Government, ‘OFT corporate documents’, *Queensland Government publications*, website, 2015, <https://publications.qld.gov.au/dataset/oft-corporate-documents> (accessed 25 August 2015).

<sup>537</sup> ASIC, ‘Credit’, *Regulatory Resources*, 2015; Financial Rights Legal Centre, *Does the National Credit Law Apply?*, 2014, page 3.



Despite these extended provisions, COTA submitted that there is continuing debate within government and the banking and investment sector on how to address the persistence of acts identified as constituting “sloppy standards”, including:

- client files not containing statements of advice
- advisers failing to demonstrate reasonable basis for advice provided to the client
- poor client records and lack of detail contained in advice documents<sup>538</sup>
- a lack of supporting documentation on files to determine if there was a reasonable basis for the advice provided to the client, and
- failing to provide sufficient evidence that clients were sophisticated investors.<sup>539</sup>

Essentially, Kelly argues, while “the regulatory tools to tackle poor lending practices in the industry are, to a large extent, already available”:

*Effective enforcement, however, remains a major challenge, and society’s most vulnerable continue to fall foul of unethical lending practices.*<sup>540</sup>

Accordingly, the Committee considers that it is incumbent on state regulatory partners to continue to engage in coordinated efforts to reform the sector and help Federal agencies in their enforcement activities. COTA Queensland submitted that at a national level it “continues to work with these sectors, in the interests of seniors, to develop regulations and safeguards so that clients can make reliable financial decisions”.<sup>541</sup>

The Committee notes that Caxton Legal Centre Inc. also highlighted the support provided by the Financial Ombudsman Service and Credit Ombudsman Service, in responding to complaints about financial service and credit providers. ASIC also drew attention to various Federal dispute resolution schemes, as a “relatively cost-effective and more accessible alternative to going to court, in many cases”.<sup>542</sup>

### Recommendation 23

The Committee recommends that the Queensland Government continue to work with the Federal Government and enforcement agencies to promote responsible lending and other ethical business practices to better safeguard the interests and assets of vulnerable seniors.

## 7.2 Financial elder abuse in Queensland

Sanders has noted that any conceptualisation of the financial abuse of older people must be framed within the overarching context of elder abuse within which it sits.<sup>543</sup> This need for a contextual framing of definitions reflects the fact that elder abuse is a complex, multi-faceted phenomenon involving coinciding patterns of behaviour which can be expressed both overtly and in more subtle and insidious

<sup>538</sup> COTA Queensland, Submission no. 3, page 11.

<sup>539</sup> COTA Queensland, Submission no. 3, page 11.

<sup>540</sup> A Kelly, ‘[Payday lending practices: why unethical loans are harming the vulnerable](#)’, *LSJ: Law Society of NSW Journal*, June 2015, page 82; Elder Abuse Prevention Unit, *EAPU Reference Group Research Subgroup – Final Study: A ‘wishlist’ for a prevalence study*, Correspondence from UnitingCare Community, 21 May 2015, pages 3-4.

<sup>541</sup> COTA Queensland, Submission no. 3, page 12.

<sup>542</sup> ASIC, Submission no. 19, page 16.

<sup>543</sup> Sanders, [Financial Abuse of Older People: A Queensland Perspective](#), 2005, page 3.

ways. The EAPU has stated that although there is *prima facie* consensus on the definition of elder abuse around the world, a unified operational definition has proven elusive.<sup>544</sup>

The WHO 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>545</sup> This definition includes the following categories:

- physical – the infliction of pain, injury or force
- psychological – the infliction of mental anguish, fear, and feelings of shame, and powerlessness
- financial – the illegal or improper use of an older person’s finances or assets
- social – preventing a person from having social contact or attending activities
- sexual – sexually abusive or exploitative behaviour, and
- neglect – the failure of a carer to provide for an older person in their care.

Notwithstanding these formal categorisations, older people recognise elder abuse as a much broader range of behaviours and relationships including: disrespect of younger people, scams, neighbourhood bullying, and many systemic issues around the cost and quality of aged care.<sup>546</sup> Importantly, while financial abuse was the focus of this Inquiry, the Committee notes that it is clear that many of the different categories of elder abuse are often co-occurring and mutually reinforcing, serving to amplify each other's effects.

With regard to financial abuse in particular, despite some variation in definitions, the EAPU has identified that elder financial abuse is generally recognised as involving “the financial exploitation of an older person, through either legal (but considered improper) or illegal misappropriation of their finances or property, by a person who is in a position of trust such as a family member or caregiver”.<sup>547</sup> This can range from a failure to access benefits, through inadvertent mismanagement and opportunistic mismanagement, to deliberate and targeted abuse, often accompanied by threats and intimidation.<sup>548</sup>

Researchers agree that the true extent of the financial and material abuse of older people is difficult to determine, at least in part due to under-reporting, and the complex way in which it can manifest.<sup>549</sup> That is, rather than a single event, abuse usually emerges as “a series of well-intentioned but ill-considered financial acts, which at some point tips over into abuse interwoven with an intricate web of family relationships” and notions or expectations of inheritance.<sup>550</sup> In such circumstances, the

<sup>544</sup> EAPU, EAPU Reference Group Research Subgroup – Final Study: A ‘wishlist’ for a prevalence study, Correspondence from UnitingCare Community, 21 May 2015, page 3.

<sup>545</sup> World Health Organisation (WHO), ‘Elder Abuse’, *Ageing and Life Course*, Factsheet no. 357, updated December 2014, <http://www.who.int/mediacentre/factsheets/fs357/en/> (accessed 20 August 2015).

<sup>546</sup> The WHO report *Missing Voices: views of older persons on elder abuse* (2002) found that structural and societal abuse were identified as common themes in older people’s views of abuse; while a workshop by Older People Speak Out (OPSO) in June 2013 identified neighbourhood bullying, scams and treatment of older people in residential aged care as elder abuse issues. See: UnitingCare, Submission no. 14, page 3.

<sup>547</sup> Sanders, *Financial Abuse of Older People: A Queensland Perspective*, 2005, page 4.

<sup>548</sup> G Crosby, A Clark, R Hayes, K Jones and N Lievesley, *The Financial Abuse of Older People: A Review of the Literature carried out by the Centre for Policy on Ageing on behalf of Help the Aged*, Help the Aged UK, London, 2008, page 8.

<sup>549</sup> L Kyle, *Out of the Shadows: A Discussion on Law Reform for the Prevention of Financial Abuse of Older People*, *Elder Law Review*, vol 7, 2012, page 1.

<sup>550</sup> Kyle, *Out of the Shadows: A Discussion on Law Reform for the Prevention of Financial Abuse of Older People*, 2012, page 1.

protective love between family members often screens changes that are critical to an older person's financial and living arrangements.<sup>551</sup>

National prevalence studies have tended to estimate rates of financial elder abuse at between 0.5 per cent and 2.5 per cent across the senior population (of a broader prevalence of up to 5 per cent or more for all types of abuse).<sup>552</sup> In Queensland, the results of a 2002 mail survey completed by 159 Aged Care Assessment Team (ACAT) members, allied health professionals, and other persons working with older adults, revealed that "86 per cent of ACAT respondents and 70 per cent of other respondents indicated that they had concerns about the misuse of an older person's assets at least once, and 80 per cent of ACAT respondents and 57 per cent of other respondents indicated they had such concerns more than once".<sup>553</sup>

The provision of assistance with managing finances and assets by relatives, friends and carers typically emerges as the critical nexus for abuse, raising questions of probity and propriety and potential conflicts of interest that can leave seniors vulnerable to financial exploitation. Notably, national data indicate a very high expectation (75 per cent) among older Australians that their children and other family members will help them with paperwork, banking and paying bills as they grow older, with seniors relying on these individuals ahead of financial advisors, banks and accountants.<sup>554</sup> Such tendencies for family consultation are expected to be heightened with the increasing incidence of dementia across the population, as anticipated to affect approximately 258,000 Queenslanders and 1.13 million Australians by 2050.<sup>555</sup> Setterlund et al have noted: "when issues of limited knowledge, trust, and questionable processes interact with a sense of relief at having relinquished control over decision-making come together, the potential for abuse is amplified".<sup>556</sup>

Further insights into these issues have also been provided by a longitudinal study into the mismanagement of seniors' assets conducted by the Monash University School of Medicine. The landmark study, which offers one of the most comprehensive pictures of financial abuse in Australia to date, identified:

*The potential for mismanagement of older people's assets is on the rise due to projected growth in numbers of older people over the next three decades, their increasing wealth and the growing number of people with dementia. The current generation of older people are at risk of being represented as a 'social problem'. We need therefore to avoid making financial abuse victims themselves the problem. In many cases 'bad' decision-making occurs in the absence of signposts to 'good' decision-making. Whilst experts distinguish good from bad decision-making, the fact that much decision-making happens within the privacy of the family means that discussions over what is 'good' or 'bad' do not take place between experts and families. The consequences of 'bad' decisions are known too late to seek effective remedy if remedy is required. Intervention as a remedy is a topic for research.*

<sup>551</sup> Kyle, [Out of the Shadows: A Discussion on Law Reform for the Prevention of Financial Abuse of Older People](#), 2012, page 1.

<sup>552</sup> G Lowndes, P Darzins, J Wainer, K Owada and T Mihaljcic, [Financial abuse of elders: a review of the evidence](#), Protecting Elders' Assets Study, Monash University Faculty of Medicine, Nursing and Health Sciences, June 2009, pages 5; 8; Crosby et al, [The Financial Abuse of Older People: A Review of the Literature carried out by the Centre for Policy on Ageing on behalf of Help the Aged](#), 2008, page 9.

<sup>553</sup> Tilse et al 2003 cited in Crosby et al, [The Financial Abuse of Older People: A Review of the Literature carried out by the Centre for Policy on Ageing on behalf of Help the Aged](#), 2008, page .

<sup>554</sup> King et al, [For love or money: intergenerational management of older Victorians' assets](#), 2011, page 13.

<sup>555</sup> Office of the Public Advocate (Qld) and QLS, [Elder Abuse: How well does the law in Queensland cope?](#), 2010, page 2.

<sup>556</sup> D Setterlund, C Tilse and J Wilson, [Substitute Decision-making and Older People](#), *Trends & issues in crime and criminal justice*, Australian Institute of Criminology (AIC), no. 139, pages 4-5.

*Assisting older people and their families adjust to changing realities in the relationships between individuals and their assets, and the group, is a goal shared by the professionals interviewed for this research project. Our interviewees estimated that three quarters of families take care of their older members within their capacity and within an environment of mutual love and trust. They suggested however, that ‘triggers’ for mismanagement are linked to the relative vulnerability of older people.*<sup>557</sup>

Among the various vulnerability-related triggers for financial abuse highlighted in this and other subsequent reports was the need to sell a house to cover the costs of residential accommodation bonds, which can tend to amount to hundreds of thousands of dollars. In this respect, the Monash study concluded that current funding models for residential care might feed in to various forms of financial mismanagement and neglect.<sup>558</sup>

More recently, the EAPU has identified scope for care arrangements and carer’s payments in particular to emerge as a nexus of abuse. With an ageing population and growing pressure on services to care for the elderly, there is an increase in families taking on the care of their elderly relatives. This responsibility can be challenging and difficult for a family, and society acknowledges this burden through the provision of the carer’s benefit, which offers a limited assistance payment to support carers in fulfilling their caring role. However, the EAPU has highlighted concerns about a growing number of neglect notifications received by its dedicated telephone helpline in which a family member has become a carer of the older person with the motivation of receiving the carer allowance from the Department of Human Services, and free accommodation while residing with the elderly person.<sup>559</sup> The carer payment is often more attractive than other allowances such as the Newstart Allowance in terms of both the amount paid and requirements for maintaining ongoing eligibility.<sup>560</sup> Notably, 2013-14 EAPU data indicated that 14.39 per cent of elder abuse perpetrators recorded as being a recipient of a carer’s benefit were also recorded as providing no care at all to the victim. It is reported that in these cases, the health and wellbeing of the older person deteriorated rapidly under the arrangement.<sup>561</sup>

In a broader sense, as vulnerabilities associated with care arrangements imply, researchers have identified that a “wide range of intentionality” towards older people’s assets may expressed, often shifting subtly with emerging opportunities and changes in the risk environment.<sup>562</sup> The Monash study described forms of mismanagement as ranging from unwise, innocent and incapacitated individual decision-making, through unwise assisted decision-making, abusive proxy decision-making, to absolute predation, with those who fared worst finding themselves “stripped of all assets and living under state guardianship”.<sup>563</sup> Interviewees identified vulnerabilities including social isolation, estrangement from family, cognitive decline and chronic illness as risk factors for mismanagement of older people’s assets by themselves and others.

The study identified that people who intentionally, or otherwise, separated seniors from their assets can be unaccountable “either because their intentions have been unclear, or because current

<sup>557</sup> King et al, [For love or money: intergenerational management of older Victorians’ assets](#), 2011, page 6.

<sup>558</sup> King et al, [For love or money: intergenerational management of older Victorians’ assets](#), 2011, page 7.

<sup>559</sup> UnitingCare Community, Submission no. 14, page 7.

<sup>560</sup> The UnitingCare Community submission highlighted that “for a single adult base Carer payment is \$766 per fortnight and Newstart is \$510.50. To remain eligible for the Carer Payment requires that the older person meets eligibility conditions, while there are much more stringent and ongoing requirements in place for the recipient of Newstart Allowance”. See: UnitingCare, Submission no. 14, page 7 (footnote reference).

<sup>561</sup> UnitingCare, Submission no. 14, page 7.

<sup>562</sup> King et al, [For love or money: intergenerational management of older Victorians’ assets](#), 2011, page 7.

<sup>563</sup> King et al, [For love or money: intergenerational management of older Victorians’ assets](#), 2011, page 7.

legislation or legal processes do not provide adequate protection”.<sup>564</sup> In this regard, a further key vulnerability has been identified with regards to exploitation of substitute decision-making powers under EPoA or Guardianship arrangements. Submitters identified that abuse may occur where a person takes advantage of an older person who has already lost (or is losing) capacity, by coercing or arranging for the older person to sign an EPoA in circumstances where the older person is unable to understand the nature and effect of the document. This raises questions about the actions of witnesses to EPoAs.<sup>565</sup> Further, abuse may subsequently manifest in behaviours by an attorney or appointed individual which are both exploitative and in violation of their powers, duties and responsibility under an EPoA.<sup>566</sup>

King et al identified that often when such behaviours are challenged, the abusing party or parties tend to “resort to rationalisations that further devalue the rights and needs of the older person”.<sup>567</sup>

### 7.2.1 Impacts of financial elder abuse

Loss of financial security due to elder financial abuse and financial crimes can have devastating effects on seniors, as the Australian Institute of Criminology (AIC) has emphasised:

*Not only can a comfortable lifestyle collapse, but they may not have the time or the opportunity for financial recovery. A blow to financial security is often a permanent and life-threatening setback, characterised by fear, lack of trust, and is often the onset of acute and chronic anxiety. Loss of assets may ruin a person’s otherwise well-planned retirement...the personal, emotional and psychological consequences of fraud for older persons are much more profound than for younger persons.*<sup>568</sup>

Similarly, Caxton Legal Centre Inc. stated:

*It is widely understood that the results of financial abuse often lead to a marginal existence for the older adult victim. The ramifications may last for the remainder of the older adults’ lives because there is little or no time to replace the exploited resources or money. In addition, if exploitation occurs, it could lead to an exacerbation of the older adult’s health problems, such as hypertension, heart disease, and other stress-related conditions such as depression, anxiety, and post-traumatic stress disorder; it may even lead to premature death.*<sup>569</sup>

Stakeholders also noted that the targeting of the older person’s home as a financial asset can contribute to homelessness and through impacts on financial security, undermine access to future health or aged care options.<sup>570</sup>

EAPU records show that during the 2013-14 financial year, a total of \$56.7 million was misappropriated from 139 elder abuse victims. However, these 139 cases constituted just a small proportion of the total

<sup>564</sup> King et al, [For love or money: intergenerational management of older Victorians’ assets](#), 2011, page 7.

<sup>565</sup> Office of the Public Advocate (Qld) and QLS, [Elder Abuse: How well does the law in Queensland cope?](#), 2010, page 7.

<sup>566</sup> C Tilse, J Wilson, B White and L Willmott, ‘Enduring Powers of Attorney: Promoting attorneys’ accountability as substitute decision-makers’, *Australasian Journal on Ageing*, vol. 33, no. 3, September 2014, page 193 (See also Associate Professor Cheryl Tilse and Professor Jill Wilson, Submission no. 10, page 7).

<sup>567</sup> King et al, [For love or money: intergenerational management of older Victorians’ assets](#), 2011, page 7.

<sup>568</sup> House of Representatives [Committee, Inquiry into older people and the law](#), page 12; citing Australian Institute of Criminology, Submission no. 40, page 1.

<sup>569</sup> Caxton Legal Centre Inc., Submission no. 15, page 5.

<sup>570</sup> UnitingCare, Submission no. 14, page 6; Townsville Community Legal Service, Submission no. 1, page 17; LAQ, Submission no. 9, page 5; King et al, [For love or money: intergenerational management of older Victorians’ assets](#), 2011, page 7.

of 789 records for financial abuse that year, with a further 650 instances where a dollar amount was not provided.<sup>571</sup> Accordingly, the actual value of direct losses is likely to have been many times this amount.

A 2009 EAPU attempt to quantify the costs of financial abuse in Queensland identified that while specific losses due to financial abuse could be estimated at approximately \$97 million in 2007-08:

*...the overall dollar amount of financial exploitation of older people could range between \$1.8 billion and \$5.8 billion per annum if other relevant services such as legal, guardianship and police are considered, although a lot of abuse will remain undetected.*

*Costs associated with any form of abuse include the physical and mental trauma experienced by the victim as well as costs associated with for example higher hospital admissions which are estimated between \$9.9 million and \$30 million per annum in Queensland.*

*Other additional costs deriving from elder abuse are associated with police and emergency service call out, access of other health and welfare services and costs associated with lawyers, courts, tribunals and investigations, although these costs are difficult to estimate.*<sup>572</sup>

### 7.3 Preventing and responding to financial abuse

There are a wide range of agencies and organisations throughout Queensland which seek to promote the rights of seniors to financial autonomy, and to help intervene and provide support to seniors who may be vulnerable to or currently experiencing financial abuse. Many of these agencies and their responsibilities are highlighted by the Office of the Public Advocate in an *Elder abuse resource directory*, which details statutory or other bodies and non-government community services which provide information or assistance in relation to elder abuse in Queensland.<sup>573</sup> This document was compiled as a companion to a review of the law on elder abuse in Queensland, and in keeping with the *Positively Ageless: Queensland Seniors Strategy 2010-2020* and its emphasis on a “systems advocacy” in support of seniors who are “vulnerable, disadvantaged or socially isolated”.<sup>574</sup>

In considering the adequacy of these protective activities, the Committee focussed primarily on the leading work of the EAPU, SLASS and statutory agencies in the Public Guardian and Public Trustee, together with the legal and service framework and conditions under which they operate.

#### 7.3.1 Elder Abuse Prevention Unit

The frontline in Queensland’s elder abuse service response is the UnitingCare Community’s EAPU and its dedicated Elder Abuse Prevention Helpline (Helpline), which has been in operation since November 1999. Funded by the Queensland Government, the Helpline offers support, information and referrals for anyone who experiences, witnesses or suspects abuse of an older person by someone they know and trust. The Helpline is also a means of collecting non-identifiable data on the expression and nature of abuse in Queensland, which the EAPU makes available to provide a better understanding of the issues and emerging trends surrounding elder abuse.<sup>575</sup>

<sup>571</sup> UnitingCare, Submission no. 14, page 6.

<sup>572</sup> Elder Abuse Prevention Unit (EAPU), [The Cost of Elder Abuse in Queensland: Who pays and how much, Key points of the report](#), Elder Abuse Prevention Unit (Queensland), June 2009, page 1.

<sup>573</sup> Public Advocate, [Elder abuse resource directory: A Queensland guide to services, assistance and information](#), 2012, page 4.

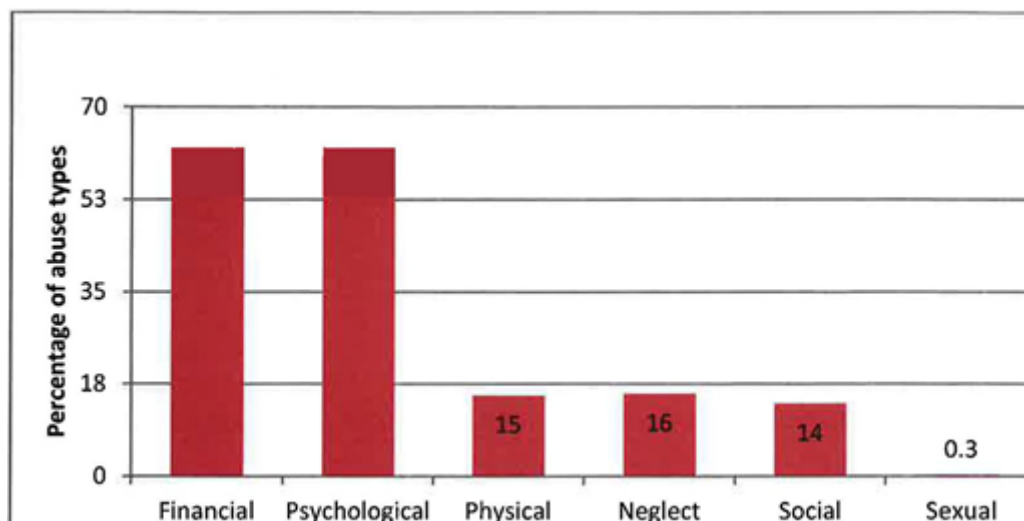
<sup>574</sup> Public Advocate, [Elder abuse resource directory: A Queensland guide to services, assistance and information](#), 2012, page 4.

<sup>575</sup> UnitingCare, Submission no. 14, page 1.



In 2013-14, the Helpline received calls pertaining to a total of 1,092 victims, of a total of 1,150 perpetrator records; and financial abuse figured prominently among these reports. Importantly, 62 per cent of victims reported experiencing financial abuse and psychological abuse in particular; which together were by far the most prevalent types of abuse experience (see Figure 2).<sup>576</sup> Despite the fact that “there is no academically validated theoretical model of abuse”, the EAPU identified that such figures are consistent with the experience of frontline services, which have identified that elder abuse in Queensland is motivated primarily by financial or lifestyle gain for the perpetrator (as reported by an EAPU research subgroup).<sup>577</sup>

**Figure 2 Abuse types experienced by victims – Helpline data 2012-14**



Source: UnitingCare, submission no. 14, page 4.

These figures also point to the common co-occurrence of multiple types of abuse, with the EAPU noting that other abuse types, and psychological abuse in particular, often serve to facilitate financial abuse.

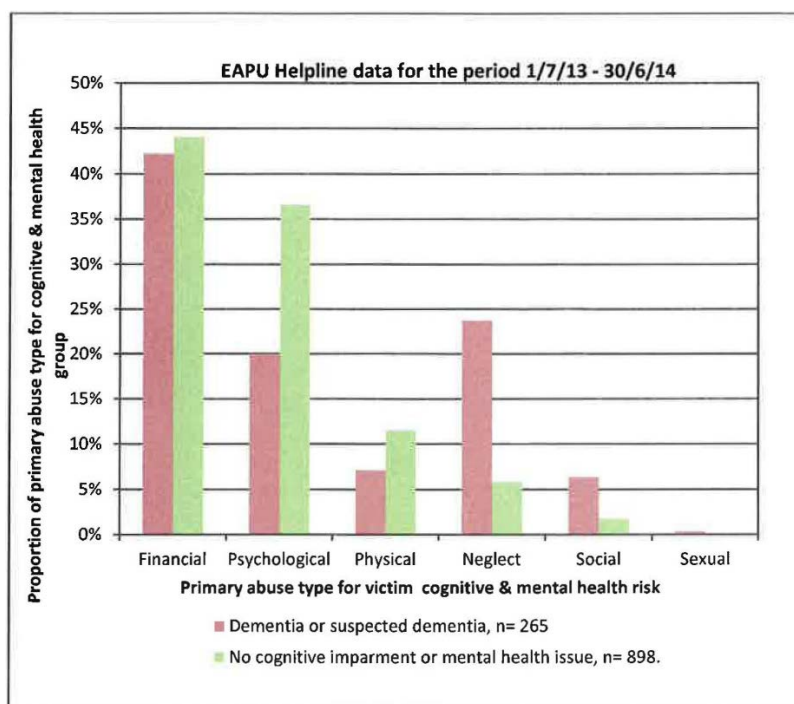
The EAPU notes that this is further reflected in data depicting abuse types according to mental health risks (see Figure 3). That is, where the victim has dementia, the occurrence of psychological abuse as a primary abuse type is halved, as perpetrators usually already have unfettered access to the assets of the older person, rendering psychological abuse unnecessary. In 2013-14, dementia was reported for 13.5 per cent of elder abuse victims, and a further 7.5 per cent were suspected to have dementia.<sup>578</sup>

<sup>576</sup> UnitingCare, Submission no. 14, pages 3-4.

<sup>577</sup> UnitingCare, Submission no. 14, page 4.

<sup>578</sup> UnitingCare, Submission no. 14, page 4.

**Figure 3 Comparison of primary abuse type for impaired and unimpaired victims – Helpline data 2013-14**



Source: UnitingCare, Submission no. 14, page 4.

As with domestic violence, the victims of elder abuse are overwhelmingly women. However, the gender of perpetrators is more evenly distributed between males and females, as highlighted in Helpline records (see Table 3). UnitingCare Community noted that victim/abuser gender proportions have remained relatively stable over the duration in which Helpline records have been kept (June 2000 onwards).<sup>579</sup>

**Table 3 Abuse victims and perpetrators by gender, 2013-14**

Helpline data – 2013-14	Victim		Perpetrator	
	Records	Percent	Records	Percent
Female	740	67.77%	568	49.39%
Male	352	32.23%	573	49.83%
Unknown	0	0%	8	0.78%
<b>Totals</b>	<b>1092</b>	<b>100.00 %</b>	<b>1150</b>	<b>100.00 %</b>

Source: UnitingCare, Submission no. 14, page 5.

This differing gender composition reflects the fact that most elder abuse is non-spousal abuse, as also illustrated by data on Domestic Violence Orders and Helpline records provided in Figures 4 and 5.

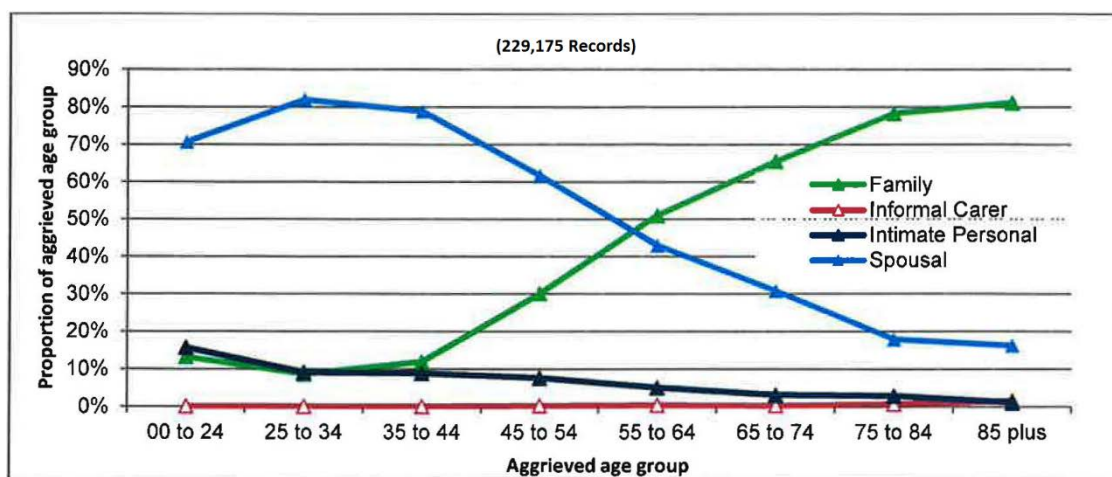
In fact, the proportion of orders made under either the “Family” or “Spousal” relationship categories neatly reverse with age. Figure 5 suggests that the Domestic Violence Orders granted under the

<sup>579</sup> UnitingCare, Submission no. 14, page 5.



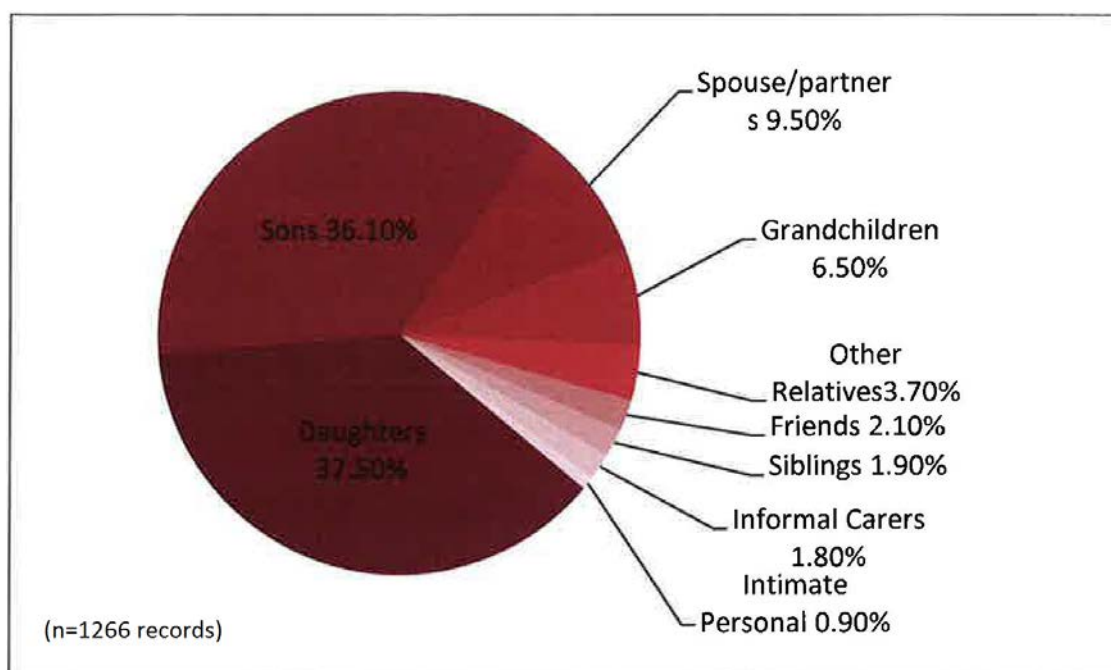
“Family” relationships category are most likely to involve adult children, who comprise around 70 per cent of perpetrators recorded by the Helpline.<sup>580</sup>

**Figure 4 Orders by respondent relationship and age, Helpline data 30 June 2004 to 30 June 2012**



Source: UnitingCare, Submission no. 14, page 5.

**Figure 5 Relationship between perpetrator and victim – Helpline data 1 July 2013 to 30 June 2014**



Source: UnitingCare, Submission no. 14, page 6.

<sup>580</sup> UnitingCare, Submission no. 14, page 5.

### 7.3.2 How the EPAU responds to calls about financial abuse

With regard to the Helpline's responses to financial abuse, the EPAU emphasised that "each older person's situation is different and no advice fits all, or even most, scenarios".<sup>581</sup> The diversity of support needs emerging from reported abuse scenarios is reflected in EPAU service referral data for 2013-14, which indicates that many callers receive referrals to multiple services depending on the nature of the abuse and the particular circumstances involved.

**Figure 6 Referral breakdown for EPAU Helpline calls, 2013-14**

Accommodation		1.70%	Carer Services		3.58%	Mediation		3.17%
Emergency Accommodation	13		Carers Queensland	46		Dispute Resolution Centre	76	
Homeless Persons Information Queensland	1		Commonwealth Respite and Carelink Centre	51		Family Relationship Centre	10	
Department of Housing	27		DV Services		1.48%	Mental Health		1.40%
Residential Tenancies Authority Queensland	1		Domestic Violence Service	19		Mental Health Services (overall)	38	
Tenant Advice and Advocacy Service Qld	2		DV Connect Men's Line	9		Safety		11.11%
Assoc of Residents of QLD Retirement Villages Inc	2		DV Connect Women's Crisis Line	12		Home Assist Secure	14	
Aged Care		6.94%	Financial		5.32%	Personal Alarms	15	
Aged Care Assessment Team	28		Bank	46		Queensland Police (QPS)	168	
Aged Care Complaints Investigation Scheme	25		Public Trustee	66		QPS - Volunteers In Policing	9	
Aged Care Facility	33		Lifeline Financial Counselling	18		QPS - Cultural Police Liaison Officer	2	
Community Care Providers	54		Centrelink	14		QPS - Crime Prevention Unit	37	
Queensland Aged and Disability Advocacy Inc (QADA)	48		Health		9.49%	QPS - Domestic Violence Liaison Officer	56	
Capacity		9.49%	Hospital	3		(all QPS)	(272)	
Assessment of Capacity	14		Community Health Centres	2		Other Referrals		17.79%
Alzheimer's/Dementia Information	9		Community Health Social Worker	6		Elder Abuse Prevention Unit	371	
QCAT	61		Hospital Social Worker	39		Seniors Enquiry Line	28	
Office of The Adult Guardian	173		Health Services Info Line	2		Other	48	
Public Trustee (see Financial)			GP	205		Older Person's Groups (overall)	4	
Complaints		0.59%	Legal		19.97%	Multicultural Services (overall)	7	
Health Quality and Complaints Commission	5		Seniors Legal and Support Service - Cairns	29		Indigenous Specific Services (overall)	4	
Ombudsman	3		Seniors Legal and Support Service - Ipswich	15		Veterans' Specific Services (overall)	17	
Office of Fair Trading	2		Seniors Legal and Support Service - Brisbane	319		Disability Services (overall)	3	
Crime and Misconduct Commission	2		Seniors Legal and Support Service - Cairns	1		Interstate Services		2.03%
Legal Services Commission	1		Seniors Legal and Support Service - Hervey Bay	32		WA - Advocare	3	
Leading Aged Services Australia	2		Seniors Legal and Support Service - Townsville	31		SA - Aged Rights Advocacy Service	4	
Human Rights and Equal Opportunity Commission	1		Seniors Legal and Support Service - Toowoomba	21		VIC - Seniors Rights Victoria	10	
Counselling/Support		5.50%	Women's Legal Service Inc - QLD	2		TAS - Advocacy Tasmania	1	
Psychologist	42		Legal Aid QLD	7		TAS - Dept of Health and Human Services	1	
General Counselling Service	50		Queensland Law Society/Private Solicitor	22		NSW - Elder Abuse Helpline	22	
Lifeline Crisis Line	18		Community Legal Centre	56		NSW - Seniors Information Service	2	
Relationships Australia	8		QADA Legal Advocacy	2		NSW - TARS	4	
Social Support Group	23		Court	4		NT - Department of Health Service	2	
Social Worker - Dept Human Services	8					Interstate Guardianship Areas	6	
<b>Total referrals: 2709</b>								
<b>*NB: Total abuse notifications: 1183. Several referrals are usually made for each call.</b>								

Source: Correspondence from UnitingCare Community, 26 May 2015.

The EPAU noted that when financial abuse is present, legal advice is usually necessary, such that a referral to the SLASS will typically be made if there is one available in the region. Where the older person has lost decision-making capacity, the EPAU reported that the caller is often advised to contact the OPG, or to seek legal advice if it is the EPoA who has called the EPAU after discovering the older person is being financially abused by another person.<sup>582</sup>

<sup>581</sup> UnitingCare, Submission no. 14, page 6.

<sup>582</sup> UnitingCare, Submission no. 14, page 6.

When these referrals are broken down by phone calls, 38 per cent of callers were referred to SLASS, and 46 per cent of callers were referred to a legal service of some kind.<sup>583</sup> The EAPU submitted that this reflects not only the high numbers of seniors affected by financial and psychological abuse, but also “the value of an SLASS model which combines legal and social work outreach services, in what is a holistic approach to the complex safety and legal issues involved”.<sup>584</sup>

In terms of issues surrounding emerging capacity issues, the EAPU emphasised that it:

*...strongly recognizes the human rights of older people with impaired capacity and explores with callers the balance between the need for financial safeguarding and rights of the cognitively impaired older person to participate in community life, to be as self-reliant as possible, to contribute to decisions about their life and circumstance and be minimally limited as far as possible given their capacity.*<sup>585</sup>

For example, EAPU notes:

*For an older person who is being taken to the bank by their niece or nephew to withdraw large sums of cash on a regular basis, the solution may be to limit the amount of money they have access to rather than stopping all access which would reduce independence and potentially socially isolate the older person. Although the exploiter may still end up getting some money, the amount can be dramatically reduced, and the older person can remain engaged with their community.*<sup>586</sup>

Importantly, UnitingCare has highlighted that in some cases the older person has full capacity to make decisions, but chooses not to take action against the abuser for a range of reasons, including safety, preservation of family relationships, and access to grandchildren. In such cases, UnitingCare notes:

*...we discuss with the older person, or the concerned other, the importance of planning for the future (e.g. drawing up an EPA that does not name the abuser as the Attorney for financial matters), as well as what steps could be taken to minimise the harm in the present situation such as cancelling keycards or credit cards, limiting withdrawal amounts, having bills paid automatically by Centrelink, and setting up alternative bank accounts.*<sup>587</sup>

The EAPU also plays an active role in raising elder abuse awareness and providing training for agencies to support improved responses and use of referral mechanisms. In the 2013-14 financial year, the EAPU participated in 205 events with 537 agencies which were attended by 5,230 participants. Included in these figures were 39 face-to-face awareness sessions delivered by the EAPU to 1,113 older people, and 109 training sessions to aged care agencies or educational facilities (attended by 2,107 aged care workers or persons soon to enter the aged care workforce).<sup>588</sup>

### 7.3.3 Seniors Legal and Support Service

Queensland’s Seniors Legal and Support Service “provides free legal and social support to seniors at risk of, or experiencing elder abuse” within a diverse array of exploitative contexts.<sup>589</sup> Offering a combination of legal advice, representation and social work, the SLASS model “is unique in that it pairs a social worker and a solicitor who can visit the older person in their home or residential facility”,<sup>590</sup>

<sup>583</sup> UnitingCare, Submission no. 14, page 5; Correspondence from UnitingCare Community, 26 May 2015.

<sup>584</sup> UnitingCare, Submission no. 14, page 5.

<sup>585</sup> UnitingCare, Submission no. 14, page 6.

<sup>586</sup> UnitingCare, Submission no. 14, pages 6-7.

<sup>587</sup> UnitingCare, Submission no. 14, page 7.

<sup>588</sup> UnitingCare, Submission no. 14, pages 1-2.

<sup>589</sup> Hervey Bay Seniors Legal and Support Service, Submission no. 12, page 2.

<sup>590</sup> Caxton Legal Centre Inc., Submission no. 15, page 4.

with the aim of providing a holistic service response to the complex issues at play in abuse and other assistance scenarios.<sup>591</sup>

Submissions received from SLASS services across Queensland highlighted that financial abuse cases constitute a significant workload for the services. Hervey Bay SLASS provided evidence from 154 cases involving financial issues dealt with by the service since 1 July 2012, while Caxton Legal Centre Inc. considered evidence from its audit of a significant 500 cases from the period 2014-15. Townsville Community Legal Service noted that it is part way through a file audit of 600 closed SLASS files with the aim of building a picture of elder abuse (including financial exploitation) within its local community area.

Townsville Community Legal Service Inc. highlighted that of 300 examined elder abuse case files (of 600 in total), 82 per cent involved financial exploitation, validating research indicating that financial exploitation is the most common form of abuse.<sup>592</sup>

Further, while the EAPU and other agencies act as important points of referral to connect seniors to required assistance, the Townsville Community Legal Service Inc. highlighted that many elder abuse clients in fact reported that they self-referred to SLASS (30 per cent), with initial contact made by 80 per cent of these clients themselves (rather than by a family member or other individual on their behalf).<sup>593</sup> Other relative levels of referral were provided by:

*...legal centres (18%), family (14%), not stated (14%), government services (9%), community services (8%), other (4%) and Police (3%).*<sup>594</sup>

Townsville Community Legal Service Inc. submitted that this information on service contacts is important because:

*...older persons have proven to be a difficult cohort to target for provision of support services in elder abuse. Additionally, studies suggest that older persons do not readily or frequently self report elder abuse. It appears that when a strong message is sent through effective media, older persons will self refer and make contact with support services.*<sup>595</sup>

Additionally, Townsville Community Legal Service Inc. highlighted service data indicating that assumptions around abuse coalescing with wealthy elders in particular may not be accurate:

*Most clients (93%) were low-income earners. Medium income earners (1.5%) and High income earners (0.5%) were not a significant portion. 92% of SLASS clients received a government pension or benefit as their source of income. Only 6 client earned an income (2%) and 16 did not state their source of income (6%).*<sup>596</sup>

Accordingly, though SLASS services may tend to refer wealthy clients who are victims of financial abuse to private legal practitioners:

*... It would be more accurate to view financial exploitation as potentially affecting all older persons rather than just those with greater means.*<sup>597</sup>

<sup>591</sup> UnitingCare, Submission no. 14, page 5.

<sup>592</sup> Townsville Community Legal Service Inc., Submission no. 1, page 11.

<sup>593</sup> Townsville Community Legal Service Inc., Submission no. 1, page 11.

<sup>594</sup> Townsville Community Legal Service Inc., Submission no. 1, page 11.

<sup>595</sup> Townsville Community Legal Service Inc., Submission no. 1, page 11.

<sup>596</sup> Townsville Community Legal Service Inc., Submission no. 1, page 11.

<sup>597</sup> Townsville Community Legal Service Inc., Submission no. 1, page 11.

In addition to the service's legal advice, representation and social work support, Caxton Legal Centre highlighted a range of important ancillary activities carried out by SLASS as follows:

*SLASS also provides approximately 32-40 Community Legal Education seminars across the greater Brisbane metropolitan area per year to seniors groups, service providers, care workers, hospital staff and any other persons who work closely with older people. The Service has also contributed to the Public Advocate's Advisory Group on supported decision-making and the new Capacity Handbook for Legal Practitioners. SLASS also maintains a high profile within Queensland in elder abuse consultative matters and collaborates regularly and consistently with other SLASS services in Queensland and with seniors' services interstate.*<sup>598</sup>

Townsville Community Legal Service Inc. submitted:

*SLASS services have used a range of innovative media and publicity campaigns to draw attention to their services including adverts inside and outside buses, television ads, performance art, flash mobs and elder friendly merchandise. SLASS services also regularly attend senior's halls and clubs, expos, senior's community events and older specific community networks.*<sup>599</sup>

Ms Vivienne Campion from Caxton Legal Centre Inc. noted that SLASS officers encounter many situations in which older people are abused by non-family members – including service providers, aged care services, paid carers, and occasionally professionals including accountants and lawyers. However, as with cases reported to EAPU, in SLASS interactions, by far and away the greatest financial abusers of older people are their adult children. In particular, SLASS officers have noted particular losses associated with a confluence of a sense of entitlement of adult children, accompanied by instances of possible mental health issues on the part of the adult child, gambling and addiction problems.<sup>600</sup>

*The consequences of financial abuse can be absolutely devastating. We have seen clients lose their homes and, in cases like that, it is because we have been involved too late and the process is too far down the track for the situation to be retrieved. I am very glad to say that we have also been in a position of helping save clients' homes. Some of the key problems that we have are clients making transfers of their property to adult sons or daughters while they are under pressure, while they are ill. I think we provided a case study where a client had been suffering from cancer and had been removed from the hospital in order to go and attend a lawyer and basically transfer the property, agree to a mortgage and so forth. Those are the situations in which it can happen.*<sup>601</sup>

#### **7.3.4 Office of the Public Guardian**

In Queensland, all persons are presumed to have full capacity to make any decision they wish in accordance with the law.<sup>602</sup> However, the Office of the Public Guardian (OPG), established under the *Public Guardian Act 2014*, exercises responsibilities for adults with impaired capacity for a matter and for relevant children in out of home care under the Queensland Child Protection system.

The *Public Guardian Act 2014* and the *Guardianship and Administration Act 2000* establish the legislative functions and powers of the OPG, and the *Powers of Attorney Act 1998* regulates the authority for adults to appoint substitute decision-makers which may include the OPG.

<sup>598</sup> Caxton Legal Centre Inc., Submission no. 15, page 4.

<sup>599</sup> Townsville Community Legal Service Inc. Submission no. 1, page 11.

<sup>600</sup> Ms Vivienne Campion, Caxton Legal Centre Inc., *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 9.

<sup>601</sup> Ms Vivienne Campion, Caxton Legal Centre Inc., *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 10.

<sup>602</sup> Guardianship and Administration Act 2000, schedule 1.

The OPG explained in its submission:

*OPG is one element in the Queensland System that makes provision for the protection of adults with impaired capacity for matters. Other relevant legislation includes:*

- *Powers of Attorney Act 1998 – empowers individuals to make provision in advance of loss of capacity by means of Enduring Powers of Attorney (EPOA) and Advanced Health Directives (AHD) for circumstances where they might, in the future, lose the capacity to make decision for themselves.*
- *Guardianship and Administration Act 2000 – empowers the independent Queensland Civil and Administrative Tribunal to appoint guardians and/or administrators for an individual where QCAT is satisfied that an individual lacks capacity for a matter.*
- *Public Guardian Act 2014 – creates a statutory guardian of last resort.*
- *Public Trustee Act 1978 – creates a statutory administrator of last resort.*<sup>603</sup>

Section 19 of the *Public Guardian Act 2014* empowers the OPG to investigate any complaint or allegation that an adult with impaired capacity is being or has been neglected, exploited or abused; or has inappropriate or inadequate decision-making arrangements.

The OPG submitted that persons with impaired capacity are often socially isolated and dependent upon close family or friends who they entrust with their financial assets and resources. Whilst not all seniors with impaired capacity will face financial abuse, their vulnerability places them at significant risk of exploitation by unscrupulous family members or friends who have access to their financial assets.<sup>604</sup>

The OPG stated:

*Under its investigative powers, the Public Guardian has the power to require people to produce records and accounts; gain access to any relevant information, including medical files, or issue a summons to a person requiring them to provide information.*

*Investigations of allegation of abuse include but are not limited to:*

- *Financial (such as misusing a person's money)*
- *Exploitation (such as taking advantage of the person)*
- *Abuse of power of attorney (such as under an Enduring Power of Attorney the person may not be acting in the interests of the person with impaired capacity).*

*The purpose of an investigation is to identify the level of risk for the vulnerable person and the action needed to best protect them. Investigations gather evidence to find out whether the allegation can be substantiated on the balance of probabilities.*<sup>605</sup>

The Public Guardian, Mr Kevin Martin, identified that the OPG investigates an average of 100 to 120 files at any one time.<sup>606</sup> Once the OPG has determined on the basis of an investigation that decision-making support or care is deficient and amounts to neglect, exploitation or abuse, it aims to then to help the person with impaired capacity obtain better arrangements for their support and care.

<sup>603</sup> OPG, Submission no. 5, page 2.

<sup>604</sup> OPG, Submission no. 5, page 7.

<sup>605</sup> OPG, Submission no. 5, page 3.

<sup>606</sup> Mr Kevin Martin, Public Guardian, *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 12.

The Public Guardian may apply to QCAT for a warrant to enter and remove an adult when there are reasonable grounds to suspect immediate risk of harm due to neglect (including self-neglect), exploitation or abuse.<sup>607</sup> If further action is required (e.g. for substantiated allegations), it may refer a matter to the police, or where relevant, to QCAT.<sup>608</sup>

The OPG explained:

*Where an investigation indicates the necessity for action to be taken, e.g. if financial abuse of a person is indicated, the Public Guardian may take action such as suspending a guardian/administrator operating under an enduring instrument for up to 3 months (section 34), bring an application to QCAT for the appointment of a guardian and/or administrator, etc.*

*Where OPG investigations indicate that criminal offences may have occurred such investigations are referred as a matter of course to the Queensland Police Service for investigation as to any potential breach of the criminal law.*<sup>609</sup>

Additionally, the OPG may connect the senior with other agencies that can provide assistance to them in their daily life.<sup>610</sup>

Importantly, the OPG's investigative function is a reactive, not proactive function, meaning that allegations of abuse must be reported before an investigation can commence. With no proactive investigative power, the initiation of an investigation relies on those involved in the person's life to identify that the person may be at risk of abuse. The OPG noted:

*The OPG recognises that a person subject to abuse may not be able to report it, or be in a position to report it. In such circumstances, the OPG works with carers, support providers and family members to immediately report suspicions of abuse to the agencies involved with the person's care, and also to report the matter to the OPG or the police directly where a criminal offence is suspected.*<sup>611</sup>

Public Guardian Mr Martin advised that an essential component of efforts in this regard is the OPG's community visitors program. This program forms part of the OPG's broader service charter with respect to adults with impaired capacity, which is to:

- make personal and health decision if it is the adult's guardian or attorney
- investigate allegations of abuse, neglect or exploitation, and
- advocate and mediate for people with impaired capacity, and educate the public on the guardianship system.<sup>612</sup>

<sup>607</sup> Section 36 of the *Public Guardian Act 2014* empowers the Public Guardian to apply to QCAT under section 148 of the *Guardianship and Administration Act 2000* for a warrant to enter and remove the adult with impaired capacity.

<sup>608</sup> OPG, Submission no. 5, page 4; Public Advocate, [Elder abuse resource directory: A Queensland guide to services, assistance and information](#), 2012, page 9.

<sup>609</sup> OPG, Submission no. 5, pages 1-2.

<sup>610</sup> Public Advocate, [Elder abuse resource directory: A Queensland guide to services, assistance and information](#), 2012, page 9.

<sup>611</sup> OPG, Submission no. 5, page 3.

<sup>612</sup> OPG, Submission no. 5, page 2.



### 7.3.5 Community visitors program

The OPG carries out an important protective role through its administration of a community visitor program which aims to protect the rights and interests of adults with intellectual, psychiatric or cognitive disability.<sup>613</sup>

Under the program, community visitors are appointed on a casual basis to conduct regular visits to more than 1,200 “visitable sites” across Queensland, where they provide a rights protection and abuse prevention service to more than 6,000 Queensland adults who may be subject to abuse, neglect or exploitation due to impaired decision-making capacity resulting from disability.<sup>614</sup>

The sites visited by community visitors are:

- disability accommodation provided or funded by the Department
- authorised mental health services, and
- private hostels (level 3 accreditation).<sup>615</sup>

Community visitors may make inquiries and lodge complaints for, or on behalf of, residents of these sites.<sup>616</sup> They also have the power to refer complaints to an external agency – including, for example, the Department, Queensland Health, or the Residential Services Unit,<sup>617</sup> as appropriate.<sup>618</sup> Issues that may be enquired into by a community visitor include:

- adequacy of services provided for assessment, treatment and support
- appropriateness of standards of accommodation, health and wellbeing
- provision of services in a way that is least restrictive of the person’s rights
- adequacy of information available for consumers about their rights, and
- operation of an accessible and effective complaints process.<sup>619</sup>

Visits are unannounced “so that community visitors can observe a standard of service delivery provided by a site on a typical day”.<sup>620</sup> The OPG submitted:

*When on site, the community visitor has legislative authority to: access all areas of a site; require staff to answer questions; request documents related to the support of adults with impaired capacity at the site; make copies of relevant documents; and talk in private with the adults, or staff at the facility. At the end of each visit, the community visitor then produces a report which is sent to the service provider and Public Guardian.*<sup>621</sup>

<sup>613</sup> OPG, Submission no. 5, pages 1-2.

<sup>614</sup> OPG, Submission no. 5, page 5.

<sup>615</sup> OPG, Submission no. 5, page 5.

<sup>616</sup> OPG, Submission no. 5, page 4.

<sup>617</sup> The Department of Housing and Public Works specifies that a complaint to the Residential Services Unit “can be made by anyone about a residential service, including aspects such as accommodation, buildings, amenities, the management, staff, food services and personal care services provided as part of the service. A complaint can also be made about suspected unregistered residential services”. See: Department of Housing and Public Works, [Making a complaint about a residential service](#), Factsheet, Queensland Government, May 2015, page 1.

<sup>618</sup> OPG, Submission no. 5, page 4.

<sup>619</sup> OPG, Submission no. 5, pages 4-5.

<sup>620</sup> OPG, Submission no. 5, page 5.

<sup>621</sup> OPG, Submission no. 5, pages 5-6.

In discharging these functions, community visitors “perform an essential function of being independent ‘eyes and ears’ on the ground who are able to identify issues that others (including family) may not be able to see”.<sup>622</sup>

The OPG submitted that under the program, community visitors observe and report many instances of financial abuse of persons with impaired capacity, particularly where family members have used the funds of persons with disability for their own means, or misused funds or other assets accessed under a power of attorney.<sup>623</sup>

Additionally, in institutional or residential settings in particular, community visitors have identified situations where inadequate financial management on behalf of a person with impaired capacity “has led to failure to provide the person in their care with reasonable access to services such as dental, medical, podiatry, or assessments for other health care needs including, but not limited to, speech and language pathology, psychiatry, psychology, dieticians and diabetes services”.<sup>624</sup>

Although potentially faced by persons with impaired capacity of all ages, the OPG identified that “these issues are particularly relevant for seniors with impaired capacity”.<sup>625</sup>

Public Guardian Mr Martin submitted of the program:

*Our community visitor program is, in my view, a vital mechanism to protect vulnerable people in institutions and in various care and support processes.*<sup>626</sup>

### 7.3.6 Current service limitations

Stakeholders submitted that the EAPU’s Elder Abuse Hotline, Seniors Enquiry Line and SLASS and their mutual referral pathways provide a valuable contribution to the financial protection of older consumers. However, submissions also emphasised that it is crucial to ensure that seniors are aware of these services and that all older Queenslanders can access a similar level of assistance.<sup>627</sup> With regards to service burdens and the adequacy of service supports generally, Caxton Legal Centre Inc.’s Ms Vivienne Campion submitted:

*There are five Seniors Legal and Support Services (SLASS) altogether across Queensland in Cairns, Townsville, Hervey Bay, ours in Brisbane and Toowoomba, which also covers Ipswich, but of course that leaves large sections Queensland and rural remote areas that do not have a service like ours.*<sup>628</sup>

While Ms Campion noted that SLASS services “do take calls from all those further-out areas and we do as much as we can by phone”; as National Seniors submitted:

*The absence of senior-specific legal and support services in other regional hubs such as Bundaberg and the Sunshine Coast is notable.*<sup>629</sup>

<sup>622</sup> OPG, Submission no. 5, page 6.

<sup>623</sup> OPG, Submission no. 5, page 6.

<sup>624</sup> OPG, Submission no. 5, page 6.

<sup>625</sup> OPG, Submission no. 5, page 6.

<sup>626</sup> Mr Kevin Martin, Public Guardian, *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 13.

<sup>627</sup> National Seniors Australia, Submission no. 18, page 2.

<sup>628</sup> Ms Vivienne Campion, Caxton Legal Centre Inc., *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 9.

<sup>629</sup> National Seniors Australia, Submission no. 18, page 2.

These concerns were acknowledged by the Department, which submitted:

*The demand for SLASS is high and the workload of all SLASS is to capacity. A significant issue that has been identified by the department is the difficulty in accessing face-to-face services in rural and regional areas.*<sup>630</sup>

Submitters and stakeholders called for the SLASS program to be supported to expand into other areas of need, emphasising that an older abused person's access to the law is fundamental.<sup>631</sup> More specifically, UnitingCare Community stated:

*Helpline data of percentage calls received based on location, indicates expansion should be prioritised to the Gold Coast (10.5% of calls), Sunshine Coast (8.2% of calls) and Rockhampton (4% of calls).*<sup>632</sup>

### Committee comment

The Committee notes the valuable contribution of the Elder Abuse Hotline, Seniors Enquiry Line and SLASS in responding to the financial abuse and exploitation of seniors in Queensland. The Committee agrees that all Queenslanders should be afforded the same levels of access and support, and therefore supports calls for increased funding in regional hubs throughout the State.

### Recommendation 24

The Committee recommends that the Queensland Government audit and increase Seniors Legal and Support Services provided throughout the State and prioritise the provision of services to regional hubs and under-served areas.

Stakeholders also raised concerns about the OPG's ability to sufficiently fulfil its remit in defending the rights of seniors with decision-making impairment or declining capacity. In general capacity terms, QADA highlighted "that there are only a handful of staff within this area of the OPG".<sup>633</sup> The 2013-14 annual report of the Adult Guardian<sup>634</sup> noted that "the level of complaints to the Investigations [Unit] will increase beyond the capacity of the current establishment to handle effectively".<sup>635</sup>

QADA also more specifically submitted:

*The Office of Public Guardian (OPG) has extensive powers to investigate allegations of financial abuse of older people with impaired capacity by their substitute decision-maker.*

*They can also suspend an EPOA document and refer the matter to QCAT.*

*QADA notes that it has had success in referring matters of this nature for investigation by the OPG. However, on other occasions, the OPG has been unable to follow up a referral because there has not been a way to access medical information to show that the adult to whom the referral relates has impaired capacity.*<sup>636</sup>

<sup>630</sup> Correspondence from the Department, 28 May 2015, page 6.

<sup>631</sup> See, for example: UnitingCare, Submission no. 14, page 8.

<sup>632</sup> UnitingCare, Submission no. 14, page 8.

<sup>633</sup> QADA, Submission no. 20, page 7.

<sup>634</sup> From 1 July 2014, the role of the Child Guardian was refocussed and combined with that of the Adult Guardian to form the new independent statutory body, the OPG. See: Office of the Public Guardian, [The new Office of the Public Guardian](#), Factsheet, State of Queensland, June 2014, page 1.

<sup>635</sup> Office of the Adult Guardian, [Annual Report 2013-14](#), State of Queensland, 2014, page 8.

<sup>636</sup> QADA, Submission no. 20, page 7.

The OPG also noted with regret that its powers to investigate allegations of neglect, exploitation or abuse of a person currently cease on the death of an individual.<sup>637</sup> In 2013-14, of the OPG's 185 concluded cases, approximately 70 per cent closed with no formal findings, of which 26 per cent were concluded as a result of the death of the adult.<sup>638</sup> OPG submitted with regard to this 26 per cent of non-concluded cases that it has been seeking legislative empowerment to continue any such investigations to their logical conclusion, notwithstanding the death of the individual whose affairs are being investigated.<sup>639</sup>

Additionally, in respect of the OPG's community visitors program, the Public Guardian submitted that:

*...it is a vital mechanism in protecting vulnerable people and it is something that I firmly believe needs to be expanded as the NDIS develops. It needs to be expanded into many areas of mental health and other forms of care for people.*<sup>640</sup>

In addition:

*While community visitors are sometimes able to identify suspected financial abuse or seniors in residential or institutional care settings, they are limited by having no jurisdiction to visit persons with impaired capacity living in community or at aged care facilities. In such circumstances, clinical staff (whether in residential, institutional or community setting) are often best placed to identify and address the common risk factors for abuse and exploitation, and recognise risk factors and potential perpetrators for abuse.*

*It is recommended that there be industry agreed standards of care for clinical staff regarding recognition and identification of risk factors relating to abuse and exploitation. Clinical staff should also be required to be mandatory reporters where abuse or exploitation of person with impaired capacity is suspected, regardless of the nature of abuse or exploitation. Greater responsibility should be placed upon clinical staff and those persons involved in the day-to-day care to understand and identify risk factors, particularly the ability to identify and address common risk factors for abuse and exploitation, both in recognising the signs of abuse and risk factors identifying potential perpetrators of abuse.*<sup>641</sup>

### Committee comment

The Committee supports the OPG's submission seeking amendment to allow the Office to continue investigations to their logical conclusion, notwithstanding the death of the individual whose affairs are being investigated.

The Committee appreciates the value of the OPG's community visitors program and the potential benefits of expanding this program to include areas of mental health and other forms of care for Queenslanders.

Complementing such expanded efforts, the Committee considers that there is clear scope to improve the systems response through enhanced partnerships with key service providers, and particularly through the adoption of agreed standards of care for clinical staff regarding the recognition and identification of risk factors relating to abuse and exploitation.

<sup>637</sup> OPG, Submission no 5, page 4.

<sup>638</sup> Office of the Adult Guardian, [Annual Report 2013-14](#), 2014, page 19.

<sup>639</sup> OPG, Submission no 5, page 4.

<sup>640</sup> Mr Kevin Martin, Public Guardian, *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 13.

<sup>641</sup> OPG, Submission no. 5, pages 7-8.

The Committee also considers that there are benefits to requiring clinical staff to be mandatory reporters where abuse or exploitation of a person with impaired capacity is suspected, regardless of the nature of the abuse or exploitation.

#### **Recommendation 25**

The Committee recommends that the *Public Guardian Act 2014* be amended to allow the Office of the Public Guardian to continue to investigate a matter, notwithstanding the death of the individual whose affairs are being investigated.

#### **Recommendation 26**

The Committee recommends that the community visitors program be expanded into all areas of care in Queensland.

#### **Recommendation 27**

The Committee recommends the development of agreed standards of care for clinical staff working in care in Queensland with regard to the recognition and identification of risk factors relating to abuse and exploitation.

#### **Recommendation 28**

The Committee recommends that clinical staff working in aged care in Queensland be required to be mandatory reporters where abuse or exploitation of a person with impaired capacity is suspected, regardless of the nature of the abuse or exploitation.

### **7.3.7 Legislative protections against financial elder abuse**

The *Criminal Code Act 1899* (the Code) provides for a wide range of offences (and penalties) pertaining to various types of financially exploitative crimes and abuse – including misappropriation and various types of fraud, scams and forms of financial abuse outlined in chapters 36 and 37 of the Code which deal with “stealing” and offences “analogous to stealing”. Abuse expressed as neglect is covered under chapter 27 of the Act, which relates to the “Preservation of Human Life including the Duty to provide Necessaries”.

The primary legislation pertaining to financial elder abuse in Queensland, however, is the *Domestic and Family Violence Protection Act 2012*. Although the Act does not make explicit reference to financial or economic elder abuse, the *Domestic and Family Violence Protection Act 2012* defines “economic abuse” to include coercive, deceptive or unreasonable control that occurs within a relevant intimate, family or informal care relationship.<sup>642</sup>

Section 13 of the Act provides that a “relevant relationship” is: (a) an intimate personal relationship; or (b) a family relationship; or (c) an information care relationship.

Section 37 of the Act provides in relation to abusive behaviours in the context of a relevant relationship that:

*A court may make a protection order against a person (the respondent) for the benefit of another person (the aggrieved) if the court is satisfied that*

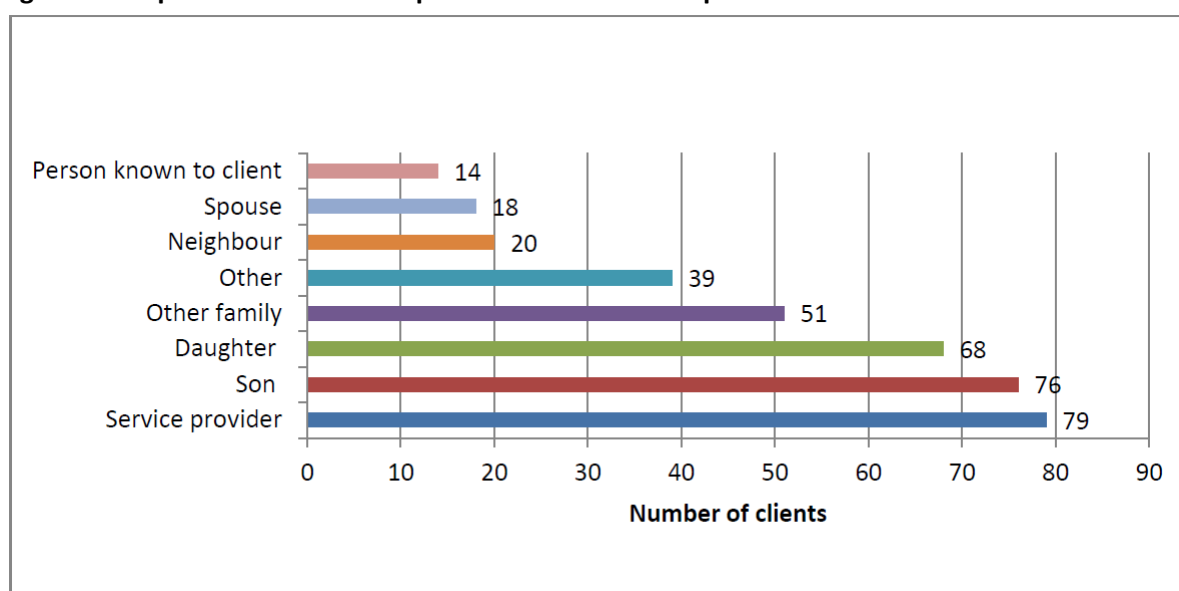
<sup>642</sup> Domestic and Family Violence Protection Act 2012 (Qld), section 12.

- 1) a relevant relationship exists between the aggrieved and the respondent; and
- 2) the respondent has committed domestic violence against the aggrieved; and
- 3) the protection order is necessary or desirable to protect the aggrieved from domestic violence.<sup>643</sup>

Economically abusive behaviour is one of a broad range of acts recognised within the legislation as constituting domestic violence.<sup>644</sup> Caxton Legal Centre Inc. noted that domestic violence research has shown that all forms of abuse are “often interconnected and are part of a complex, shifting kaleidoscope or mosaic of abuse, often with the misuse or abuse of power and control at the centre”.<sup>645</sup>

Caxton Legal Centre Inc. submitted that the addition of financial and psychological abuse as a form of abuse in this legislation has provided a tangible recourse for clients who suffer financial abuse at the hands of family members. However, Caxton Legal Centre Inc. noted that many clients are presenting with abuse being perpetrated by those not included in the definition of “relevant relationship”. In particular, the Centre’s SLASS Coordinating Solicitor Ms Kirsty Mackie drew attention to the omission from the “relevant relationship” definition of paid service providers, who are the second highest ranking group of abusers according to Centre data (see Figure 7).

**Figure 7 Perpetrator’s relationship to client – from a sample of 500 cases**



Source: Caxton Legal Centre Inc., Submission no. 15, page 9.

Given that service provider relationships are not covered under the “relevant relationship” definition, such abusers are unable to be brought to account under the *Domestic and Family Violence Protection Act 2012*.<sup>646</sup> Accordingly, Caxton Legal Centre Inc. recommended that the definition of “relevant relationship” be broadened to include paid carers, companions, friends and boarders – “or alternatively, that consideration be given to separate elder justice legislation”.<sup>647</sup>

<sup>643</sup> Domestic and Family Violence Protection Act 2012 (Qld), section 37.

<sup>644</sup> Behaviours constituting domestic violence are outlined in section 8 of the Act, which specifies the ‘meaning of domestic violence’. See: *Domestic and Family Violence Protection Act 2012 (Qld)*, section 8.

<sup>645</sup> Caxton Legal Centre Inc., Submission no. 15, page 9.

<sup>646</sup> Ms Kirsty Mackie, Coordinating Solicitor, Seniors Legal and Support Service, Caxton Legal Centre Inc., *Transcript of Proceedings (Hansard)*, Public Hearing, Communities, Disability Services and Domestic and Family Violence Prevention Committee, 3 June 2015, page 11.

<sup>647</sup> Caxton Legal Centre Inc., Submission no. 15, page 2.

QADA suggested that a proactive prosecution approach that seeks out and prosecutes elder abuse, including financial abuse, could also bolster existing legal provisions, to improve protections for Queensland seniors:

*This could be guided by a “Prosecutors Handbook”, similar to that in the USA and Canada, to show, in practical terms how to investigate and take evidence from older people with disabilities and vulnerabilities whose evidence may otherwise be discounted from the beginning (National Center for State Courts, Prosecution Guide to Effective Collaboration on Elder Abuse, available at <http://www.eldersandcourts.org/~media/Microsites/Files/cec/Prosecution%20Collaboration.ashx>). Training could be delivered to police and prosecutors on the basis of this handbook.*<sup>648</sup>

This type of approach seeks to leverage multidisciplinary partnerships and build expertise to assist police and prosecutors in effectively gathering evidence and responding to victims, prosecuting individual cases, and improving community responses to elder abuse more broadly, by:

- improving police and prosecutor knowledge of the State’s laws relating to elder abuse, neglect and exploitation and their understanding of the dynamics and tactics used in the commissioning of these crimes
- enhancing recognition of underlying issues which may affect witness testimony (including effects of trauma, shame, fear of losing independence, fear of impacts on relationships with the perpetrator or family and friends, and lack of knowledge about the criminal justice process)
- improving knowledge and developing strategies with regard to other factors which may impact on prosecution (including mental capacity, undue influence, health conditions, and accommodation of the victim’s cognitive, physical and other needs), and
- enhancing referral pathways and linkages with community resources to facilitate multidisciplinary support responses.<sup>649</sup>

Multidisciplinary, integrated approaches have been employed with positive outcomes in responding to and prosecuting domestic and family violence.<sup>650</sup> Other opportunities for service provider collaboration are considered in section 7.6.

### Committee comment

The Committee notes the possible limitations of the definition of the term “relevant relationship” in the *Domestic and Family Violence Prevention Act 2012*, and agrees that an amendment may be needed to broaden the scope of the definition to include paid carers, companions, friends and boarders. In this regard, the Committee considered that indications that paid service providers rank as the second highest ranking group of abusers show that such action may be particularly imperative.

The Committee also considered that other means of bolstering prospects for prosecution and improving legal service interactions with financial abuse victims merit further investigation.

<sup>648</sup> QADA, Submission no. 20, page 7.

<sup>649</sup> See also S Keilitz, B Uekert, T Jones, E Baldwin, P Ulrey and C Heisler, *Prosecution Guide to Effective Collaboration on Elder Abuse*, National Center for State Courts, Bureau of Justice Assistance, U.S. Department of Justice, 2012, pages 2-3.

<sup>650</sup> Australian Law Reform Commission (ALRC) and NSW Law Reform Commission (NSWLRC), ‘Integrated responses in the context of family violence,’ Chapter 29, *Family Violence – A National Legal Response*, ALRC Final Report 114/NSWLRC Report 128, vol. 1, Commonwealth of Australia, October 2010, pages 1349-1395.



**Recommendation 28**

The Committee recommends that the definitions of “relevant relationship” in the *Domestic and Family Violence Prevention Act 2012* be amended to include paid carers, companions, friends and boarders.

**7.3.8 Alternative dispute resolution: supported elder mediation**

Given the “expensive and adversarial” nature of elder abuse court situations, and their likely “negative impact on family relationships”; alternative justice approaches “which are cost effective and preserve family relationships” have been identified as having “considerable appeal for families dealing with these issues”.<sup>651</sup> The Committee noted that Caxton Legal Centre Inc.’s submission considered in some detail the potential for alternative dispute resolution to deliver more participatory forms of justice in cases of abuse:

*Supported mediation has the potential to be well suited as a form of dispute resolution for older people. It is submitted that a participatory model of supported mediation is the best way to address the ageist context in which abuse occurs, namely allow the older people to participate in the solution instead of relying on intervention.*

*It is proposed that a model of supported mediation be utilised to serve as education and prevention.*

*A supported family mediation is a cooperative process aimed at assisting older people and their families prevent or resolve family conflicts and to empower the older person to make decisions that protect their interests and their rights. The process would allow the older person to find areas of agreement which can be incorporated into solutions that the people themselves create. These mediations or meetings would serve as an early form of intervention whereby families can develop strategies in relation to the older person’s finances and property to guard against potential risk of exploitation or abuse from a family member.*

*The potential advantages include:*

- *Empowering the older person by giving them a voice in an open forum;*
- *Hasty decision are potentially prevented;*
- *Protective mechanisms can be put in place to prevent any future financial exploitation of the older person;*
- *Family members are educated on behaviours perceived to be normal but are in fact financial abuse;*
- *Escalation of a family dispute into legal action is avoided and matters are prevented from going to QCAT or through the court process.*

*A similar project titled “The Older Person Centred Mediation Project” is currently being trialled in South Australia involving collaboration between the Department for Families and Communities, Alzheimer’s Australia SA, Guardianship Board, Office of the Public Advocate, Relationships Australia SA, University of South Australia and Flinders University.<sup>652</sup>*

Further, Caxton Legal Centre Inc.’s Ms Mackie commented:

*I think it would be worthwhile to investigate ... a specific mediation component of the dispute resolution... it is not so much that the older person is put in a room and pitted against a table*

<sup>651</sup> J Braun, ‘[Elder Mediation – Promising Approaches and Potential Pitfalls](#)’, *Elder Law Review*, vol. 7 (article 2), 2013, page 4.

<sup>652</sup> Caxton Legal Centre Inc., Submission no. 15, pages 18-19.

*of people; it is a collaborative process and it is something that everyone is educated. Even people who were skating on thin ice in terms of potentially misusing powers of attorney, they are educated...*

*It keeps it out of the courts, it keeps it out of the tribunals, because our clients run a mile from the courts. We have great difficulty convincing people to go to court.*<sup>653</sup>

Caxton Legal Centre Inc. also emphasised that family based mediation or alternative dispute resolution is widely supported in the context of elder abuse;<sup>654</sup> and may be better able to support financial recourse amid the often complicated and nuanced contexts involved in the transfer of assets, particularly where they involve competing understandings of transfers as gifts or loans respectively.<sup>655</sup>

### Committee comment

The Committee acknowledges the benefits of Supported Elder Mediation, which extend to educating the participants about their respective rights and responsibilities.

### Recommendation 29

The Committee recommends that the Queensland Government develop programs to enhance the delivery, availability and accessibility of Supported Elder Mediation.

### 7.3.9 Prevalence study

Stakeholders and submitters noted that Queensland currently lacks any rigorous prevalence study identifying the incidence of elder abuse in the State. Without such baseline data, the EAPU notes, it is:

*...difficult to make accurate estimates of the cost and the impact on health-care utilisation and evaluate the impact of prevention and/or awareness on actual abuse rates. It also means that specific smaller studies that may get done or people may want to do cannot be generalised more broadly to all victims.*<sup>656</sup>

This call was echoed by the Caxton Legal Centre Inc., which noted the importance of review or audit data to help “gain a better understanding of our client base and the issues they [are] presenting with, in order to provide a more effective service”.<sup>657</sup>

Currently in Queensland, submitters emphasised that available prevalence data is collected primarily through interactions with the EAPU Helpline – the only known ongoing data collection in Queensland specific to elder abuse.<sup>658</sup>

There are significant limitations associated with this collection of data, including that it is collected through voluntary disclosure of notifiers (the individual disclosing the abuse, whether a victim or third party), and is therefore vulnerable to the incompleteness and subjective assessment of the notifier.<sup>659</sup> Additionally, abuse cases self-select themselves into the dataset – that is, relative levels of abuse at a population level must be extrapolated based on the number of victims reporting or reported to the unit.<sup>660</sup>

<sup>653</sup> Ms Kirsty Mackie, Caxton Legal Centre Inc., *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 11.

<sup>654</sup> Caxton Legal Centre Inc., Submission no. 15, pages 19-20.

<sup>655</sup> Caxton Legal Centre Inc., Submission no. 15, page 19.

<sup>656</sup> Ms Cellaigh Spike, EAPU, *Transcript of Proceedings (Hansard)*, Public Hearing, 20 May 2015, page 13.

<sup>657</sup> Caxton Legal Centre Inc., Submission no. 15, page 19.

<sup>658</sup> UnitingCare Community, Submission no. 14, page 1.

<sup>659</sup> UnitingCare Community, Submission no. 14, page 1.

<sup>660</sup> UnitingCare Community, Submission no. 14, page 1.

Further, given the broad consensus that there is likely to be significant levels of underreporting of elder abuse, such reports – while important – are likely to represent a significant underestimation of the extent of impacts.

In sum, the EAPU notes:

*It [a prevalence study] is something that the EAPU has been advocating for a long time. We would really like to see a prevalence study, not just a phone survey. A detailed study would be very useful. The other obvious benefit of a prevalence study is that it actually helps us to plan for our future. We know the population is aging. At the moment we do not know what targeted resources we are going to need into the future. Whilst the helpline is an important part of our work, the training and awareness is actually where it is going to get traction on the ground. We hear more about underreporting from having those conversations in local community settings. Having a prevalence study would actually allow not just us but obviously the Queensland government to make a much more targeted investment into the needs of the community once we know exactly what they are.*<sup>661</sup>

Caxton Legal Centre Inc. similarly called for funding to be provided for a study to be undertaken,<sup>662</sup> and Dr Cassandra Cross also advocated for more research with regards to consumer scams and associated forms of financial exploitation.<sup>663</sup>

#### Committee comment

The Committee acknowledges the notable absence of elder abuse prevalence information for Queensland.

The Committee notes the broad support for a prevalence study, and the benefits this data would afford service providers in the development and delivery of vital services to Queensland's seniors.

#### Recommendation 30

The Committee recommends that the Queensland Government commission a study into the prevalence of elder abuse in Queensland.

## 7.4 Supported and substituted decision-making

### 7.4.1 Prioritising supported decision-making

There are a number of international human rights treaties that are relevant to the protection of at-risk adults, including the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, and the *Convention on the Elimination of All Forms of Discrimination against Women*. The right of all people to live their lives free from violence is central to many of these core human rights treaties.<sup>664</sup>

<sup>661</sup> Ms Samantha Klintworth, EAPU, *Transcript of Proceedings (Hansard)*, Public Hearing, 20 June 2015, pages 13-14.

<sup>662</sup> Caxton Legal Centre Inc., Submission no. 15, page 2; Ms Vivienne Campion, Caxton Legal Centre Inc., *Transcript of Proceedings (Hansard)*, Public Hearing, 3 June 2015, page 11.

<sup>663</sup> Dr Cassandra Cross, QUT, *Transcript of Proceedings (Hansard)*, Public Hearing, 15 July 2015, pages 5-7.

<sup>664</sup> J Chesterman, [Responding to violence, abuse, exploitation and neglect: improving our protection of at-risk adults](#), Report for the Winston Churchill Memorial Trust of Australia, Office of the Public Advocate, Victoria, Australia, July 2013, page 14.

Moves are also afoot to establish a UN convention on the rights of older persons, in recognition that despite the existence of the *Universal Declaration of Human Rights*,<sup>665</sup> older people are not recognised explicitly under the international laws that legally oblige governments to realise the rights of all people.<sup>666</sup> Among existing international conventions, however, the *Convention on the Rights of Persons with Disabilities* (the Convention) has particular relevance to this Inquiry, as seniors are more likely than others to have identified disabilities, or may face declining physical and/or cognitive capability in their later years.<sup>667</sup>

Notably, while assisted decision-making provisions are intended to act as a protective mechanism for those adults with impaired capacity, the Convention acknowledges that a range of practices have often been undertaken in the name of “protection”, which ultimately constitute human rights abuses.<sup>668</sup> Two of the key themes in the Convention for the purposes of this Inquiry are that:

- positive steps should be taken to prevent, and respond appropriately to, violence against, and abuse of, people with disabilities, and
- State-directed substitute decision-making should be minimised, with preference given to assisted or supported decision-making.<sup>669</sup>

With regards to the latter of these themes in particular, Article 12 of the Convention affirms that persons with disabilities have the right to recognition everywhere as persons before the law, such that:

*(2) State Parties shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in aspects of life.*

*(3) State Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.*

*(4) State Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, **are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review** by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.*<sup>670</sup>

Chesterman notes that while these articles provide the authority for substitute decision-making arrangements to be employed; they also emphasise that the transferral of decision-making authority

<sup>665</sup> Established in 1948, the Universal Declaration of Human Rights is now recognised as customary law that is binding on every country in the world.

<sup>666</sup> Hon S Ryan AO (Age Discrimination Commissioner), ‘UN Convention for the Rights of Older Persons’, Speech (online), Older Women’s Network Event, 20 August 2014, <https://www.humanrights.gov.au/news/speeches/un-convention-rights-older-persons> (accessed 20 August 2015); *Strengthening Older People’s Rights: Towards a UN Convention*, ‘A resource for promoting dialogue on creating a new UN Convention on the Rights of Older Persons’, Page 3

<sup>667</sup> Chesterman, *Responding to violence, abuse, exploitation and neglect: improving our protection of at-risk adults*, 2013, page 14.

<sup>668</sup> Chesterman, *Responding to violence, abuse, exploitation and neglect: improving our protection of at-risk adults*, 2013, page 14.

<sup>669</sup> Chesterman, *Responding to violence, abuse, exploitation and neglect: improving our protection of at-risk adults*, 2013, page 14.

<sup>670</sup> See Article 12, *United Nations Convention on the Rights of Persons with Disabilities*, UN GA Res 61/106 (entered into force 3 May 2008), signed by Australia 30 March 2007, webpage, <http://www.un.org/disabilities/convention/conventionfull.shtml> (accessed 20 August 2015).

(as happens when guardianship orders and other substitute decision-making processes, including involuntary mental health treatment orders are made) should rarely occur.<sup>671</sup> Further, where such arrangements are necessary, they should be tailored to the needs of the individual, limited in time, and subject to review.<sup>672</sup>

In adopting the Convention, the Australian Government declared that it did so on the basis “that the Convention allows for fully supported or substituted decision-making arrangements ... only where such arrangements are necessary, as a last resort and subject to safeguards”.<sup>673</sup>

In keeping with this, the OPG submitted:

*The concept of assisted or substituted decision-making for individuals who lack capacity is arguably no longer reflective of current acceptable international standards for decision-making for individuals who lack necessary capacity. The United Nations Conventions on the Rights of Person with Disabilities has now set the international standard for decision-making for individuals who lack capacity as being that of supported decision-making.*<sup>674</sup>

The Public Trustee, in its submission, stated that the framework established under Queensland Law “is very much one oriented to making decisions only when necessary and then only with the interests and views of the adult having been taken into account”, as reflected in the “general principles” for guardians and administrators outlined in schedule 1 of the *Guardianship and Administration Act 2000*.<sup>675</sup> These principles require:

*...amongst others, taking account of the adult’s right to be a valued member of society (principle 4), participate in the general community (principle 5), encouraging self-reliance (principle 6), to participate as much as is practicable in making decision (principle 7(1)), obliging the substitute decision-maker to the greatest extent practicable to preserve the adult’s right to make his or her own decisions (principle 7(2)) and also where appropriate to make decisions which would conform with the adult’s views and wishes if the adult was not affected by the incapacity (principle 7(4)).*<sup>676</sup>

However, the OPG argued that this acknowledgement in the Act’s general principles does not necessarily translate to particular standards of behaviour or action in relation to key decision-making processes, such that “Queensland has not yet made the necessary legislative amendment to reflect such a new international standard in practice”.<sup>677</sup>

QADA similarly highlighted that it often sees substitute decision-making employed as an inadequate response arising from a lack of other appropriate supports and often very heavy handed. In the 2014-15 financial year, QADA assisted over 200 clients and attended approximately 100 QCAT hearings relating to guardianship and administration matters.<sup>678</sup> QADA CEO Mr Geoff Rowe reported that a scenario that regularly arises in this guardianship casework is where an older person is having some

<sup>671</sup> Chesterman, [Responding to violence, abuse, exploitation and neglect: improving our protection of at-risk adults](#), 2013, page 14.

<sup>672</sup> Chesterman, [Responding to violence, abuse, exploitation and neglect: improving our protection of at-risk adults](#), 2013, page 14.

<sup>673</sup> Chesterman, [Responding to violence, abuse, exploitation and neglect: improving our protection of at-risk adults](#), 2013, page 15.

<sup>674</sup> OPG, Submission no. 5, page 6.

<sup>675</sup> Public Trustee, Submission no. 7, page 6.

<sup>676</sup> Public Trustee, Submission no. 7, page 6.

<sup>677</sup> OPG, Submission no. 5, page 6.

<sup>678</sup> QADA, Submission no. 20, page 2.

difficulty managing their financial affairs and would benefit from specifically targeted education support.<sup>679</sup>

QADA submitted:

*...Those with concerns in relation to the adult will often make an application to QCAT for the appointment of an administrator to make decisions on the adult's behalf. Financial protection through a substitute decision-maker then comes at the expense of the client's right to be supported to make their own decisions and to be supported, through appropriate programs and education, to protect themselves from financial exploitation. The adults often feel, very keenly, the loss of independence and autonomy that comes with the appointment of a substitute decision-maker.*

*Examples of the above include a woman, Dorothy, who was ageing and had a condition which was deteriorating slowly over time and resulting in cognitive deficits such as slowed processing. She received an extremely high bill for a product and it was unclear whether that bill was legitimate or not. She was having some difficulty resolving the issue. A service provider made an application to QCAT for the appointment of the Public Trustee as an administrator. The Public Trustee was appointed and was presented to the older women as a way to have these financial issues resolved. Once the Public Trustee was appointed, the older women disagreed with a number of decisions that were being made by the Public Trustee in relation to her finances and felt keenly the loss of her financial independence.*

*She made a further application to QCAT and was successful in obtaining a declaration of capacity.*

*The key point here is that there should have been a range of other options that could have been presented to Dorothy to support her to resolve the concerns about the bill. She did have supportive family members in her life and she could have been assisted to enlist their support in resolving the issue. There should have been services that she could access that could provide the relatively low level support that she required to resolve the issue in relation to bill. Such support should not have come at the expense of her legal ability to make her own financial decisions.*

*Similarly, we had a client, Nancy, who was in the early stages of dementia and a family member had begun to access her funds for their own benefit. Nancy was assisted to go to the bank and ensure that that family member could no longer access her accounts. Nancy found the idea of giving up control of her finances very distressing. She wanted to be able to access some kind of support to continue to manage her own finances but, being unable to identify any available supports, she felt that she had no options other than the appointment of the Public Trustee. QCAT put in place the Public Trustee to make her financial decisions.<sup>680</sup>*

QADA submitted that this “over-reliance on substitute decision-making” is not in accordance with Australia’s international human rights obligations, “which require that we promote supported decision-making and reduce reliance on substitute decision-making”.<sup>681</sup>

QADA CEO Mr Geoff Rowe further submitted:

*We need supported decision-making rather than substituted decision-making; systems that promote the older person to make the decisions that they can make. ... The contact we have*

<sup>679</sup> Mr Geoff Rowe, CEO, QADA, *Transcript of Proceedings* (Hansard), Public Hearing, 3 June 2015, page 7.

<sup>680</sup> QADA, Submission no. 20, page 5.

<sup>681</sup> Chesterman, cited in QADA, Submission no. 20, page 5. See: J Chesterman, ‘Modernising Adult Protection’, *Australian Journal of Public Administration*, vol. 73, no. 4, pages 517 – 524.

*around EPOAs [enduring power of attorney] is where, with the lack of understanding about what it means to have an EPOA, people really abuse it. They make all of the decisions for the individual and do not encourage the individual. We often see people disempowered to the point where they cannot access their own money.*<sup>682</sup>

More specifically, Mr Rowe highlighted concerns that EPoAs are being used as a “default position” and the “first place to go”, as opposed to seeking an approach that aims to determine the least restrictive alternative available. Mr Rowe notes of this tendency towards what may be “a very heavy handed intervention”:

*We also see people who are subject to an EPoA because of an accident or because of a stroke, and they actually improve and they get their cognition and abilities back. To get that EPoA removed or the public trust removed and out of their life is quite a difficult process to go through.*<sup>683</sup>

Mr Rowe suggested considering ways of supporting someone for a short time so that they “skill up” and are able to manage their own affairs: “can we walk side by side with them until they get to that point?”.<sup>684</sup>

*Substituted decision-making is often used as a “first-line” response to seniors requiring financial protection. This is often an inadequate response arising from a lack of other more appropriate supports and occurs at the expense of an older person’s right to be supported to make their own decisions...*

*We need arrangements that, in the first instance, look at using the skills people have; in the second, it should be that least restrictive alternative. ... How do we assist a person to make decisions about their life, rather than replacing their decision-making capacity? ... the issue is lack of cognition.*<sup>685</sup>

In keeping with this, submissions widely highlighted the need for change in the legislative and cultural framing and administration of substitute decision-making powers in Queensland, to better support seniors’ right to financial autonomy.

Among the broad range of more specific initiatives that might accompany or be part of such a shift, the Committee noted the submission of the Hervey Bay Seniors Legal and Support Service that “amending the PoAA and the EPoA to make incapacity the default position for the exercise of financial power rather than [the] immediate [position]” might reflect a more open and appropriate arrangement that “would reduce the extent of this type of financial abuse”.<sup>686</sup>

More specifically, the Hervey Bay SLASS advised:

*It is recommended that the EPoA form be amended to the NSW model where the options as to when financial power commences are clearly specified. Our anecdotal evidence from clients is that they unwittingly elect for their attorney’s power on their financial matters to begin ‘immediately’ without really understanding the effect or wishing to do so.*

*The existing Queensland EPoA form provides:*

*“5. The power given to my attorney/s begins:*

*☐ immediately.*

<sup>682</sup> Mr Geoff Rowe, CEO, QADA, *Transcript of Proceedings* (Hansard), Public Hearing, 3 June 2015, page 7.

<sup>683</sup> Mr Geoff Rowe, CEO, QADA, *Transcript of Proceedings* (Hansard), Public Hearing, 3 June 2015, page 8.

<sup>684</sup> Mr Geoff Rowe, CEO, QADA, *Transcript of Proceedings* (Hansard), Public Hearing, 3 June 2015, page 8.

<sup>685</sup> Mr Geoff Rowe, CEO, QADA, *Transcript of Proceedings* (Hansard), Public Hearing, 3 June 2015, page 8.

<sup>686</sup> Hervey Bay Seniors Legal and Support Service, Submission no. 12, pages 4-5.



☐ on this date: \_\_\_\_\_

*[Write here the date when you want the appointed person/s to begin acting as your attorney.]*

☐ on this occasion: \_\_\_\_\_

*[Write here the occasion on which you want the appointed person/s to begin acting as your attorney.]*

*Note: If you do not complete clause 5, the power begins immediately. "*

*This is compared to the New South Wales model which provides:*

*" 4. Commencement*

*Tick the applicable box below (one only)*

*This power of attorney operates:*

☐ a) *Once the attorney/s have accepted his/her appointment by signing this document.*

☐ b) *Once a medical practitioner considers that I am unable to manage my affairs (and provides a document to that effect).*

☐ c) *Once my attorney considers that I need assistance managing my affairs.*

☐ d) *Other.....*

*If no option is selected or the options chosen are unclear or inconsistent, I intend that the power of attorney will operate once my attorney/s have accepted their appointment by signing this document."*<sup>687</sup>

The Hervey Bay SLASS noted that such documentary amendments may be particularly appropriate as, accompanying Queensland's enabling of powers to be exercised immediately in the absence of an express limitation, the Service regularly sees:

- *Attorneys taking the view that because they have the financial power they can exercise it in any manner they think appropriate;*
- *Seniors with capacity believing they can no longer make financial decisions because the attorney is acting; and*
- *Attorneys exercising the power without consultation or discussion with the senior regardless of the extent of their incapacity. For example, in a recent case the attorney withdrew all of the money from the older person's bank account and placed it in a trust account in their name which the adult could not access. A large portion of the adult's pension was then redirected to the new account. This was done without advising or consulting the senior who still had capacity. It was established that these steps were taken by the attorney to protect the money from a grandchild rather than to misappropriate the funds but the attorney nonetheless failed in their duties by not consulting with the adult.*<sup>688</sup>

As a corollary to the need to prioritise facilitating the financial autonomy of seniors, QADA also highlighted a need to improve scope for individuals to access legal advice and support. Specifically, QADA submitted that there are barriers to lawyers providing advice and support to those requiring

<sup>687</sup> Hervey Bay Seniors Legal and Support Service, Submission no. 12, pages 4-5.

<sup>688</sup> Hervey Bay Seniors Legal and Support Service, Submission no. 12, pages 3-4.

financial protection whose capacity may be in question, as the professional conduct rules for lawyers stress that instructions can only be taken from a competent person (Australian Solicitor's Conduct Rules 8.1). QADA stated:

*Lawyers are apprehensive in working with people with a cognitive disability in the absence of clear guidelines and are concerned about jeopardizing their professional career. This gives lawyers little confidence in being able to bring a case before the courts in terms of strict legal rights. Therefore, another process, the appointment of a litigation guardian, is required for civil matters.*

*Statutory agencies are averse to taking on this role, as it leaves them exposed to costs orders.<sup>689</sup>*

In its *Review of Guardianship Laws*, the Queensland Law Reform Commission (QLRC) recommended that a court have the power to appoint the Public Guardian and Public Trustee as litigation guardians without their consent, with the QLRC determining that the potential financial burden of any adverse costs that may be awarded in these circumstances was outweighed by the need to safeguard the interests of adults with impaired capacity.<sup>690</sup>

However, there remains some contention over this proposition, reflecting difficulties associated with requiring these public bodies to conduct and potentially face costs for litigation they might not consider advisable or would otherwise discontinue.<sup>691</sup> The Victorian Law Reform Commission has stated that:

*There is clearly a need to establish a mechanism for assisting some people with impaired decision-making ability to locate a suitable litigation guardian. It might be possible to establish a pool of suitable volunteer litigation guardians and to create a fund which could be used to indemnify these people from adverse costs orders.<sup>692</sup>*

### Committee comment

The Committee notes that over-reliance on substitute decision-making does not accord with Australia's international human rights obligations, which require the promotion of supported and assisted modes of decision-making which support personal autonomy, in preference to substituted decision-making arrangements. The Committee acknowledges the importance of providing the individual with the support that he or she requires relative to his or her capacity at all times.

The Committee considers that the Government should examine its existing decision-making framework and provisions and identify opportunities to better support seniors' financial autonomy and ownership of their decisions, in accordance with their legal entitlements.

In keeping with this, the Committee considers that the amendment of existing power of attorney paperwork to support more informed, capacity-specific decision-making provisions may be an important step in the adoption of a more appropriate assisted decision-making culture; and at the very

<sup>689</sup> QADA, Submission no. 20, page 7. See also: Australian Law Reform Commission (ALRC), '[Access to Justice](#)', Chapter 7, *Equality, Capacity and Disability in Commonwealth Laws*, Discussion paper 81, 22 May 2014, pages 155-193.

<sup>690</sup> Health and Disabilities Committee, [Queensland Law Reform Commission Recommendations on Guardianship Laws Inquiry: Issues Paper](#), November 2011 (Paper Tabled in the Queensland Legislative Assembly on 29 November 2011), page 24.

<sup>691</sup> Victorian Law Reform Commission (VLRC), '[Litigation Guardians](#)', Chapter 26, *Guardianship: Final Report* 24, VLRC, Melbourne, 2012, page 574.

<sup>692</sup> Victorian Law Reform Commission (VLRC), '[Litigation Guardians](#)', Chapter 26, *Guardianship: Final Report* 24, VLRC, Melbourne, 2012, page 574.

least, may also perform the important role of making the effects of these documents clearer to all signatories.

#### **Recommendation 31**

The Committee recommends that the Queensland Government work closely with service providers to develop a broader range of strategies to assist individuals manage their affairs in the least restrictive, most supported way possible.

#### **Recommendation 32**

The Committee recommends that the Queensland Government explore options to ensure substitute decision-making paperwork better reflects principles of supportive decision-making and more clearly communicates to the parties involved the implications of the arrangements.

### **7.4.2 The Public Trustee**

The Public Trustee has significant involvement with seniors in support of their financial decision-making, chiefly by way of its provision of advice and document-making in respect of estate planning instruments (wills and enduring powers of attorney); and in acting as financial administrator for seniors who have a decision-making incapacity.<sup>693</sup> In keeping with this, the Public Trustee sees incidents of elder abuse in a particular context. That is, if it is suspected a senior has capacity and is being subject to neglect, abuse or exploitation, the Public Trustee can provide the senior with estate planning advice; assist in establishing safeguards to protect their remaining assets; and if the individual does not know anyone suitable to act as their financial attorney, the Public Trustee may be nominated.<sup>694</sup> These independent decision-making support mechanisms are considered in more detail in Chapter 5.

For those with impaired capacity, the Public Trustee may at first refer allegations of neglect, abuse or exploitation to the OPG for investigation. However, where allegations are substantiated or a deficiency in decision-making support has been identified, the Public Trustee's primary protective responsibility relates to its appointment as administrator for a senior person with decision-making incapacity. Within this context, the Public Trustee also performs a role of investigating and sometimes civilly prosecuting matters where the adult has had money or property misappropriated from them.<sup>695</sup>

The *Guardianship and Administration Act 2000* provides a framework for facilitating the appointment, by QCAT, of substitute decision-makers for adults who have a decision-making incapacity and for whom there is a need for a decision to be made. Administrators are appointed as substitute decision-makers for financial matters and guardians in respect of personal matters.<sup>696</sup>

As previously noted, each guardian and administrator is obliged to adhere to general principles outlined in schedule 1 of the *Guardianship and Administration Act 2000*, which encourages self-reliance and participation of the adult with impaired capacity "as much as is practicable".<sup>697</sup>

The Public Trustee submitted that it is appointed administrator for in excess of 8,300 adults with a decision-making incapacity, many of whom are seniors.<sup>698</sup> These appointments reflect "one part of a

<sup>693</sup> Public Trustee, Submission no. 7.

<sup>694</sup> Public Advocate, [Elder abuse resource directory: A Queensland guide to services, assistance and information](#), 2012, page 10.

<sup>695</sup> Public Trustee, Submission no. 7, pages 3; 8.

<sup>696</sup> Public Trustee, Submission no. 7, page 5.

<sup>697</sup> Public Trustee, Submission no. 7, page 6.

<sup>698</sup> Public Trustee, Submission no. 7, page 6.

comprehensive statutory and policy framework to assist, support and in some cases, protect seniors who suffer a decision-making incapacity (often a dementia type illness)".<sup>699</sup>

The majority of the seniors and other adults for whom the Public Trustee is appointed administrator have relatively modest assets. The Public Trustee's submission identified that approximately 77 per cent of these individuals have assets valued at \$55,000 or less and almost 95 per cent have assets valued at less than \$150,000.<sup>700</sup>

Most of these individuals receive support from the Public Trustee at a reduced rate by way of a community service obligation which sees approximately \$0.55 in every \$1 of fees rebated (not charged).<sup>701</sup> As a result, the Public Trustee's assistance, support and advice in the role of administrator costs approximately \$19 million annually.<sup>702</sup>

The Public Trustee also litigates on behalf of some adults for whom it is appointed administrator, and who may not otherwise have the funds or capacity to seek to recover misappropriated property. Oftentimes the cases are "complex, significant and the subject of strident defence from those involved", and many others "involve sums of money and property of much lesser value resulting in protracted litigation being less viable".<sup>703</sup>

However, the Public Trustee has had some significant civil litigation successes in recent years, resulting in the recovery of substantial sums. For example:

***The Public Trustee of Queensland (as litigation guardian for ADF) v Ban & Anor:*** In this litigation a senior suffering a dementia illness had purportedly "gifted" both the proceeds of sale of a property (of something greater than \$2m) and an interest in the senior's remaining real estate (also worth a considerable sum of money) to his attorney pursuant to an enduring power. The Public Trustee litigated in the Supreme Court and obtained declarations that those "gifts" had not been perfected.

***Lawrie v Hwang:*** In a series of cases in the Supreme Court the Public Trustee litigated for a senior who had been suffering from dementia. The senior's wife (after marrying him) and after QCAT had declared that he lacked capacity flew with her husband to the Sydney branch of a bank, caused a term deposit in a company account previously controlled by the senior to be broken and repatriated the funds from that term deposit to her place of birth – South Korea. The defendant in that matter had transferred more than \$2.6M. The wife, defendant had judgments entered against her including amongst other things for fraud.<sup>704</sup>

The first of these cases, in addition to attesting to the Public Trustee's role in protecting the assets of seniors with impaired capacity; is also illustrative of concerns voiced by the agency that outside of Public Trustee-administered arrangements, substitute decision-making powers may themselves present a nexus for financial abuse. While this abuse may be "opportunistic and intentional or indeed unintentional", the Public Trustee submitted that in overseas jurisdictions, explicit and actual knowledge of the duties and obligations of decision-makers in these circumstances serves to clarify roles and requirements, to reduce scope for unintentional but likely financial abuse.<sup>705</sup>

In this regard, a number of submitters highlighted a need to "raise the bar" in terms of implementing training requirements and seeking to improve understanding about the roles and obligations of substitute decision-makers. For example, the EAPU submitted:

<sup>699</sup> Public Trustee, Submission no. 7, page 6.

<sup>700</sup> Public Trustee, Submission no. 7, page 6.

<sup>701</sup> Public Trustee, Submission no. 7, page 6.

<sup>702</sup> Public Trustee, Submission no. 7, page 6.

<sup>703</sup> Public Trustee, Submission no. 7, page 7.

<sup>704</sup> Public Trustee, Submission no. 7, page 7.

<sup>705</sup> Public Trustee, Submission no. 7, page 7.

*... there is a need for greater attention to the role of attorneys in the formal guidelines about the role of attorneys, also in the structure and the witnessing of the forms, increased direction for attorneys about record keeping, access to advice and support about substitute and assisted decision-making once they are the attorney, monitoring of attorney's accounts through banks—so random audits—registration when the enduring powers of attorney are used and potentially voluntary registration of attorneys when they are created and just generally much greater education regarding substitute decision-making for attorneys, principals and providers in community and residential care.*<sup>706</sup>

The Public Trustee noted that in California, the evolution of such considerations has led to the mandatory licensing of professional fiduciaries, which includes an injunctive for continuing professional development;<sup>707</sup> and a primary focus of the Office of the Public Guardian in England includes the supervision and education of substitute decision-makers in the discharge of their duties and obligations.<sup>708</sup> The Public Trustee also noted that the Victorian Law Reform Commission has recommended that the Tribunal appointing substitute decision-makers have a power to order newly appointed substitute decision-makers to undergo training.<sup>709</sup>

### Committee comment

The Committee notes that some jurisdictions require attorneys to demonstrate explicit and actual knowledge of the duties and responsibilities of the role before being appointed as an attorney. The Committee notes the use of this strategy to minimise financial abuse.

The Committee also notes that some jurisdictions have mandatory licensing of attorneys.

### Recommendation 33

The Committee recommends that the Queensland Government consider and adopt strategies to regulate and record the appointment of attorneys in Queensland.

### Recommendation 34

The Committee recommends that the Queensland Government consider amendments to the *Powers of Attorney Act 1998* to expressly provide that attorneys demonstrate explicit and actual knowledge of an attorney's duties and responsibilities before they are appointed as an attorney.

### 7.4.3 Elder abuse and powers of attorney

While many seniors rely primarily on informal assistance in the management of their assets, tending primarily to consult or involve friends and family, a 2002 study of Queensland seniors and their asset management estimated that in approximately 15.4 per cent of asset management assistance scenarios an EPoA was in play and for approximately 1.4 per cent a guardianship order was involved.<sup>710</sup> Whilst acknowledging the importance of allowing for decision-making to continue after an individual has been deemed incapable of making informed decisions; Settlerlund et al have reported that that the

<sup>706</sup> Ms Cellaigh Spike, EAPU, *Transcript of Proceedings (Hansard)*, Public Hearing, 20 May 2015, page 13.

<sup>707</sup> Public Trustee, Submission no. 7, page 8.

<sup>708</sup> Public Trustee, Submission no. 7, page 8.

<sup>709</sup> Public Trustee, Submission no. 7, page 8.

<sup>710</sup> J Wainer, P Darzins and K Owada, [Prevalence of Financial Elder Abuse in Victoria](#), Protecting Elders' Assets Study, Monash University School of Medicine, Nursing and Health Sciences, 10 May 2010, page 7.

overwhelming majority of older people had a limited to low understanding of law relating to substitute decision-making, increasing the scope for their financial exploitation.<sup>711</sup>

This accords with the submission of the Public Trustee and others that vulnerabilities associated with the combination of reduced capacity and conferred financial control and access provided by EPoAs are heightened by a lack of clarity or understanding about the roles and requirements of substitute decision-makers.

For example, the Hervey Bay SLASS submitted that it is also regularly finding that:

- attorneys take the view that because they have the financial power they can exercise it in any manner they think is appropriate
- seniors with capacity believe they can no longer make financial decisions because the attorney is acting, and
- attorneys exercise their power without consultation with the senior, regardless of the extent of the principal's incapacity.<sup>712</sup>

Hervey Bay SLASS submitted:

*In a recent case the attorney withdrew all of the money from the older person's bank account and placed it in a trust account in their name which the adult could not access. A large portion of the adult's pension was then redirected to the new account. This was done without advising or consulting the senior who still had capacity. It was established that these steps were taken by the attorney to protect the money from a grandchild rather than to misappropriate the funds but the attorney nonetheless failed on their duties by not consulting with the adult.*<sup>713</sup>

The EAPU noted that expectations around both powers of attorney and enduring powers of attorney differ significantly across Australia, with Queensland requirements falling at the lighter end of the regulatory spectrum. Looking to other jurisdictions, in addition to calls for improved training and professional development strategies outlined by the Public Trustee, the EAPU noted that witness signatory requirements have also emerged as an area of reform to address some of these issues. For example, the EAPU reported that in New South Wales, responsibility rests with the lawyer, or the witness certifying the EPoA, to ensure that the person signing the power of attorney fully understands the document. In Western Australia and Victoria, two witnesses are required to sign these documents.

In Queensland, in contrast, capacity guidelines for EPoA provide only that the witness is satisfied that the person signing the document has capacity and understanding to do so.<sup>714</sup>

Hervey Bay SLASS suggested amendments to the PoAA and EPoA forms to ensure the attorney's signature is witnessed by a qualified witness who have certified that they have explained the role and responsibilities to the attorney, and that the attorney has understood their obligations.<sup>715</sup>

With regard to record keeping obligations, further, the Hervey Bay SLASS suggested that attorneys' obligations to keep records should extend to a specific duty to produce and hand-over records to a subsequent attorney when their appointment is revoked. The Hervey Bay SLASS acknowledged that QCAT currently has the power to order production of existing attorneys' file records and to have accounts audited under section 122 of the *Powers of Attorney Act 1998*, but noted that this power

<sup>711</sup> Sanders, [Financial Abuse of Older People: A Queensland Perspective](#), 2005, pages 5-6.

<sup>712</sup> Hervey Bay Seniors Legal and Support Service, Submission no. 12, page 4.

<sup>713</sup> Hervey Bay Seniors Legal and Support Service, Submission no. 12, page 4.

<sup>714</sup> Sanders, [Financial Abuse of Older People: A Queensland Perspective](#), 2005, page 6.

<sup>715</sup> Hervey Bay Seniors Legal and Support Service, Submission no. 12, page 5.

does not extend to former attorneys.<sup>716</sup> This can present challenges where a new substitute decision-maker is appointed following instances of attorney-perpetrated neglect, exploitation or abuse.

Hervey Bay SLASS also called for the Public Trustee's powers to be extended to enable them to investigate and prosecute both current and former attorneys where there is evidence of financial abuse of a senior, regardless of whether or not the senior has capacity.<sup>717</sup>

### Committee comment

The Committee sees merit in attorneys' obligations extending to a specific duty to produce and hand-over records to a subsequent attorney when their appointment is revoked. The Committee notes the benefit in extending the obligations established in section 122 of the *Powers of Attorney Act 1998* to former attorneys.

Further, the Committee acknowledges the benefits in extending the Public Trustee's powers to enable them to both investigate and prosecute both current and former attorneys where there is evidence of financial abuse, regardless of whether the person has capacity.

### Recommendation 35

The Committee recommends that the *Powers of Attorney Act 1998* be amended to provide a specific duty for former attorneys to produce and hand over records to subsequent attorneys.

### Recommendation 36

The Committee recommends that the *Public Trustee Act 1978* is amended to give the Public Trustee powers to enable them to investigate and prosecute both current and former attorneys where there is evidence of financial abuse, regardless of whether the person has capacity.

## 7.4.4 Registration of powers of attorney

A number of stakeholders identified a need for the establishment of a formal registration requirement for PoAs and EPoAs.

QADA noted that a system of registration would remove uncertainty about whether or not formal arrangements have been made in certain circumstances, and prevent unnecessary QCAT hearings occurring.<sup>718</sup> The ABA also particularly espoused the benefits of and the need for a national register for powers of attorney, to "promote consistency and uniformity".<sup>719</sup> The ABA stated that:

*Formal arrangements should be consistent and uniform across jurisdictions. Supporting guidance about instruments should provide clear instructions to attorneys and agents and provide clear information to individuals so they can make informed decisions appropriate to their circumstances.*

*The ABA believes that a national approach is required to reduce regulatory and administrative complexity and promote consistency of legal obligations and practices across Australia. While the laws in each jurisdiction and the processes for appointing attorneys, agents and administrators are broadly similar, there remain differences that our member banks, customers and their substituted decision-makers are required to understand. For example, the laws across the States and Territories may have different names for different powers, and*

<sup>716</sup> Hervey Bay Seniors Legal and Support Service, Submission no. 12, page 6.

<sup>717</sup> Hervey Bay Seniors Legal and Support Service, Submission no 12, page 7.

<sup>718</sup> QADA, Submission no. 20, page 8.

<sup>719</sup> ABA, Submission no. 17, page 4.



*different formats, capacity testing, witnessing and execution processes (e.g. the instrument may or may not need to be registered with the appropriate State or Territory agency to take effect). As a result, it may take a while for our member banks (and other financial institutions, organisations, companies and service providers) to process and verify authorities. These differences cause unnecessary complexity and contribute to unnecessary business costs, including training for staff and communications for customers. Additionally, it can cause other risks where lack of awareness about the specific instrument could result in inappropriate application and/or powers being exceeded, or alternatively, expectations not being met with regards to the use of the instrument.*<sup>720</sup>

In addition:

*Portability and transferability*

*Formal arrangements should be recognised across jurisdictions and be transferrable without the need for new arrangements to be put in place.*

*The ABA believes that progress should be made towards mutual recognition of power of attorney instruments. This is important as it will provide ease of process for customers who move interstate and eliminate uncertainty with the use of instruments.*

*Legitimacy – a national register*

*Formal arrangements should be registered so that banks can more easily establish the authenticity and currency of the instrument. Currently, the ability of our member banks to verify the authority of an enduring power of attorney or court-appointed administrator is unclear and cumbersome. For example, there is no national register to which we can verify the authenticity of powers presented. Banks have experienced incidents where transactions have been delayed due to the need to verify an instrument and this has caused adverse consequences for the individual, the bank or both (such as, a delay in settling a property transaction causing additional costs or a delay in completing a market transaction and adverse movements in prices). Lack of a national register exposes people to the risk of financial abuse as well as the risk of unfavourable outcomes with regards to their transactions.*

*The ABA believes that clearer, consistent legal arrangements would provide certainty to customers and their substituted decision-makers, and reduce the regulatory and administrative complexities and compliance burden on industry.*<sup>721</sup>

The Public Trustee also suggested that a register of powers of attorney would be useful, highlighting key arguments and examples of reform for consideration. The Public Trustee noted:

*Some jurisdictions provide for registration of powers of attorney holding that in part registration and public (or limited) knowledge of who the attorney is tends to reduce the incidences of financial abuse.*

*In England there is such mandatory registration for “lasting” powers of attorney pursuant to the Mental Capacity Act 2005.*

*In the Australian context the Victorian Law Reform Commission has recommended compulsory registration of powers of attorney.*

<sup>720</sup> ABA, Submission no. 17, page 4.

<sup>721</sup> ABA, Submission no. 17, page 4.

*The Australian Bankers Association have called for uniformity in respect of enduring documents as well as a system of registration.*<sup>722</sup>

The Public Trustee highlighted that the QLRC, in the report on its 2010 review of Queensland's Guardianship Laws, decided against recommending the implementation of compulsory registration of powers of attorney in the State. In so doing, the QLRC concluded that although a registration may assist in verifying the existence and formal validity of an EPOA, that in itself cannot necessarily assist in the detection of fraud or abuse; and may necessarily have significant privacy and resource implications and add an additional layer of formality and expense which may discourage the use of such documents.<sup>723</sup> Accordingly, the QLRC determined the burdens might be outweighed by its benefits and recommended a range of other possible options to curb improper use of decision-making powers, including:

- *legislative measures to exclude a person from being eligible to be an attorney if the person has been a paid carer for the principal within the previous three years or convicted on indictment for an offence involving personal violence or dishonesty in the previous 10 years (Recs 16-1 to 16-6);*
- *the redrafting of the approved forms for an enduring power of attorney to more clearly explain the key features of an enduring power of attorney and the role, powers and duties of an attorney (Recs 16-11 to 16-13); and*
- *the inclusion of information in the approved forms for an enduring power of attorney to explain that the principal may elect to nominate particular persons who must be notified of the activation of the power of attorney (Rec 16-16).*<sup>724</sup>

The Public Trustee noted, however, that registration continued to be a matter of much debate, and may have other benefits.

**Mr PYNE:** *In terms of registration of instruments, I have taken the time to prepare an advance health directive. It is in the filing cabinet at home. How confident can we be in the emotional turmoil of a tragic accident resulting in loss of capacity that people will know about those instruments? Is there a way of registering those instruments so people will know about them?*

**Mr Crofton:** *The answer is no. This is probably a more powerful argument for a registration system than to combat elder abuse in my respectful opinion—and, that is, it is difficult to know. This is what the Australian Bankers' Association complain of. It is difficult to know that an instrument exists or which is the last instrument.*<sup>725</sup>

### Committee comment

The Committee notes there are a range of benefits associated with state and federal attorney registers, which may outweigh any costs pertaining to their administration. The Committee supports the compulsory registration of powers of attorney.

<sup>722</sup> Public Trustee, Submission no. 7, page 10.

<sup>723</sup> Queensland Law Reform Commission (QLRC), *A Review of Queensland's Guardianship Laws: Report*, Report no. 67, vol. 1, September 2010, page xxxi.

<sup>724</sup> QLRC, *A Review of Queensland's Guardianship Laws: Report*, 2010, page xxx.

<sup>725</sup> *Transcript of Proceedings* (Hansard), Public Hearing, Communities, Disability Services and Domestic and Family Violence Prevention Committee, 3 June 2015, page 8.

**Recommendation 37**

The Committee recommends the compulsory registration of powers of attorney.

The Committee recommends that the Queensland Government work with the Federal Government to implement a Federal Register to complement the proposed State Register.

**7.4.5 Enhanced legislative responses to guardianship and administrative abuses**

In addition to calls for greater specific recognition of elder abuse relationships, in response to perceived legislative shortfalls in this regard, submitters also highlighted calls for an enhanced legislative response to abuses of powers of attorney and other administrative powers.

Notably, the Public Trustee drew attention to an outstanding recommendation from the QLRC's 2010 review of guardianship laws, which recommended both the introduction of aggravated penalties for those individuals acting in a fiduciary capacity who exploit their position to perpetrate an abuse; and a special penalty dealing with the financial abuse and exploitation of vulnerable persons which equally represents a particular predatory and disagreeable form of financial misconduct.<sup>726</sup> The Public Trustee noted:

*...The remark that was made was that there is a likelihood of a greater sentence if you happen to steal or commit fraud as an attorney, for example. The Queensland Law Reform Commission recommended that, if you are in a fiduciary capacity—an attorney or an administrator—you could add that as an aggravated circumstance which would then attract a higher sentence.<sup>727</sup>*

The QLRC report recommendations 17.18 and 17.19 stated:

*17.18 Section 408C of the Criminal Code should be amended by adding the aggravating circumstances in section 408C(2):*

*(a) if the offender is an attorney under an EPA and the victim is the principal; and*

*(b) if the offender is an administrator appointed under the GAA and the victim is the adult.*

*17.19 The Commission recommended the development of a new offence dealing with financial abuse and exploitation of vulnerable persons (including older people, people with impaired capacity, people with disabilities).<sup>728</sup>*

The Queensland Government's response to the report, published in 2012, indicated that the two recommendations were "under consideration".<sup>729</sup> The Public Trustee noted that "Victorian Law Reform Commission seized upon or spoke about the same thing and said we should make it a civil crime—that

<sup>726</sup> Mr Mark Crofton, Acting Public Trustee, the Public Trustee, *Transcript of Proceedings* (Hansard), Public Hearing, Communities, Disability Services and Domestic and Family Violence Prevention Committee, 3 June 2015, page 18.

<sup>727</sup> Mr Mark Crofton, the Public Trustee, *Transcript of Proceedings* (Hansard), Public Hearing, 3 June 2015, page 20.

<sup>728</sup> QLRC, *A Review of Queensland's Guardianship Laws: Report*, 2010, page 284.

<sup>729</sup> Department of Justice and Attorney-General, [Queensland Government's Response to Queensland Law Reform commission Report: A Review of Queensland's Guardianship Laws, Queensland Government](#), June 2014, page 34.

is, a civil penalty”; and, second, “there are jurisdictions that have a criminal framework particularly for vulnerable adults. So there is a particular statute”.<sup>730</sup>

### Committee comment

Given the Queensland Government’s declared commitment to the implementation of reforms to improve responses to domestic violence and the exploitation or abuse of vulnerable individuals, the Committee considers it fitting that the Government provide an update on its position with regard to the QLRC’s recommendations for strengthening the legislative response to the abuse of powers of attorneys.

In this regard, the Committee notes persistent arguments of a number of stakeholder groups that “a stronger legislative approach is needed that defines the financial abuse of the elderly as a crime and imposes significant, meaningful and readily enforceable remedies”.<sup>731</sup>

### Recommendation 38

The Committee recommends that the Queensland Government provide an update on its position regarding recommendations 17.18 and 17.19 of Queensland Law Reform Commission report no. 67, *A review of Queensland’s Guardianship Laws* (2010).

### 7.4.6 Improved access to legal remedies

As noted in Chapter 6.4.3, financial abuse and other non-violent financially exploitative acts do not qualify as a recognised form of crime for which financial support is available under the *Victims of Crime Assistance Act 2009*.<sup>732</sup> The Committee recognises that some financial abuse victims may nonetheless be eligible for assistance under the act given that financial abuse and neglect often co-occur with other types of elder abuse including physical abuse, for which support is available under the Act.

However, submitters highlighted that in addition to limited criminal remedies, the law in Queensland often makes it harder for older persons to qualify for a civil remedy. An example of this is the presumption of advancement. The QLS and OPA define this concept as follows:

*This is the legal presumption that a transfer of an asset from a parent to a child is a gift unless the older person can rebut the presumption by demonstrating that at the time of the transfer no gift was intended (for example, by proving that undue influence occurred).*<sup>733</sup>

As a result, as the Hervey Bay SLASS noted:

*In any civil proceedings to recover money paid to or taken by family members, the presumption of advancement means that the older person needs strong evidence before they can succeed. These transactions are rarely documented and it requires an independent strong-willed older person to take recovery action in any form.*<sup>734</sup>

<sup>730</sup> Mr Mark Crofton, the Public Trustee, *Transcript of Proceedings* (Hansard), Public Hearing, 3 June 2015, page 20.

<sup>731</sup> N Wuth, [Enduring Powers of Attorney: With limited remedies – It’s time to face the facts](#), *Elder Law Review*, vol. 7, 2013 (article 3), page 1.

<sup>732</sup> The *Victims of Crime Assistance Act 2009*’s financial assistance scheme is limited in its provision to certain victims of acts of violence only (and not to victims of non-violent crimes). See: *Victims of Crime Assistance Act 2009*, section 3; Schedule 3. See also Dr Cassandra Cross, QUT, *Transcript of Proceedings* (Hansard), Public Hearing, 15 July 2015, page 8; Dr Cassandra Cross, Submission no. 11, page 10.

<sup>733</sup> Office of the Public Advocate (Qld) and QLS, [Elder Abuse: How well does the law in Queensland cope?](#), 2010, page 8.

<sup>734</sup> Hervey Bay Seniors Legal and Support Service, Submission no. 12, page 2.

These concerns were echoed by Caxton Legal Centre Inc., which noted that claims of financial abuse generally involve undue influence, unconscionable conduct and constructive trust, and “the law of undue influence does not provide adequately for situations of elder abuse”:

*The law presumes undue influence exists within established relationships including parent and child, but not, child and parent. Therefore, for an older person to establish undue influence against a child they must rebut the legal presumption that a transfer of an asset from a parent to a child is a gift unless it can be established that at the time of the transfer no gift was intended.*<sup>735</sup>

Another example is the removal of exemplary, punitive or aggravated damages as a remedy for actions pursued under the *Personal Injuries Proceedings Act 2002*. As the QLS and OPA point out:

*Prior to [this change in the law] one of the largest components of damages that might ordinarily have been awarded to an older person in a personal injuries claim was exemplary, punitive or aggravated damages....For an 85 year-old person who may have impaired capacity and / or personal injuries as a result of an act of abuse...the most significant element of recompense has been removed.*<sup>736</sup>

Further, Hervey Bay SLASS has submitted:

*The relevant cause of action to recover money taken by an attorney using their powers under an EPoA is not a simple debt claim. It is an equitable action for account, money had and received, breach of fiduciary duty or unconscionable conduct. This type of court action or action to recover money taken by misuse of the EPoA powers can only be instituted in the superior courts. Section 106 of the PoAA gives the court power to order an attorney to compensate a principal for any loss caused by the attorney's failure to comply with the Act. However, QCAT has no jurisdiction to order an attorney to pay compensation pursuant to this section. Further, QCAT's jurisdiction under its Guardianship and Administration jurisdiction is limited to making orders in respect of current attorneys only. It cannot make orders against previous attorneys.*

*The cost and time scale of a Supreme Court action prohibits such recourse being undertaken by many of the clients seen by SLASS. Many adults and their attorneys do not have the resources to bring a superior court action and services such as SLASS do not have the resources to assist them. Consequently, even if an older person has been deprived of their life savings by an attorney – and falls within the QCAT monetary limit – they have very little prospect of obtaining redress. If such actions could be taken through QCAT as part of its Guardianship and Administration jurisdiction this would result in greater access to justice in these circumstances.*<sup>737</sup>

Hann (for the EAPU) has reported that “the final observation of the QLS and OPA in this matter is telling”:

*By eliminating aggravated, punitive and exemplary damages and restricting the amount available for general damages, older personal injuries claimants have been disadvantaged. The result is a system which does not provide for adequate compensation of older victims by perpetrators of elder abuse.*<sup>738</sup>

<sup>735</sup> Caxton Legal Centre Inc., Submission no. 15, page 19.

<sup>736</sup> Office of the Public Advocate (Qld) and QLS, [Elder Abuse: How well does the law in Queensland cope?](#), 2010, page 8.

<sup>737</sup> Hervey Bay Seniors Legal and Support Service, Submission no. 12, page 5.

<sup>738</sup> D Hann, [Law reform needed to combat elder abuse in Queensland](#), Elder Abuse Prevention Unit, August 2010, page 2.

Similarly, Caxton Legal Centre Inc. submitted:

*Legislative provisions for compensation for losses caused by financial abuse. The common law has not adapted sufficiently quickly to provide realistic accessible and appropriate remedies for elder abuse victims and does not provide deterrence for financial abuse in the first instance. Current remedies do not properly compensate for the pain and suffering endured by victims of financial abuse, and do not provide appropriate monetary recompense, and access to such remedies are limited by both the remaining financial means of the client and their health and capacity to pursue them.<sup>739</sup>*

In response to these shortcomings, submitters made a number of recommendations. In particular, Hervey Bay SLASS recommended:

*It is recommended that PoA be amended to give QCAT jurisdiction to order compensation up to its monetary limit for losses suffered as a result of the actions of both current and former attorneys....*

*It is recommended that as part of its response to Recommendation 96 of the Not Now, Not Ever Report the Queensland Government consider whether the proposed Domestic and Family Violence Courts include within their jurisdiction an informal process to assist in recovering money where there is financial abuse of older persons by family members, and the power to make repayment orders in these circumstances.<sup>740</sup>*

Further:

*Additionally, it is recommended that in these cases the presumption of undue influence, similar to that contained in section 87 of the Powers of Attorney Act 1998 (PoAA), be applied to recovery actions by the elder persons. The section provides:*

*“The fact that a transaction is between a principal and 1 or more of the following –*

*(a) An attorney under an enduring power of attorney or advance health directive;*

*(b) A relation, business associate or close friend of the attorney;*

*gives rise to a presumption in the principal’s favour that the principal was induced to enter the transaction by the attorney’s undue influence.”<sup>741</sup>*

### **Committee comment**

The Committee considers that current provisions and options for support and compensation of Queensland victims of elder financial abuse do not sufficiently reflect the significant and debilitating impact that these losses can have, nor the serious commitment with which these issues should be approached.

Accordingly, the Committee considers that the Government should further explore options to ensure Queensland abuse victims have access to appropriate remedies and various other financial and emotional supports to better support their financial and emotional recovery.

In this regard the Committee seeks to reaffirm that, as per recommendation 18 of this report (pertaining to fraud and consumer scams), that this should include not only effective referral to support services but also consideration of statutory reform.

<sup>739</sup> Caxton Legal Centre Inc., Submission no. 15, page 2.

<sup>740</sup> Hervey Bay Seniors Legal and Support Service, Submission no. 12, page 2.

<sup>741</sup> Hervey Bay Seniors Legal and Support Service, Submission no. 12, pages 2-3.

**Recommendation 39**

The Committee recommends that the Queensland Government examine options to improve available financial remedies and compensation available for seniors who are victims of financial elder abuse.

**7.5 Education and awareness**

Education and awareness are broadly recognised as crucial tools in the prevention and early identification of financial elder abuse, helping to improve understanding and recognition of abusive behaviours, and address social barriers to reporting.

This includes broad public education to target age discrimination and support a cultural shift away from attitudes of entitlement associated with the social and culturally prescribed expectation of inheritance;<sup>742</sup> together with the promotion of systematic future planning by older people, to make early family meetings and conversations about assets and care plans more commonplace.<sup>743</sup>

Caxton Legal Centre Inc. advocated for strengthening protections and greater awareness of the problems of financial abuse, suggesting that strategies need to be put in place on a number of levels, including community awareness campaigns and integrated improvements in planning support and financial counselling services.<sup>744</sup>

However, submitters also highlighted a need for State-based education and awareness of elder abuse to target "specific groups in relation to identifying and preventing financial abuse".<sup>745</sup> Particularly, those individuals who regularly engage with older people in care or financial contexts may be important sources of bystander intervention and early detection, helping to address barriers to effective reporting of elder abuse – "including a lack of education, fluctuating capacity, fear of the abuser and the consequences of reporting the abuse, namely a fear of being institutionalised and a lack of awareness of legal rights and options".<sup>746</sup>

In addition, both the Hervey Bay SLASS and the Public Trustee highlighted the importance of broad education programs that extend to the powers and responsibilities of attorneys. The EAPU submitted with regard to the intersection of abuse and powers of attorney:

*The issue of enduring powers of attorney and misunderstanding—as well as misunderstanding about decision-making as being contextual, it is decision dependent—is a real issue. It is not just about financial abuse. I had a call yesterday morning where an older woman was in an aged-care facility. There was conflict between two of her children, one who was the enduring power of attorney. The daughter who was not the enduring power of attorney was wanting to visit her mum in the aged-care facility with her granddaughter and the aged-care facility refused them entry because the enduring power of attorney had told them not to let the daughter in. The older adult had full capacity. That was her decision to make. Even if the older adult had some sort of decision-making impairment the general principles in the Guardianship and Administration Act say that you need to be facilitating supportive relationships. So there is a lot of misunderstanding and that is across providers.*

<sup>742</sup> Lowndes et al, *Financial abuse of elders: a review of the evidence*, 2009, page 16.

<sup>743</sup> DPS News, 'Elder abuse education needs to start "young"', *Aged Care Guide News* (online), 16 July 2015, <https://news.agedcareguide.com.au/2015/07/16/elder-abuse-education-needs-to-start-young/> (accessed 20 August 2015).

<sup>744</sup> Ms Vivienne Campion, Caxton Legal Centre Inc., *Transcript of Proceedings* (Hansard), Public Hearing, 3 June 2015, page 10.

<sup>745</sup> Caxton Legal Centre Inc., Submission no. 15, page 2.

<sup>746</sup> Caxton Legal Centre Inc., Submission no. 15, page 14.



*The principals themselves often think, 'They are the enduring power of attorney; they can do anything now.' So, education is a massive thing.*<sup>747</sup>

The OPG also submitted that while education and awareness efforts should address the needs of protecting all vulnerable persons in the community from financial abuse, “rather than a focus on persons who might be classified as seniors”:

*There should be... funding for broad public education regarding how powers of attorneys operate, and how assets can and should be used as directed by the person, including what to do and where to go if financial abuse or exploitation is suspected.*<sup>748</sup>

### Committee comment

The Committee notes the OPG’s recommendation that education and support efforts should be widely available and packaged to reach all persons who may be vulnerable to abuse, notwithstanding their age. However, the Committee also recognises that there are certain dimensions to elder abuse and financial elder abuse particularly, and areas of associated vulnerability, which merit specific educative interventions.

The Committee acknowledges opportunities to address cultural notions of inheritance and encourage family discussions, together with a need for targeted education and awareness programs to promote bystander or service provider intervention, and enhance understanding of appropriate use of powers of attorney.

### Recommendation 40

The Committee recommends that the Queensland Government develop an education and awareness program that promotes awareness of elder abuse and incorporates a range of accessible and inclusive community education programs that outline the role and responsibilities of powers of attorney.

## 7.6 Other service providers

In addition to enhancing education and awareness programs, stakeholders noted opportunities to more actively engage service providers in the response to elder abuse. As noted in section 7.3.4 of this report, the OPG’s community visitors program has highlighted the importance of empowering individuals to look and see, to notice and respond to the needs of others. The Committee’s recognition of the benefits of expanding this program to allow visits to persons living within the community or at an aged care facility, and of especially including aged care staff in protective and reporting systems, is reflected in recommendations 26 to 28.

The Public Trustee advocated for more robust training and engagement with health professionals, lawyers and bank staff “to enable more individuals to both identify abuse and importantly, provide their professional skills with greater contextual understanding”.<sup>749</sup> In addition, the Public Trustee noted:

*A key capacity for seniors (in addition to training and education) lies with those in government, and not-for-profit and private sector professionals who are dedicated to providing support in the legal and financial context in particular.*

<sup>747</sup> Ms Cellaigh Spike, EAPU *Transcript of Proceedings (Hansard)*, Public Hearing, 20 May 2015, page 13.

<sup>748</sup> OPG, Submission no. 5, page 8.

<sup>749</sup> Public Trustee, Submission no. 7, page 8.

*In the United States increasingly the first responders to elder abuse take the form of coordinated groups involving lawyers, doctors and social workers (subsequent to reports of such abuse by Adult Protective Services).<sup>750</sup>*

Such programs might reflect an expansion of current collaborative efforts between the OPG and the QPS or other services in investigating elder abuse, and of the cooperative engagement of social workers with seniors' legal services. The Public Trustee noted that the OPG "acquits that task in the Public Trustee's view well", and that "Seniors' legal services provide great support for seniors in respect of all matters concerning older Queenslanders and are an important capacity".<sup>751</sup>

Caxton Legal Centre Inc. submitted in this regard:

*All services unfortunately tend to respond in a more "reactive" rather than "proactive" way. The solution to providing a proactive response would be a collaboration between a wider group of the community that is currently being engaged. It is proposed that a holistic, multi-agency approach is needed to examine these issues and consider legal reform where appropriate in order to address the needs of older Queenslanders. Such an approach needs to be combined with a major education and awareness campaign targeting: The legal profession; Service providers; Health professionals; Queensland Police Service; Justice of the Peace; and Financial institutions.<sup>752</sup>*

Perel-Levin, in the WHO report *Discussing Screening for Elder Abuse at Primary Health Care Level*, suggested that such integrative responses can benefit from the incorporation of a human-rights based approach to addressing elder abuse:

*Although the domains of public health and human rights frequently overlap, effective interventions are hampered by the lack of an active integration of human-rights principles in health care. Legal frameworks, health care and social services need to be applied with a strong sense of equity, reinforcing the civil and human rights of all people, regardless of sex, ethnic origin, socioeconomic status and age.<sup>753</sup>*

Perel-Levin concluded that education and training in this context need to be included in the formal curricula of the caring professions, and that this must move beyond the recognition of the signs and symptoms of abuse and neglect. Perel-Levin stated:

*Careful consideration to the great complexity of ethical issues faced by care providers, including their own feelings, while facing abuse needs to be given.*

- *Interdisciplinary and interagency training sessions are crucial for implementing screening and referral procedures successfully.*
- *Training needs to incorporate wider societal issues and barriers, such as gender dimensions and ageism, as well as an opportunity for reflection on personal attitudes and on group processes.*
- *Older persons, including survivors of elder abuse and domestic violence, should be involved in educational activities.*
- *Home visits and outreach to the community could be a central element of formal training, as personal knowledge of the older person's environment increases patient-practitioner trust.*

<sup>750</sup> Public Trustee, Submission no. 7, page 10.

<sup>751</sup> Public Trustee, Submission no. 7, page 10.

<sup>752</sup> Caxton Legal Centre Inc., Submission no. 15, page 18.

<sup>753</sup> S Perel-Levin, [\*Discussing screening for elder abuse at primary health care level\*](#), World Health Organisation, 2008, page 11.

- *Outreach and training with other professions other than primary care could be considered. For example, training seminars of judges on elder abuse has proved very successful in the United States. School teachers could be a good target group for training to promote intergenerational solidarity.*
- *Creative educational venues that involve innovative partnerships across society such as television networks and industry/workplaces, need to be explored more.*<sup>754</sup>

### 7.6.1 Health Justice Partnerships

Among various models for service provider partnerships and collaboration, the Committee noted the example of Health Justice Partnerships (HJPs) engaged by Justice Connect – an organisation formed by the merging of the Public Interest Law Clearing Houses PILCH VIC and PILCH NSW.<sup>755</sup> Justice Connect provides an independent, non-profit legal referral service which engages the pro bono resources of the private legal profession to meet the unmet legal need of people experiencing marginalisation and disadvantage.<sup>756</sup>

HJPs offer a new model of collaboration between lawyers and health professionals to provide better health outcomes and access to justice for patients with legal issues, with the primary objective of improving the overall health and wellbeing of outcomes for people experiencing disadvantage.<sup>757</sup>

As an example, a patient may make certain disclosures during an appointment with a health professional which suggest issues of neglect, exploitation or abuse. The health professional may then suggest the individual “see the clinic’s social worker and lawyer for legal and non-legal advice and assistance”. These services can be provided “onsite and free” and may help protect the patient and also increase their understanding of their options and rights.<sup>758</sup>

The model, which is built on “an understanding that the social, economic, and political context of an individual’s circumstances impacts upon their health, and that these social determinants of health often manifest in the form of legal needs or requirements”, has three key components:

***Provision of legal assistance within the healthcare setting.*** These services focus on early identification of potential legal problems by healthcare professionals. This leads to early intervention, which can often prevent medical and legal crises.

***Transforming Health and Legal Institutions and Practices.*** Through the model health professionals refocus their time with patients to assist in identifying issues that may impact on health, such as accommodation standards and personal safety issues in addition to treating medical symptoms and illness. Legal Professionals work in partnership with health care professionals to help identify and address the legal needs of patients through the delivery of advocacy training and the development of resources and toolkits for this setting.

***Policy Change.*** One of the key benefits of the model is the potential to influence policy reform, to improve the health and well being of vulnerable populations through the advocacy of both the health and legal professionals of the HJP.<sup>759</sup>

<sup>754</sup> S Perel-Levin, [Discussing screening for elder abuse at primary health care level](#), 2008, page 29.

<sup>755</sup> Justice Connect, *Our Story*, webpage, 2015, <http://www.justiceconnect.org.au/who-we-are/our-story> (accessed 10 August 2015).

<sup>756</sup> Justice Connect, *Our Story*, 2015.

<sup>757</sup> Justice Connect, *Health Justice Partnerships*, webpage, 2015, <http://www.justiceconnect.org.au/what-we-do/what-we-are-working/health-justice-partnerships> (accessed 10 August 2015).

<sup>758</sup> Justice Connect, *Health Justice Partnerships*, 2015.

<sup>759</sup> Justice Connect, *Health Justice Partnerships*, 2015.

Justice Connect Seniors Law made a submission to Victoria's Royal Commission into Family Violence – established in February 2015 – which outlines nine recommendations to address elder abuse through prevention and early intervention, incorporating the HJP approach as part of a broader commitment to better integration of services and an adapted legal response.<sup>760</sup>

Ranging from “quick wins” to more substantial initiatives, the submission called for:

1. *Targeted education campaign*

*Evidence suggests older people are reliant on their family to manage their financial affairs, citing a lack of confidence in managing their affairs themselves. There is also limited understanding about powers of attorney or how they can be misused. Consequently, a targeted community education campaign promoting the financial literacy of older people and their understanding on substitute decision-making, would encourage financial independence and reduce the risk of financial elder abuse.*

2. *A screening tool for elder abuse*

*If elder abuse does occur, older people are generally reluctant to seek assistance. Elder abuse can be subtle and, without disclosure, can be difficult to detect. The existing risk assessment framework for family violence does not screen for significant risk factors of elder abuse – such as the accumulation of assets. As such, a framework designed to screen for the risk factors of elder abuse is required.*

3. *Better integration of health, community and legal services*

*These screening tools must be supported by training of health and community professionals, who are generally best placed to identify and respond to elder abuse. However, ad hoc training does not necessarily translate into the systemic change of practice needed to effectively identify and respond to elder abuse. A more integrated, multi-disciplinary approach is required, such as a “health justice partnership” (HJP). By integrating legal, health and community services, the HJP model of service delivery can create synergies, maximising the healthcare team's ability to identify and respond to elder abuse.*

4. *An adapted legal response*

*The legal system must advance the human rights of older people, providing a range of interventions that are adapted to their needs and priorities. As financial abuse is commonly perpetrated through the use of substitute decision-making appointments and “assets for care” arrangements, the recommendations focus on addressing gaps and deficiencies in the legal frameworks that regulate these situations.*

5. *Greater accountability of decision-makers*

*Legislative amendments are required to provide for greater accountability of guardians and administrators who perpetrate financial elder abuse, such as the ability to order compensation and impose penalties. Systemic oversight of powers of attorney is also required.*

6. *Easier enforcement of failed “assets for care” arrangements*

*To enforce property rights under an “assets for care” arrangement, an older person may have to overcome onerous evidentiary burdens imposed by archaic legal presumptions that are not*

<sup>760</sup> Justice Connect, *Family violence and elder abuse: similar but different*, webpage, 2015, <https://www.justiceconnect.org.au/our-programs/seniors-law/law-and-policy-reform/family-violence-and-elder-abuse-similar-different> (accessed 10 August 2015).

*adapted to the generally informal nature of these arrangements. Legislative amendments are required to limit the operation of these presumptions in the adjudication of property matters.*

#### **7. Extending the definition of “family violence”**

*In its current form family violence legislation does not necessarily protect older people experiencing neglect and subtle forms of financial abuse. By extending the definition of family violence, intervention orders may provide a useful mechanism to address these instances of abuse.*

#### **8. Better access to justice for clients with diminished capacity**

*Not only do legal interventions have to be appropriate, older people – especially those with diminished capacity – must be able to access them. Currently, lawyers must navigate competing professional obligations in assessing a client’s capacity to provide instructions. Clarification of these obligations encourages compliance and allows the lawyer to progress the older person’s legal matter arising in the context of elder abuse. Further barriers can arise if an older person has a matter requiring litigation. Amendments to court rules are required with respect to the appointment of litigation guardians, their risk of costs liability as well as the oversight of their conduct.<sup>761</sup>*

### **Committee comment**

The Committee notes the importance of proactive strategies in this context, and acknowledges Seniors Law’s submission that screening tools must be supported by training of health and community professionals, who are generally best placed to identify and respond to elder abuse, and that ad hoc training does not necessarily translate into the systemic change of practice needed to effectively identify and respond to elder abuse.

The Committee supports an integrated, multi-disciplinary approach to training and support.

The Committee acknowledges the promise of Health Justice Partnerships and other collaborative service models in integrating legal, health and other community services to enhance the response to elder abuse.

### **Recommendation 41**

The Committee recommends that the Queensland Government implement a multi-disciplinary approach to training, support and reporting elder abuse.

<sup>761</sup> Justice Connect, [Family violence and elder abuse: similar but different](#), 2015.

## 8. Financial sector role

The financial sector has a considerable history of involvement in various financial literacy initiatives. The ABA notes that for more than a decade, its 'Broadening Financial Understanding' program it has aimed "to help Australians make confident and informed decisions regarding their money and finances".<sup>762</sup> Activities continue to be conducted through various banks and financial service providers, who work in concert with National Financial Literacy Strategy leader ASIC and various state and local government and organisational agencies.

Many of these efforts have focussed on younger consumers and school-based interventions. However, banks are now increasingly addressing specific materials at seniors to promote education of elder abuse. Notably, Caxton Legal Centre Inc. has highlighted the ABA's efforts in producing "detailed factsheets on financial abuse", and recommended the broader distribution of materials such as the ABA's 'Ten Tips to Prevent Elder Abuse' Factsheet.<sup>763</sup>

Caxton Legal Centre Inc., in its submission, sought to highlight the value to be gained from opportunities to exploit collaborations between local groups and banks and industry, to fill gaps in hands-on community financial literacy workshops.<sup>764</sup> In this respect, Caxton Legal Centre Inc. drew attention to:

*... an example of how this was tackled through an initiative in Illinois – where a community partnership was formed with Allianz, to provide grants to support their financial literacy workshops for seniors. These workshops are intended to educate seniors about the increasing problem of elder financial abuse and offer guidance on steps they can take to protect their finances.*<sup>765</sup>

The ABA noted that it is already leveraging local organisational links to raise awareness of financial abuse, as well as support research in the area. Included in these efforts have been collaborative efforts with Alzheimer's Australia and Capacity Australia, to build on existing training programs and to provide an interactive training module covering financial abuse.<sup>766</sup> In addition to these general consumer literacy and education efforts, however, it is also increasingly recognised that banks and other industry actors can play a more direct role in the reduction and early detection of financial exploitation and abuse.

This area can be a deeply challenging one for the sector, as every customer's situation is unique, and industry operators have an obligation to protect their customer's privacy, maintain the duty of confidentiality, and to not unnecessarily intrude into their customers' lives.<sup>767</sup> As the ABA explained, among the many variables banks must consider in this regard:

*First, banks must ensure that they do not breach their legal obligations, including under privacy laws, in the act of responding to, and managing, a possible or actual instance of financial abuse.*

*From a bank perspective, banks must assume that a customer can transact until a point to which the law, and medical profession, say this is not the case. Banks must act on the instructions of their customers. If a customer makes a decision to withdraw money, transfer*

<sup>762</sup> Australian Bankers' Association, [Position Statement on Financial Literacy](#), 2014, page 1.

<sup>763</sup> Caxton Legal Centre Inc., Submission no. 15, page 16.

<sup>764</sup> Caxton Legal Centre Inc., Submission no. 15, page 13.

<sup>765</sup> Caxton Legal Centre Inc., Submission no. 15, page 13.

<sup>766</sup> ABA, Submission no. 17, page 5.

<sup>767</sup> Australian Bankers' Association, '[Banking industry package helps to combat this silent crime](#)', *Financial abuse prevention*, Media Release, 14 June 2013; ABA, Submission no. 17, page 3.

*money or property, etc, a bank is obliged to assume this decision has been made with the knowledge and authority of their customer.*

*In addition, banks have to be very careful not to discriminate against people based on age or disability. Where a third party exerts “undue influence”, it is difficult for a bank to establish without asserting some form of subjective judgement. A response by a bank may “discriminate” against their customer.*

*Second, financial abuse tends to be a breach of a relationship of trust, for example, a family member acting as an agent. A bank has a legal obligation to act in accordance with the authority as contained in an instrument or order. Financial abuse may be perpetrated by someone that has the legal authority to make decisions on behalf of the older person.*

*The bank-customer relationship is a contractual relationship in which the bank is not at liberty to permit transactions on the customers’ account without the customer’s mandate. Therefore, a person presenting as an agent of the customer imposes an obligation on the bank to authenticate the arrangement. Recognition by a bank that the authority of a third person to act on behalf of a bank customer, whether the customer is an older person or otherwise, is a key liability issue for banks. The duty to authenticate the authority to act as agent as well as establish the identity of the agent needs to be carefully and strictly exercised.*

*Third, financial abuse is often complex and difficult to ascertain. It is difficult to distinguish between an unwise but legitimate financial transaction from an exploitative transaction. For example, ‘implausible reasons for banking activity’, this is difficult to ascertain; and ‘undue pressure’, this is open to subjective judgement. Assumptions may be offensive. Actions may discriminate. Banks cannot prevent customers from making informed, but ill-advised decisions.<sup>768</sup>*

Ultimately, the ABA noted, such considerations mean there are significant risks to action in this regard, as to intervene or question a customer inappropriately, or without due consideration and sensitivity, may cause embarrassment for the customer, or possibly damage the customer-banker relationship, or even result in greater vulnerability for the customer.<sup>769</sup> Further, such actions may also disadvantage older people “through the diminution of trust in third parties who are acting in good faith and in the best interests of the older person”.<sup>770</sup>

Primary measures for addressing the scourge of financial abuse and exploitation of seniors and other vulnerable people have consisted of a combination of training for bank staff, and associated protocols and procedures for dealing with suspected instances of abuse; together with possible mandatory reporting requirements and/or computerised alert systems.

A number of these approaches have been specifically recommended in various reviews. For example, the final report of Federal parliamentary inquiry into older people and the law, completed in 2007, included a chapter that addressed issues surrounding fraud and financial abuse. The chapter recommended, in relation to initiatives in the banking sector, that there be:

- co-operative development of national, industry-wide protocols for reporting alleged financial abuse, and
- development of a training program to assist bank staff to identify suspicious transactions.<sup>771</sup>

<sup>768</sup> ABA, Submission no. 17, page 3.

<sup>769</sup> ABA, '[Banking industry package helps to combat this silent crime](#)', 2013.

<sup>770</sup> ABA, Submission no. 17, page 3.

<sup>771</sup> FOS, '[Financial Abuse of the Vulnerable Older Person](#)', 2007, page 3.



In the wake of the Inquiry report, the Banking and Financial Services Ombudsman produced a Bulletin, *'Financial Abuse of the Vulnerable Older Person'*, which provided information about financial abuse and how to identify it in the context of the interactions between banks and other financial institutions and their older customers.<sup>772</sup> The Bulletin noted, for example, that the 'red flags' or warning signs of financial abuse potentially visible to bank staff could include that the older person may:

- *Be accompanied by a new acquaintance to make a large or unusual withdrawal of cash;*
- *Be accompanied by a family member or other person who seems to coerce them into making transactions;*
- *Not be allowed to speak for themselves/the other party does all the talking (particularly in combination with either of the two above situations);*
- *Start to appear fearful (particularly of the person accompanying them) or withdrawn;*
- *Have withdrawal slips presented by a third party, with their signature on it but the rest of the slip filled out in a different handwriting;*
- *Have large withdrawals or transfers made on behalf of the older person without prior direct contact from them;*
- *Not understand or be aware of recently completed transactions;*
- *Give implausible explanations about or appear confused about what they are doing with their money;*
- *Engage in bank activity that is inconsistent with their ability such as apparent use of an ATM card despite the fact that they are housebound or in hospital;*
- *Engage in bank activity that is unusual, erratic or uncharacteristic;*
- *Suddenly register for internet banking when prior banking has been branch based and there has been no preliminary contact with the bank;*
- *Have unpaid bills that they should be able to afford to pay – e.g. complain of having no heating despite the fact that they can afford to have it, or that they are being evicted;*
- *Be concerned about missing funds or banking related documents;*
- *Indicate that mail is no longer being delivered to their home.*<sup>773</sup>

Many of these warning signs and various options for response were canvassed in a 2008 report published by Victoria's Loddon Campaspe Community Legal Centre, entitled *Responding to the financial abuse of older people: Understanding the challenges faced by the banking and financial services sector*.

Then National Convenor of the Australian Network for the Prevention of Elder Abuse (ANPEA), Associate Professor Gerry Naughtin, stated in the foreword that the report offered a comprehensive analysis of "the challenges, legislative constraints and opportunities for addressing financial abuse for the banking and financial sector in Australia"; and commended the report's range of concordant

<sup>772</sup> M Clare, BB Blundell, J Clare, [Examination of the extent of elder abuse in Western Australia: A qualitative and quantitative investigation of existing agency policy, service responses and recorded data](#), Crime Research Centre, University of Western Australia, Joint Initiative with Advocare Inc., July 2011, pages 52-53.

<sup>773</sup> FOS, ['Financial Abuse of the Vulnerable Older Person'](#), 2007, page 7.

suggestions and recommendations draw on some of the initiatives that have been implemented overseas.<sup>774</sup> These recommendations included:

*(a) the [Banking Industry] Code to be amended to require adopting banks to implement appropriate training for all staff of a financial institution, including to:*

- (i) recognise signs of abuse, recognise the common profile of a vulnerable customer and/or potential abusers;*
- (ii) understand protocols to deal with suspected abuse; and*
- (iii) understand enduring powers of attorney and administration orders made by tribunals;*

*(b) possible amendment to relevant legislation and codes (including the Code, and the Privacy Act), to protect financial institutions from any suit of defamation, or breach of contract or confidentiality or interference with privacy if they report suspected abuse in good faith;*

*(c) the Australian Bankers' Association to consider whether it should:*

- (i) amend the Code to include new or separate standards and contractual terms for consumer banking services (including basic savings and investment products) to or for elderly customers;*
- (ii) conduct research on overseas trends and experiences to enhance the value of the review.*

Further, the report recommended consideration of all of the reforms proposed by the House of Representatives Standing Committee on Legal and Constitutional Affairs in the 2007 Inquiry into Older People and the Law. With regards to banks, this particularly included:

- *the members of the Australian Guardianship and Administration Committee examine the Western Australian legislation relating to reporting by banks and other financial institutions of suspected abuse to the Public Advocate and Advocare, and develop similar initiatives for consideration by their respective state and territory governments.*
- *the Australian Government or the Australian Bankers' Association provide funding and appoint or establish an agency to be responsible for monitoring abuse, developing solutions to combat abuse and providing a focal point to address the issue of abuse.*<sup>775</sup>

These recommendations were largely reaffirmed in an April 2011 examination of the extent of elder abuse in Western Australia carried out by the University of Western Australia's Crime Research Centre, in a joint initiative with Advocare. The "qualitative and quantitative investigation of existing agency policy, service responses and recorded data" outlined the results of a series of detailed interviews of service provider organisations responding to elder abuse. In response to the findings, the WA report recommended that:

- *Banks develop policies, practices, educational programs, and regulatory measures that reduce the risk and incidence of financial abuse. These may include better*

<sup>774</sup> J Edmonds and P Noble, eds., [Responding to the financial abuse of older people: Understanding the challenges faced by the banking and financial services sector](#), Loddon Campaspe Community Legal Centre, Advocacy & Rights Centre Ltd, Victoria, August 2008, page ii.

<sup>775</sup> Edmonds and Noble, eds., [Responding to the financial abuse of older people: Understanding the challenges faced by the banking and financial services sector](#), 2008, page 6.

*education of vulnerable older people about the potential for financial abuse, an alert system (similar to AUSTRAC<sup>776</sup>) to identify suspicious transactions, as well as better arrangements to ensure the currency of third party signing rights.<sup>777</sup>*

- *APEA: WA (Alliance for the Prevention of Elder Abuse, Western Australia) continue to work with the major banks to design and implement an integrated strategy to address the risks of financial abuse and fraud which victimise older people in Western Australia; such work to include an invitation for the network of the major banks to become an active member of APEA: WA.<sup>778</sup>*

The WA report noted that given banks may have a high staff turnover for front-counter workers, which may present an obstacle to their keeping up with education and training about EPOAs and elder abuse; a monitoring policy and program to support the reporting of suspicious transactions to the appropriate authorities may be a particularly helpful system action. The contribution of three interview participants in this regard were especially singled out:

*I still come across cases where the banks don't understand what an Enduring Power of Attorney is...and banks are fairly laws unto themselves. They do very, very odd things, and so educating the banks would be educating them more to picking up instances where things might not be quite right (Interview Nine)...*

*Whether banks need to set up...a sort of policy in regard to monitoring, or do they hand it over to a similar body, like AUSTRAC, who have access to all accounts and everything that goes through the system...and again they have analysts who can readily say, —Oh well no, that's been happening|| or they can say, —Well this looks a bit suspicious and then they can report it to the appropriate authority (Interview Twelve)...*

*The major banks have certainly got plenty of money. It shouldn't be that hard for them to identify a program that would pick up the sort of transactions that were happening on the little old lady's bank account, where she'd been drawing \$300 a week and then suddenly it was \$1,000 a day (Interview Eight)...*

*Sometimes it...you know, we just don't need to see it happen. If we don't look at it, it's not happening. ....you'll have a person who's quite financially well off who, the only people who know about it is their immediate family, who do take advantage of it, at the end of the day. You've got all those sorts of issues, but again, if you made it mandatory reporting like you do with AUSTRAC for people who put into the bank more than \$10,000 at a time or they put into the bank an amount of money under \$10,000 too often, get reported, likewise, if you flag people who are of retirement age, and suddenly they're fortune starts dwindling very quickly, maybe the bank should have to report it (Interview Ten).<sup>779</sup>*

<sup>776</sup> AUSTRAC is Australia's anti-money laundering and counter-terrorism financing regulator and specialist financial intelligence unit. See: Australian Government, Australian Transaction Reports and Analysis Centre, *About AUSTRAC*, Commonwealth of Australia, webpage, 2015, <http://www.austrac.gov.au/about-us/austrac> (accessed 20 August 2015).

<sup>777</sup> Clare et al, *Examination of the extent of elder abuse in Western Australia: A qualitative and quantitative investigation of existing agency policy, service responses and recorded data*, 2011, pages 52-53.

<sup>778</sup> Clare et al, *Examination of the extent of elder abuse in Western Australia: A qualitative and quantitative investigation of existing agency policy, service responses and recorded data*, 2011, page 95.

<sup>779</sup> Clare et al, *Examination of the extent of elder abuse in Western Australia: A qualitative and quantitative investigation of existing agency policy, service responses and recorded data*, 2011, pages 68; 52; 65.

It was noted that credit cards are more heavily monitored than decision-making-related anomalies, as banks have clearer liabilities in relation to the former, and may have to replace the money if it is later found that a transaction was fraudulent.<sup>780</sup>

Extending existing fraud-related monitoring activities to support alerts regarding unusual transactions, together with training for bank staff about risks and warning signs and the development of protocols for response, were accordingly highlighted as key areas for future action.<sup>781</sup>

The 2007 Financial Ombudsman Service Bulletin on elder abuse similarly called for additional monitoring activities to take place as a natural extension of existing fraud detection activities, arguing that “training in relation to identifying financial abuse fits squarely within the fraud prevention role of the bank and its officers – to be alert for fraud and to reduce fraud related losses for the bank and its customers”.<sup>782</sup>

Dr Cassandra Cross submitted that responses across both areas – fraud *and* abuse – could stand to be strengthened, drawing on lessons from victim experience:

*... talking to older victims of fraud...while some victims did seek advice from banks or financial advisors, this has mixed success in terms of the quality of advice provided. In some cases, these individuals or agencies supported the victim in their fraud victimisation or enabled them to continue their involvement despite providing warnings. It is acknowledge that this is a difficult balance to strike at times, between the need of the agency to protect their client/customer and the independence of the individual to make their own decisions. However, there are instances from my interviews where this has clearly failed.*

*... What I would say is that the victims I have spoken to have gone to the banks and have in some circumstances given a very open account of why they need to withdraw money or why they need to open a new bank account, and there are instances where banks have openly aided and facilitated that. I do think there is scope to better educate perhaps some members of the banking industry, and front-line staff are most important. It is important for front-line staff to have the support of their organisation so that, if they do have a relationship with the customer and they have this gut feeling that something is not right, they are supported to bring that up, not in a confrontational manner but in a calm manner.*<sup>783</sup>

In line with this, given that financial abuse often takes the form of misuse of or theft from a bank account or other facility or financial services product, Gardner argues that employees of financial institutions may be in the best, and sometimes the only position to recognise financial exploitation as it occurs, and before the senior's assets have been dissipated.<sup>784</sup> Notably, in disputes arising from alleged financial abuse, it is often the case that “at least one bank employee had concerns”.<sup>785</sup>

In 2013, in response to these various recommendations and concerns about financial abuse, the ABA launched a package of initiatives to be adopted by the industry “to help prevent this silent crime”.<sup>786</sup> The package consisted of two consumer fact sheets on “protecting yourself from financial abuse” and “setting up power of attorney to help manage your banking needs”, together with industry guidelines

<sup>780</sup> FOS, ‘[Financial Abuse of the Vulnerable Older Person](#)’, 2007, page 9.

<sup>781</sup> Clare et al, [Examination of the extent of elder abuse in Western Australia: A qualitative and quantitative investigation of existing agency policy, service responses and recorded data](#), 2011, pages 68-69.

<sup>782</sup> FOS, ‘[Financial Abuse of the Vulnerable Older Person](#)’, 2007, page 9.

<sup>783</sup> Dr Cassandra Cross, QUT, *Transcript of Proceedings (Hansard)*, Public Hearing, 15 July 2015, page 7.

<sup>784</sup> Gardner, cited in Edmonds and Noble, eds., [Responding to the financial abuse of older people: Understanding the challenges faced by the banking and financial services sector](#), 2008, page v.; FOS, ‘[Financial Abuse of the Vulnerable Older Person](#)’, 2007, page 2.

<sup>785</sup> FOS, ‘[Financial Abuse of the Vulnerable Older Person](#)’, 2007, page 2.

<sup>786</sup> ABA, ‘[Banking industry package helps to combat this silent crime](#)’, 2013.

on “protecting vulnerable customers from potential financial abuse” and “responding to requests from a power of attorney or court-appointed administrator”.<sup>787</sup>

Such efforts have been acknowledged as important initiatives, with ASIC Commissioner Greg Tanzer emphasising that:

*...it is important that financial institutions and intermediaries foster a culture not only of compliance with the law, but also on the long-term interests of their customers. Trust and confidence in our markets is dependent on our gatekeepers having a culture that emphasises the best interests of their customers.*<sup>788</sup>

However, whilst acknowledged by support service providers as important initiatives, Alzheimer's Australia NSW has expressed concern that:

*...this guideline does not have any legal force or prescribe binding obligations on individual banks. The ABA industry guidelines are voluntary and it is up to ABA members to incorporate guidelines into their internal processes, procedures and policies. Australian banking and financial institutions are not statutorily required to report suspicions of financial abuse.*<sup>789</sup>

Alzheimer's Australia, in its 2014 Discussion Paper on preventing financial abuse of people with dementia, recommended that banking and financial services institutions be required to develop systems and processes to prevent financial abuse and to implement protocols to report suspected abuse; and that training on financial abuse and dementia also be mandatory for all bank staff.<sup>790</sup>

Other various international jurisdictions have trialled various pilot projects incorporating such multiple strategies. For example, in Philadelphia, financial services provider Wachovia – now Wells Fargo – launched a system-wide elder fraud prevention program in 2003, which remained in place through to 2007 and included the following three components:

- bank employees were trained to recognize elder abuse, delay any suspicious transactions, and report the incidents to the company's Loss Prevention Department
- the Loss Prevention Department served as the centralized reporting and investigative group, and
- all suspected cases were reported to APS (Adult Protective Services). If financial abuse was substantiated, the bank then partnered with APS in the investigation and protection of the consumer's assets.<sup>791</sup>

During the program's four years of operation, approximately 3,000 cases were investigated, \$2.2 million in losses were prevented, and \$62.5 million in assets were protected. In an article examining the program published in the *Journal of the American Society on Aging* in 2012, Snyder further noted that “Wachovia reported only positive feedback from customers and their loved ones”.<sup>792</sup>

Although the program officially came to an end in 2009 when Wachovia was purchased by Wells Fargo, the Wachovia Elder Abuse Prevention Program was used as a foundation for:

- a national model

<sup>787</sup> ABA, '[Banking industry package helps to combat this silent crime](#)', 2013.

<sup>788</sup> ASIC, Submission no. 19, pages 17-18.

<sup>789</sup> Miskovski, '[Preventing Financial Abuse of People with Dementia](#)', 2010, page 28.

<sup>790</sup> Miskovski, '[Preventing Financial Abuse of People with Dementia](#)', 2010, page 28.

<sup>791</sup> J Snyder, 'Strategies for Banks to Protect Elderly Clients from Themselves and Others', *Generations*, no. 2, Summer 2012, page 99.

<sup>792</sup> Snyder, 'Strategies for Banks to Protect Elderly Clients from Themselves and Others', 2012, page 99.

- the *BITS Fraud Protection Tool Kit*, and
- the *BITS* report, *Protecting the Elderly and Vulnerable from Fraud and Exploitation*.<sup>793</sup>

Snyder notes that:

*BITS, the technology policy division of The Financial Services Roundtable, which represents 100 of the largest integrated financial services companies in the United States, adopted the training program in 2006, and made it available for free to all banks on the BITS website. BITS re-released the program after reviewing and updating it in 2010.*<sup>794</sup>

The Committee notes that other jurisdictions have taken the more aggressive step of requiring bank staff and other individuals in certain positions to report incidents that reasonably appear to constitute financial abuse of an older person or dependent adult.

In California, the state's *Elder Abuse and Dependent Adult Civil Protection Act* establishes a mandatory reporting regime for a whole host of persons who assumed "full or intermittent responsibility for the care or custody of an elder or dependent adult", whether or not compensated;<sup>795</sup> including:

*...administrators, supervisors, and licensed staff of a public or private facility that provides care or services for elders or dependent adults; physicians and medical professionals; clergy; and employees of APS [Adult Protective Services] agencies and local law enforcement.*<sup>796</sup>

Since 2007, officers and employees of financial institutions have also been mandated reporters under the Act.<sup>797</sup> Bessolo reports that while initial attempts to extend reporting requirements to bank officials were opposed by the financial sector, the inclusion of protections from liability of financial institutions for a false report, and the imposition of a misdemeanor rather than criminal penalty for instances in which an employee or financial institution fails to report, "substantially addressed" the industry's concerns.<sup>798</sup>

Preliminary data published after the introduction of the mandatory reporting laws in California suggested a likely significant increase in the number of financial abuse reports filed as a result of such activities. That is:

*According to information provided by a representative of Los Angeles County APS, financial abuse reports filed with APS in Los Angeles County during the first four months of 2006 numbered 1,062, with most reports submitted by financial institutions voluntarily. For the first four months of 2007 [following reform], the filings increased to 1,485, with most reports derived from financial institutions. This represents a 40 percent increase in financial abuse reporting. Hopefully, the increased reporting will result in a reduction of actual losses incurred by elders and dependent adults and an increase in assistance to those who have been victimized.*<sup>799</sup>

Such mechanisms were highlighted by a number of submitters, though they remain a point of some contention, as the Public Trustee noted:

*There is some contention as to whether there should be a scheme obliging those who come in contact with or suspect elder abuse to report their concerns. At one end of the spectrum sits mandatory reporting (that is legislative compulsion to report) of suspected abuse. At the*

<sup>793</sup> Snyder, 'Strategies for Banks to Protect Elderly Clients from Themselves and Others', 2012, page 99.

<sup>794</sup> Snyder, 'Strategies for Banks to Protect Elderly Clients from Themselves and Others', 2012, page 99.

<sup>795</sup> Public Trustee, Submission no. 7, page 10.

<sup>796</sup> JP Bessolo, '[Mandatory Reporting Requirements for Financial Elder Abuse](#)', *Angeles Lawyer*, vol 30, no. 7, October 2007, page 23.

<sup>797</sup> Bessolo, '[Mandatory Reporting Requirements for Financial Elder Abuse](#)', 2007, page 24.

<sup>798</sup> Bessolo, '[Mandatory Reporting Requirements for Financial Elder Abuse](#)', 2007, page 24.

<sup>799</sup> Bessolo, '[Mandatory Reporting Requirements for Financial Elder Abuse](#)', 2007, page 23.



*other end of that continuum proponents suggest there is little evidence that mandatory reporting is more effective in identifying instances of financial abuse than is voluntary reporting. In California there is an obligation upon all persons “who has assumed full or intermittent responsibility for the care or custody of an elder or dependant adult” to report suspicions of abuse (see the Elder Abuse and Dependant Adult Civil Protection Act – Welfare and Institutions Code). In British Columbia in Canada there is no system of mandatory reporting but there is legislative obligation to investigate once a report is made (see the Adult Guardianship Act in that jurisdiction).*

*Interestingly one of the difficulties for financial institutions in the context of financial elder abuse is concerns as to confidentiality or privacy of customers of their institution. This may tend to prevent reporting of concerns identified. There is legislation in some overseas jurisdictions addressing this type of issue and in the Queensland context would be matter for Federal law.<sup>800</sup>*

Townsville Community Legal Service submitted that:

*Reporting has also been said to potentially disadvantage cultural and linguistically diverse communities and aboriginal communities.*

*The high value placed on older people’s ability to be self-determining and the reluctance to view older people as vulnerable or excessively needy has led to strong opposition to the development of mandatory reporting and/or other protective legislation to address the financial abuse of older people.<sup>801</sup>*

Representatives from the ABA reported that such proposals are not supported by the financial sector:

*The ABA does not prefer the mandatory reporting approach, and this has been adopted in a couple of states in the US. Our concern is primarily with the risk of disrupting a trusted relationship and further disempowering a vulnerable customer. It can be very difficult for bank staff, as you said, to know whether or not somebody is making a bad decision or whether in fact they have a disability, somebody else is pulling the strings and signing the withdrawal forms. So it is very difficult. There may well be a legitimate and valid reason for the way something is happening, and to report it can actually invade the relationship of trust and destroy it unnecessarily because of a mere suspicion. There are a couple of elements at play there. It is quite a fine line to draw and to impose on a bank’s staff to do so.<sup>802</sup>*

ABA Policy Director – Retail Policy, Ms Christine Cupitt, stated:

*We have also had some informal feedback from stakeholder groups that we work with, like ACT COTA, for example, who have expressed concerns about the introduction of a mandatory reporting regime because of those impacts on vulnerable customers.<sup>803</sup>*

A more promising area of initiative, the ABA suggests, is the implementation of a number of product and service solutions to assist customers to better manage their finances and adopt supported (as opposed to substituted) decision-making approaches.

<sup>800</sup> Public Trustee, Submission no. 7, pages 10-11.

<sup>801</sup> Townsville Community Legal Service Inc., Submission no. 1, page 23.

<sup>802</sup> Ms Lina Rizk, Manager, Retail Policy, Australian Bankers’ Association, *Transcript of Proceedings (Hansard)*, Public Hearing, Communities, Disability Services and Domestic and Family Violence Prevention Committee, 15 July 2015, page 3.

<sup>803</sup> Ms Christine Cupitt, Policy Director, Retail Policy, Australian Bankers’ Association, *Transcript of Proceedings (Hansard)*, Public Hearing, Communities, Disability Services and Domestic and Family Violence Prevention Committee, 15 July 2015, page 3.



The ABA submitted:

*These arrangements help customers put in place appropriate measures to help protect themselves yet retain their financial independence.*

*Examples of these product and service solutions include:*

*A **joint account** which can include a co-signatory account, two-to-sign account or linked account:*

- *Co-signatory account – either the customer or third party is able to operate the account;*
- *Two-to-sign account – both the customer and the third party are able to authorise transactions; and*
- *Linked accounts – different accounts or facilities which are linked together to help better manage day-to-day transactions and bill payments, savings and loans. Linked accounts make it easier to transfer money between accounts using Internet or digital banking channels.*

*Additionally, banks variously offer arrangements to enable a third party to be authorised to access the account. Some account arrangements can be tailored to limit or allow certain access and/or transaction types. For example, some authorisations can be limited so that the third party is able to access the account, but not transact on the account. Upon request other account services are also available to assist customers better manage their money and finances, including hard copy account statements in larger print, reduced maximum daily withdrawal limits, transaction and transfer restrictions, direct debits for regular payments, and SMS or email alerts to remind customers about their account balance, transactions and payments. Services such as these can assist customers maintain their financial independence and autonomy.*

*Five, banks discourage customers adopting informal arrangements. While some people may prefer informal arrangements, such arrangements may leave them vulnerable to fraud, exploitation and financial abuse, even by their trusted third party (such as spouse or family member). Informal arrangements can include providing a PIN or other access code to a third party to conduct banking transactions on their behalf. Such practice can expose customers to significant risks. For example, if an unauthorised transaction is conducted on their account and the bank is aware that the customer has breached their terms and conditions by providing their PIN or access code to another person, then they may also lose their protections under the e-Payments Code and be liable for any loss.*

*Banks regularly promote the need for customers to retain their personal and financial information in a secure place. However, banks strongly encourage formal substituted decision-making arrangements and supported decision-making arrangements, as these mechanisms provide the bank with clear instructions, minimises the risk of the customer breaching their contractual obligations, and ensure banks are able to better service their customers' needs.*

*Customers should speak to their bank about putting in place an arrangement that best suits their needs and eliminates exposure to financial risks.<sup>804</sup>*

<sup>804</sup> ABA, Submission no. 17, pages 3-4.

**Committee comment**

The Committee acknowledges the important role banks and other frontline service industries play in the detection and reduction of financial exploitation and abuse.

The Committee also notes the importance of ongoing training and professional development to support and encourage financial sector professionals to remain alert and aware of financial exploitation and elder abuse. To ensure consistency across the sector, the Committee sees merit in protocols and formal statutory protections in the financial and insurance industries.

Overall, building partnerships based on trust and confidence are in the best interests of clients and service providers. In this regard, the Committee considers that opportunities to establish pilot project leveraging multiple strategies of awareness, technology-enhanced detection, risk-minimising account mechanisms and potentially, mandatory reporting frameworks, merit further investigation and consideration.

**Recommendation 42**

The Committee recommends that the Queensland Government support efforts to develop more formal protocols and service obligations for financial services providers with regard to elder abuse, including exploring opportunities for trials of coordinated partnership projects and mandatory reporting.

## Appendix A – Terms of Reference

1. That the Communities, Disability Services and Domestic and Family Violence Prevention Committee inquire into and report on the adequacy of existing financial protections for our state's seniors.

2. That, in undertaking this inquiry, the Committee should consider:

- the current levels of financial literacy of seniors and how that can be improved, for example by education programs
- what support and advice is available to assist seniors with their independent financial decision-making
- online and internet based vulnerabilities and the prevalence and vulnerability of seniors to scams
- agencies and organisations that provide advice and support to seniors requiring financial protection, and
- the role of the financial sector in ensuring adequate safeguards for seniors in relation to financial decision-making.

3. Further, that the Committee seek public submissions and consult with key stakeholders, including seniors' representative bodies, the financial sector and relevant experts

4. Further, that the Committee report to the Legislative Assembly by 31 August 2015.

## Appendix B – List of Submissions

001	<a href="#">Townsville Community Legal Service Inc.</a>
002	<a href="#">Diana Whiting</a>
003	<a href="#">Council on the Ageing (COTA) Queensland</a>
004	<a href="#">Andrew C. Worthington</a>
005	<a href="#">The Public Guardian (OPG)</a>
	<a href="#">The Public Guardian (OPG) – supplementary submission</a>
006	<a href="#">Dr Jacqueline Drew</a>
007	<a href="#">The Public Trustee of Queensland</a>
008	<a href="#">Queensland Council of Social Service</a>
009	<a href="#">Legal Aid Queensland</a>
010	<a href="#">Associate Professor Cheryl Tilse and Professor Jill Wilson</a>
011	<a href="#">Dr Cassandra Cross</a>
012	<a href="#">Hervey Bay Seniors Legal and Support Service</a>
013	<a href="#">Insurance Council of Australia</a>
014	<a href="#">UnitingCare Community</a>
015	<a href="#">Caxton Legal Centre Inc.</a>
016	<a href="#">Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd</a>
017	<a href="#">Australian Bankers' Association Inc.</a>
018	<a href="#">National Seniors Australia</a>
019	<a href="#">Australian Securities and Investments Commission</a>
020	<a href="#">Queensland Aged and Disability Advocacy Service</a>

## Appendix C – List of Witnesses at Public Briefings and Hearings

<b>Wednesday 6 May 2015</b>
Ms Karin Finsterle, Director, Community Support, Department of Communities, Child Safety and Disability Services
Ms Barbara Shaw, Executive Director, Community Services, Department of Communities, Child Safety and Disability Services
<b>Wednesday 20 May 2015</b>
Assistant Commissioner Paul Stewart, Queensland Police Service
Ms Samantha Klintworth, Director, Community Services, Elder Abuse Prevention Unit, UnitingCare Community
Ms Ceallaigh Spike, Project Officer – Research and Systems, Elder Abuse Prevention Unit, UnitingCare Community
Ms Barbara Shaw, Executive Director, Community Services, Department of Communities, Child Safety and Disability Services
Ms Karin Finsterle, Director, Community Support, Department of Communities, Child Safety and Disability Services
<b>Wednesday 3 June 2015</b>
Detective Superintendent Brian Hay, Fraud and Cyber Crime Group, State Crime Command, Queensland Police Service
Mr Geoff Rowe, Chief Executive Officer, Queensland Aged and Disability Advocacy Inc.
Ms Vivienne Campion, Manager, Seniors Legal and Support Service, Caxton Legal Centre Inc.
Ms Kirstie Makie, Coordinating Solicitor, Seniors Legal and Support Service, Caxton Legal Centre Inc.
Mr Kevin Martin, Public Guardian, Office of the Public Guardian
Mr Mark Tucker-Evans, Chief Executive Office, Council on the Ageing
Mr Mark Crofton, Acting Public Trustee, the Public Trustee
<b>Wednesday 15 July 2015</b>
Ms Lena Rizk, Policy Manager – Retail Policy, Australian Bankers Association
Ms Christine Cupitt, Policy Director – Retail Policy, Australian Bankers Association
Dr Cassandra Cross, Lecturer, Queensland University of Technology
Private witness