



Submission in response to the *National Plan to End the Abuse and Mistreatment of Older People 2024 – 2034* | Older Persons Legal Services Network

Overview

The Older Persons Legal Services Network (**the Network**) welcomes the opportunity to comment on the draft *National Plan to End the Abuse and Mistreatment of Older People 2024-2034* (**the Plan**).

The Network is made up representatives from, predominately Community Legal Centres (CLCs) but also Legal Aid Commissions and similar from across Australia. All members of the Network have programs dedicated to working with older people and the Network receives some administrative support from Community Legal Centres Australia. CLCs are not-for-profit community-based organisations that provide legal advice, casework, information and a range of other services. CLCs primarily assist members of society who are facing disadvantage and marginalisation, including those with special needs, and take on matters in the public interest. Older Australians experiencing some form of abuse will often seek help from a CLC, which are at the forefront of protecting the rights of older Australians. The members of the Network have drawn on their specialist experience in seniors' rights issues and elder law to compile this submission.

Members of the Network regularly work with Aboriginal and Torres Strait Islander clients and organisations and the Network supports the Plan's focus on First Nations Peoples. We have chosen not to comment specifically on issues within the plan relating to First Nations People and will leave this to be commented on by the experts – First Nations Peoples and First Nations Led-organisations.

The Network supports the Commonwealth Governments' commitment to preventing the abuse and mistreatment of older people, and is generally supportive of the purpose, term and structure of the Plan, and the fact it is underpinned by a commitment to human rights. The Network does, however, see room for improvement in the Plan. In this submission, the Network outlines our members' feedback on certain elements of, or omissions in, the Plan. Our recommendations are included on page 2.

In short, our recommendations focus on the challenges posed by accessibility and a lack of digital literacy among older Australians; the differing experience of elder abuse among older people of different demographic groups; the need to adjust measures to identify and combat elder abuse across older people with different levels of decision-making capacity; the importance of ongoing reform of decision-making instruments such as enduring powers of attorney (**EPOAs**); the need to expand specialist elder abuse services; safeguarding; an increased focus on post-intervention (recovery and healing); and standardisation in data collection. Above all, we emphasise the importance of co-design and a human rights approach.

The success of the Plan, in the Network's view, will depend on robust implementation, sustained funding, and meaningful engagement with older people and frontline services. Ongoing monitoring and accountability and a commitment to continuous improvement will be essential to achieving its objectives.

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Recommendations

Recommendation 1: That the Plan refers to domestic human rights legislation and that human rights principles under the Plan are measurable and reported against.

Recommendation 2: That the co-design principles, set out in this submission, are detailed under Principle 3, and that a commitment to establishing a Co-design Group is inserted into the Plan.

Recommendation 3: That the Plan requires financial institutions, government bodies, and other institutions to ensure accessibility of their products including by making phone and in-person services available, and to increase safeguarding mechanisms, in light of risks of elder abuse posed by online platforms.

Recommendation 4: That the Plan and Action Plans more comprehensively explore and address the experiences of older people from CaLD communities including victim-survivors of elder abuse.

Recommendation 5: That the Plan acknowledges that men form a significant percentage of victim-survivors of elder abuse and that prevention, early intervention, response, and post-intervention services must be designed for all victim-survivors of elder abuse, including men.

Recommendation 6: That other relevant national plans and strategies that apply to women are interrogated and gaps identified from the perspective of older women, and that the Plan and Action Plans clearly articulate the role this Plan has alongside those other plans and strategies.

Recommendation 7: That LGBTQIA+ communities form a specific focus of further research, and that existing evidence regarding experiences of elder abuse within LGBTQIA+ communities is better reflected throughout the Plan.

Recommendation 8: Principle 5: That 'Supporting individual decision making, autonomy and dignity' is updated to include additional context on the needs of individuals with and without decision-making capacity or whose capacity is fluctuating.

Recommendation 9: Focus Area 2: That legal frameworks and adult safeguarding responses are enhanced, and include considerations of capacity in the commentary on EPOA reform. That there is a Priority Action to update laws across the country to give effect to supported decision-making and implement modern capacity assessment guidelines.

Recommendation 10: Focus Area 3: That the following Priority Action is added: Strengthen the capacity and capability of services to ensure they are equipped to respond to the needs of people who lack decision-making capacity.

Recommendation 11: That awareness raising campaigns are accompanied by corresponding increases in funding and supports for specialist support services including at CLCs.

Recommendation 12: In terms of training, that:

- training for professionals in relevant occupations is expanded to community organisations and carers, with such training mandatory where possible;
- there is a particular commitment to training in regional, rural and remote areas;
- health and aged care providers receive training on capacity and supported decision-making; and

- relevant individuals (including attorneys themselves) receive specific training regarding EPOAs.

Recommendation 13: That older persons receive targeted communications across different media (including physical media) regarding future planning and protection from potential abuse, especially when reaching a certain age, or in vulnerable situations such as natural disasters. All such education and awareness campaigns should be available in community languages.

Recommendation 14: That every Australian jurisdiction should have a mechanism to allow a court or tribunal to make a compensation order against an attorney when they cause damage or loss to the principal through a breach of their obligations.

Recommendation 15: That Australia establishes a national EPOA register.

Recommendation 16: That the Plan and Action Plans emphasise the crucial importance of the sustainability and expansion of specialist legal and multidisciplinary elder abuse services, including helplines, and clearly specify responsibility for funding.

Recommendation 17: That the definition of safeguarding is clarified under the National Plan. This definition should be underpinned by the human rights principles under the Plan.

Recommendation 18: That adult safeguarding bodies are given sufficient powers to investigate and intervene in elder abuse cases, and that enhanced oversight mechanisms are built into adult safeguarding bodies to prevent and address systemic failures.

Recommendation 19: That policing is highlighted as an essential focus area within the Plan and that specific actions relating to policing are included in the Action Plans, including actions relating to improving consistency in identifying and responding to elder abuse, and consistent and ongoing training and practice improvements.

Recommendation 20: That post-intervention supports, recovery, and healing initiatives are prioritised and embedded in the Plan.

Recommendation 21: That Priority Action 4.1 provides further details regarding the national framework, including standardised baseline data collection, and consideration of the role of a central coordinating agency for data collection, analysis and research.

Recommendation 22: That Priority Action 4.3 is amended to ensure that older persons are appropriately included in the research to ensure it is reflective of lived experiences.

Body of submission

The Network offers the following observations and insights in respect of the Plan.

1. Human rights

- 1.1 The Network strongly supports the human rights approach embodied in Principle 1. We agree that measures to address the abuse and mistreatment of older people should be underpinned by human rights principles that prioritise older people's agency, autonomy, liberty and equality, alongside the other principles articulated in the Plan.
- 1.2 In addition to referring to United Nations conventions and principles, the Plan should also expressly incorporate domestic human rights legislation (existing and any yet-to-be introduced), in the Network's view, and the commitment to human rights in the Plan should be measurable, reported against, and enforceable.

Recommendation 1: That the Plan refers to domestic human rights legislation and that human rights principles under the Plan are measurable and reported against.

2. Co-design

- 2.1 The Plan must demonstrate a clearer and firmer commitment to co-design, in the Network's view. As it stands, Principle 3 under the Plan seeks to encourage co-design, however, only Priority Action 1.3 relates directly to co-design, seeking to ensure First Nations People and other Priority Groups are involved in the design and delivery of specific communications. This is inadequate.
- 2.2 The Plan, Action Plans to sit beneath it, the monitoring and evaluation framework, and reporting in respect of the Plan, should all be co-designed with older people (including from Priority Groups as defined under the Plan and people with lived experience of elder abuse) and frontline services including representatives from CLCs, in the Network's view.
- 2.3 The Plan should articulate specific co-design principles and commit to using them. The following co-design principles would be suitable for inclusion the Plan, in the Network's view:¹
 - 2.3.1 actively engaging with a broad array of older people, people with lived experience, people in aged care and hospitals, and frontline workers from the earliest point possible when developing new plans, strategies, approaches or initiatives relating to the Plan;
 - 2.3.2 establishing a co-design group or team that includes people with lived experience of elder abuse, older people from Priority Groups, and frontline services including specialist elder abuse legal services, CLCs, and relevant peak bodies including Elder Abuse Action Australia (**EAAA**) (**Co-design Group**);
 - 2.3.3 having defined objectives and deliverables which are discussed and agreed upon by the Co-design Group;
 - 2.3.4 ensuring there is adequate knowledge exchange within the Co-design Group and ensuring that professional knowledge is transferred and disseminated throughout in an accessible way; and

¹ O'Donnell, D (2020) "Keep Control: A Co-designed Educational and Information Campaign Supporting Older People to Be Empowered against Financial Abuse" in Phelan, A (2020) *Advances in Elder Abuse Research* (pp. 121-135).

- 2.3.5 activating the Co-design Group in a public-facing or ‘ambassador’ role for the Plan and future related initiatives.
- 2.4 The Plan should be a plan not just for government and service providers – it should be a plan for and by older people, and accessible to all older people and the broader community. Inclusion and implementation of the co-design principles will help achieve this.
- 2.5 Trust is an essential precursor and corequisite to effective co-design, in the Network’s view. Trust is built through sustained interaction and listening and a genuine, physical presence (especially in regional, rural and remote communities). The Network recommends that governments involved with the development and implementation of the Plan and related initiatives understand the importance of building trust and make genuine efforts to do so particularly with Priority Groups and others with whom they wish to genuinely engage.

Recommendation 2: That the co-design principles, set out in this submission, are detailed under Principle 3, and that a commitment to establishing a Co-design Group is inserted into the Plan.

3. Accessibility and digital exclusion

- 3.1 The Network welcomes the Plan’s acknowledgement that some older people have lower digital literacy and face risks of digital exclusion. However, in the Network’s view, the significance of these issues is not sufficiently emphasised or addressed in the Plan.
- 3.2 Older people face disproportionate digital exclusion, In this regard, the 2023 Digital Inclusion Index found that:

people aged over 65 maintain lower scores than the national average. Those aged 65-74 record scores 12.1 points below the national average, while those over 75 record scores 24.6 points below. For people over the age of 75, disparities ... are considerable.²
- 3.3 This finding aligns with the experience of the Network. We see digital literacy issues affecting many older people when they attempt to access services, including services provided via online platforms such as MyGov and internet banking. This can in turn increase an older person’s vulnerability to abuse, as demonstrated in the following case study provided by one of our member organisations:

Case study: Maria

Maria lives in a residential aged care facility and experiences barriers to communication over the telephone. She has mobility issues and cannot attend government agencies in person. As a workaround, Maria was advised to notify changes to her personal circumstances through the MyGov portal. However, due to her limited digital literacy, she sought assistance from her niece. After setting up Maria’s MyGov and MyID accounts, the niece retained Maria’s identity documents, login credentials, and password. Unbeknownst to Maria, her niece accessed her MyGov account, applied for successive advance payments of Maria’s aged pension, and redirected the funds into her own account.

- 3.4 Government agencies often rely heavily on digital campaigns across many issues, including seniors’ rights. For example, the 2024 national elder abuse awareness campaign was largely digital, and the significant number of older people who are less digitally engaged may not have been exposed to it.
- 3.5 Low levels of digital literacy can affect older people in a wide array of situations, including:

² Australian Digital Inclusion Index, ‘Measuring Australia’s Digital Divide – Australian Digital Inclusion Index 2023’, available [here](#).

- 3.5.1 accessing government services or agencies, such as Centrelink;
 - 3.5.2 contacting banks;
 - 3.5.3 engaging with support services, including social, legal and medical; and
 - 3.5.4 engaging with community groups.
- 3.6 Exclusion from such services or organisations can result in a lack of agency or control, social isolation, and sometimes abuse (where an older person seeks help from someone else to access a digital platform and they abuse this trust).
- 3.7 It cannot be assumed that older people have generally good digital literacy. It also cannot be assumed that every older person has a carer or supportive person who can perform digital tasks on their behalf in a trustworthy fashion. In the Network's experience, this is not the reality.
- 3.8 There are a number of scenarios in which older people can be particularly vulnerable. Banks have a strong preference for moving from hard copy to digital statements to go paper-lite. In the event that an older person has an attorney or financial administrator, the statements will usually be re-directed to them. If the older person is not able to check their banking information online, they can be completely unaware of their financial affairs.
- 3.9 In light of this, it is essential that services and information are accessible to older people in a number of different ways including by telephone and in-person. Accordingly, the Network supports Priority Action 3.3 to strengthen the 1800ELDERHelp phone lines, as well as improving equity of access to specialist services (including those provided by CLCs) under Priority Action 3.4.

Recommendation 3: That the Plan requires financial institutions, government bodies, and other institutions to ensure accessibility of their products including by making phone and in-person services available, and to increase safeguarding mechanisms, in light of risks of elder abuse posed by online platforms.

4. Intersectionality

- 4.1 The Network welcomes the Plan's focus on ageism and its stated commitment to taking an intersectional approach and learning from the diverse experiences of older people.³ However the Plan does not, in the Network's view, effectively communicate:
- 4.1.1 how intersecting forms of discrimination can affect the drivers, risks, and experiences of elder abuse; or
 - 4.1.2 the importance of factoring intersectionality into processes designed to prevent, intervene in, and respond to elder abuse.
- 4.2 The Network has a few specific concerns in this regard which are outlined below.

CaLD communities

- 4.3 Although CaLD communities are recognised as falling within the definition of 'Priority Groups' under the Plan, there is little said about the unique experiences of elder abuse for victim-survivors in CaLD communities. In addition, the barriers to accessing services that are experienced by members of CaLD communities to are not sufficiently explored or addressed. Instead, CaLD communities are given only a fleeting and cursory mention within the Plan.

³ See for example pp 38- 39 of the Plan.

- 4.4 In the Network's experience, victim-survivors of elder abuse from CaLD communities face specific and unique forms of abuse that must be addressed head-on. For example, older people from CaLD communities may experience:
- 4.4.1 visa abuse, for example, when an older person has come to Australia on a parent visa sponsored by their adult child, who then threatens to deport them;⁴
 - 4.4.2 coercion or misleading and deceptive conduct, when a family member or trusted person gets them to sign a document in English that they cannot read, and they later find out it was an EPOA that gave their family member access to their funds, or a document which transferred assets to their family member unbeknownst to them; and/or
 - 4.4.3 as recognised in the Plan, cultural abuse, for example denying an older person access to a place of worship or cultural events.
- 4.5 Older people from CaLD communities may also be less likely to be aware of available supports, or may feel unsafe approaching mainstream services due to past experiences of discrimination or racism, feeling unsafe or uncomfortable, or distrust of authority or systems. Further, the supports that are available might not be suitable for them, in that interpreters may not be available, and written resources may not be available in language.

Case study: Mei

Mei's son and daughter-in-law moved from China to Australia, and now have children. Mei's son flew her from China to Australia to live with them and help care for the grandchildren. However, the grandchildren are now older, and Mei's son and daughter-in-law have asked her to leave their home. She has nowhere else to go, speaks limited English, has no legal right to permanently live in Australia, and is desperate to remain near her grandchildren.

Male victim-survivors

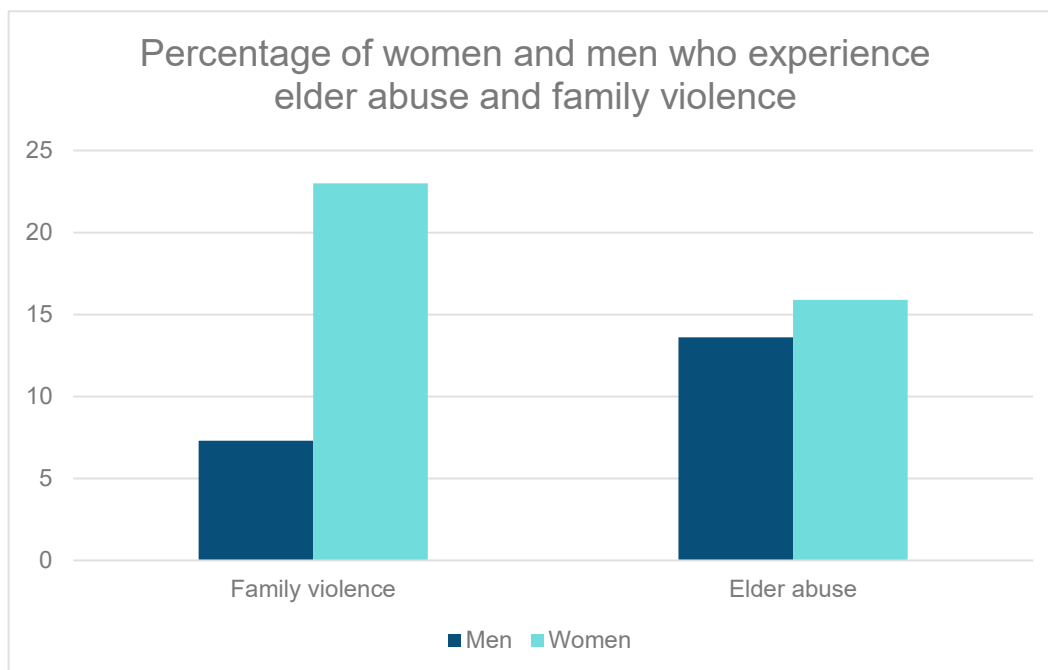
- 4.6 The Plan notes correctly that women are more likely than men to experience elder abuse, but fails to acknowledge that men form a significant percentage of victim-survivors of elder abuse. This omission has led, at times, to the Plan betraying an inherent assumption that supports and interventions should be designed for women. For example:
- 4.6.1 under the definition of 'professionals in relevant occupations', the Plan includes 'hairdressers' but omits 'barbers'; and
 - 4.6.2 although the Plan acknowledges that elder abuse victim-survivors can access family and domestic violence services,⁵ it fails to acknowledge that such services are often not available to male victim-survivors. For example, the Plan refers to crisis accommodation as a relevant service type for people experiencing elder abuse,⁶ but crisis accommodation is often not available to men.
- 4.7 It is important for the Plan to acknowledge that elder abuse is not as gendered as other forms of family and domestic violence. In this regard, studies show that:
- 4.7.1 Elder abuse - 15.9% women compared with 13.6% of men experienced elder abuse;

⁴ Ethnic Communities Council of Victoria, 'Literature Review: Elder abuse against people from migrant and refugee backgrounds' June 2022, p 13, available [here](#).

⁵ See for example page 54.

⁶ Page 32.

- 4.7.2 Other forms of family violence - 23% of women compared with 7.3% of men experienced other forms of family violence.⁷



- 4.8 In addition, members of the Network note that they have observed an increase in male victim-survivors of elder abuse presenting to their services. Some members noted that elder abuse experienced by men may be underreported.
- 4.9 Prevention, early intervention, response, and post-intervention services must be designed for all victim-survivors of elder abuse, including men, and this should be captured explicitly in the Plan.

Female victim-survivors

- 4.10 Notwithstanding the above observations regarding male victim-survivors, the Plan does not, in the Network's view, sufficiently outline a plan to address the unique experiences of female victim-survivors of elder abuse.
- 4.11 The Network agrees with the observation in the Plan that female victim-survivors of elder abuse face 'the compounding impact of a lifetime of structural inequality',⁸ and supports the Plan's stated intention to work alongside other national plans and strategies that are aimed at supporting women, including the *National Plan to End Violence against Women and Children 2022-2032* and *Working for Women: A Strategy for Gender Equality (2024–2034)*.
- 4.12 However, in the Network's view, the Plan does not clearly articulate how it intends to work alongside these other plans and strategies. The risk of this not being articulated clearly is that older women may 'fall through the cracks' in Australia's approach to supporting women.
- 4.13 In the Network's experience, older women face unique experiences and challenges. For example:

⁷ Australian Institute of Health and Welfare, Family Domestic and Sexual Violence (2024), available [here](#).

⁸ Page 22.

- 4.13.1 many older women have disproportionately lower financial literacy due to a current or former male partner having entirely controlled household finances;⁹
- 4.13.2 relatedly, older women have less money, less superannuation, and less access to money, and are more likely to not have legal ownership of valuable possessions such as property or cars, which are more likely to be in a male partner's name.¹⁰ This can make it harder for victim-survivors of elder abuse to leave as they face a real risk of destitution and homelessness;
- 4.13.3 older women are more likely to have lower levels of digital literacy than younger women and therefore may be more susceptible to abuse perpetrated online;¹¹ and
- 4.13.4 older women have sometimes experienced a lifetime of abuse, from childhood (experiencing abuse from a parent), through to adulthood (intimate partner violence) and older adulthood (experiencing abuse from an adult child).

LGBTQIA+ People

- 4.14 The Plan does not sufficiently explore or address unique issues affecting people from the LGBTQIA+ community who are at risk of or experiencing elder abuse. This should be a specific focus for more research, but also, the research that is available should be reflected in the Plan and should be woven throughout.

Recommendation 4: That the Plan and Action Plans more comprehensively explore and address the experiences of older people from CaLD communities including victim-survivors of elder abuse.

Recommendation 5: That the Plan acknowledges that men form a significant percentage of victim-survivors of elder abuse and that prevention, early intervention, response, and post-intervention services must be designed for all victim-survivors of elder abuse, including men.

Recommendation 6: That other relevant national plans and strategies that apply to women are interrogated and gaps identified from the perspective of older women, and that the Plan and Action Plans clearly articulate the role this Plan has alongside those other plans and strategies.

Recommendation 7: That LGBTQIA+ communities form a specific focus of further research, and that existing evidence regarding experiences of elder abuse within LGBTQIA+ communities is better reflected throughout the Plan.

5. Decision-making capacity

- 5.1 Decision-making capacity is complex and can be fluid and difficult to establish. As the Queensland Capacity Assessment Guidelines 2020 note, a person's capacity to make decisions is decision-specific and time-specific, can fluctuate, and can vary depending on the supports they have available.¹² Traditionally, despite the well accepted concept that capacity is 'decision-specific', the law treated all individuals as either having or not having decision-making capacity, and allowed courts and tribunals to appoint a substituted decision-maker to

⁹ 'Financial literacy...are women opting out?', Griffith University, <https://www.griffith.edu.au/engage/professional-learning/content-centre/women-are-opting-out-again>; Alison Preston & Robert E. Wright, 'Gender, Financial Literacy and Pension Savings', *Economic Record*, December 2022, volume 99, issue 324, pages 58-83.

¹⁰ 'Superannuation & gender pay gaps by age group', Workplace Gender Equality Agency, 2019 <https://www.wgea.gov.au/publications/superannuation-gender-pay-gaps-by-age-group>; 'Women and Property 2022', CoreLogic, March 2022, <https://www.corelogic.com.au/news-research/reports/women-and-property-22>

¹¹ 'Understanding the digital behaviours of older Australians: Summary of national survey and qualitative research', Office of the eSafety Commissioner, May 2018, <https://www.esafety.gov.au/sites/default/files/2019-08/Understanding-digital-behaviours-older-Australians-summary-report-2018.pdf>

¹² Queensland Capacity Assessment Guidelines 2020, <https://www.publications.qld.gov.au/ckan-publications-attachments-prod/resources/23e5bde1-40d7-4115-a15d-c15165422020/qld-capacity-assessment-guidelines-version-2-to-upload-28-04-21.pdf>, pp. 5-6.

act for a person who did not have capacity. Recently, some jurisdictions have changed their laws regarding substituted decision-making to maximise the autonomy of the principal, or have created the position of a supported decision-maker whereby assistance can be given to a person with a disability or mental illness to make decisions on their own and to help give effect to those decisions. For example, Victoria allows a principal to appoint a supportive attorney.¹³ However, anecdotally, this appears to not be occurring regularly.

- 5.2 In our view, it is important that the Plan considers the different needs and vulnerabilities of older people with decision-making capacity, those who lack decision-making capacity, and those whose capacity is fluctuating or fluid. Individuals who lack capacity still have needs for connection, autonomy, competence and effectiveness, and these should be facilitated as much as possible. Those with fluctuating capacity can sometimes be presumed incorrectly to lack capacity. For example:
 - 5.2.1 an attorney who acts for an older person when they are in hospital due to a period of ill-health may continue to act for them after they have recovered and been discharged, even if it is against their wishes; or
 - 5.2.2 an aged care facility can assume that a resident lacks decision-making capacity when there is an EPOA in place, and speak only to the resident's family member, rather than speaking with the resident directly.
- 5.3 Additionally, it may be assumed that older people do not have capacity in circumstances in which they would not make the same assumption for a younger person. For example, if the older person is the victim of a scam.
- 5.4 Furthermore, making an assessment of capacity is difficult. Capacity assessments need to happen face-to-face, often over multiple sessions. This can be costly and time-consuming, particularly if a professional needs to visit an older person at home. A proper assessment of capacity, therefore, depends on the funding and resources available to the older person and older people without the financial capacity to pay can be left at a disadvantage.
- 5.5 Whether an older person has capacity also has an impact on how they can seek help if they are experiencing abuse or neglect. In considering specialist services for responding to the mistreatment and abuse of older people, the Plan notes that there may be a need for reform where a lawyer is unable to take legal instruction from a person with cognitive impairment who may be experiencing abuse or mistreatment (p. 55). This can leave a significant gap in

Case study – Helen

A legal service was working with Helen, an 82 year old woman who had appointed her son under an EPOA in Victoria. Her son, George, had withdrawn all of Helen's funds from her bank accounts, without her knowledge, and for his own benefit. The legal service was considering whether Helen had capacity to instruct them to revoke the EPOA.

The legal service met with Helen and noticed that she became confused during the appointment and forgot some of the things they had discussed. The lawyer conducted a capacity assessment over the next two appointments and assessed she did not have capacity. The options left for Helen would be to apply to the Victorian Civil and Administrative Tribunal (VCAT) for an appointment of a guardianship or administrator, or to have the EPOA revoked. These options are complicated and time-consuming to pursue and raise issues as to who can commence them, given Helen lacks decision-making capacity – despite the fact there is clearly an urgent need to prevent further abuse.

¹³ Powers of Attorney Act 2014 (Vic), Part 7 – Supportive attorney appointments.

the response for financial abuse as services, including police and lawyers, may not be able to help.

- 5.6 These considerations extend throughout Focus Area 3: Strengthen the capacity and capability of services, including through targeted education and training for professionals, and all of the priority actions related to the Focus Area. We recommend that there be an additional action to consider if the support services described in the Focus Area are accessible to older Australians with capacity, without capacity, and whose capacity is fluid or unclear.

Recommendation 8: Principle 5: That 'Supporting individual decision making, autonomy and dignity' is updated to include additional context on the needs of individuals with and without decision-making capacity or whose capacity is fluctuating.

Recommendation 9: Focus Area 2: That legal frameworks and adult safeguarding responses are enhanced, and include considerations of capacity in the commentary on EPOA reform. That there is a Priority Action to update laws across the country to give effect to supported decision-making and implement modern capacity assessment guidelines.

Recommendation 10: Focus Area 3: That the following Priority Action is added: Strengthen the capacity and capability of services to ensure they are equipped to respond to the needs of people who lack decision-making capacity.

6. Education and awareness raising

- 6.1 The Network supports Priority Action 3.6 to improve the coordination, scope and consistency of education for professionals in relevant occupations.
- 6.2 Increasing early intervention including education and awareness raising for professionals will hopefully reduce dependence on medical and legal services, allowing older persons to access supports more quickly, rather than at crisis point. However, the Network notes that at times increasing awareness can have the opposite impact, and lead to increased referrals to medical and legal services, which is one reason why funding for specialist and other services must be increased and continued. This is addressed more specifically below at section 8.
- 6.3 The Network makes the following recommendations regarding education and training for professionals under Focus Area 3:
- 6.3.1 Training and education should be provided to the following people in addition to the professionals in relevant occupations (as defined under the Plan):
 - (a) workers in seniors groups and community groups; and
 - (b) carers (informal and formal) (noting this could be a mandatory requirement in order to receive the carer's payment from Centrelink).
 - 6.3.2 Training relating to decision-making capacity should be provided to health and aged care providers to equip them to have a more nuanced understanding of capacity.
 - 6.3.3 There should be a particular effort to provide training in regional, rural and remote areas where there is limited access to specialised support services.
 - 6.3.4 Lawyers and other professionals should be educated to deal directly with the older person, as opposed to another family member or support person, in order to avoid influence by relatives or acquaintances.

- 6.3.5 More specific training could be provided to those individuals involved with the drafting, execution and implementation of substitute decision-making documents including EPOAs. This could occur:
- (a) for lawyers, medical practitioners, Justices of the Peace, and police officers, through a professional development requirement; and
 - (b) for appointees, through mandatory training.
- 6.4 Additionally, older persons themselves should be receiving relevant communications regarding future planning when they reach a certain age, and messaging about increased risks at relevant times (e.g. after natural disasters). Such information should be available in different places, including online or other media, by post, as well as at relevant physical locations such as libraries, town halls, or disaster recovery centres.
- 6.5 Service providers must also be educated about common issues with EPOAs, including considering vested interests of the person appointed.
- 6.6 Such reforms should occur in accordance with law reforms discussed in further detail below at section 7.
- 6.7 In line with Principle 1, all of the above education and awareness campaigns must be available in a form that can be understood, including in different languages.

Recommendation 11: That awareness raising campaigns are accompanied by corresponding increases in funding and supports for specialist support services including at CLCs.

Recommendation 12: In terms of training, that:

- training for professionals in relevant occupations is expanded to community organisations and carers, with such training mandatory where possible;
- there is a particular commitment to training in regional, rural and remote areas;
- health and aged care providers receive training on capacity and supported decision-making; and
- relevant individuals (including attorneys themselves) receive specific training regarding EPOAs.

Recommendation 13: That older persons receive targeted communications across different media (including physical media) regarding future planning and protection from potential abuse, especially when reaching a certain age, or in vulnerable situations such as natural disasters. All education and awareness campaigns should be available in community languages.

7. Enduring powers of attorney and substitute and supported decision-making reforms

- 7.1 Focus Area 2, 'Enhance legal frameworks and adult safeguarding responses', includes achieving greater national consistency in EPOA laws. This is covered by two Priority Actions: continue efforts to achieve greater national consistency in enduring power of attorney laws (action 2.1) and strengthen safeguarding frameworks and clarify pathways for abuse and mistreatment to be reported and addressed (action 2.4).
- 7.2 The Plan also endorses the findings and recommendations of the Disability Royal Commission relating to EPOA reform. This includes, relevantly for the Plan, establishing the appointment of a supportive attorney in all jurisdictions as is currently the case in Victoria

under the *Powers of Attorney Act 2014* (Vic) (Disability Royal Commission, Recommendation 6.4).

- 7.3 The Network strongly endorses the goal of achieving consistency in EPOA laws, and laws relating to other substitute decision-making documents as they exist in different jurisdictions. In our experience, EPOAs are a common tool for the financial abuse of older Australians, and they must be a focus of the Plan. We recommend further specific measures to strengthen the Plan as it relates to EPOAs.
- 7.4 We find that both attorneys and principals can be poorly-informed of their respective obligations and rights. A friend or relative can frequently agree to act as attorney for an older person without fully understanding the extent of their duties and the amount of work involved. Better education and awareness raising will support the selection and appointment of individuals who are more equipped to fulfil the role in a way in supports the rights of older people. It will also mitigate the potential for financial abuse.
- 7.5 The Plan notes that the *Powers of Attorney Act 1998* (Qld) has been reformed to allow for a court or tribunal to order an attorney to pay compensation to the principal for any loss incurred from the attorney's failure to comply with the Act (s. 106). There is a similar provision in the *Powers of Attorney Act 2014* (Vic) (s. 77). These provisions do not yet exist in every state.
- 7.6 Finally, the Network strongly endorses a central EPOA register would make verifying an attorney's authority easier, particularly when an attorney needs to act for a principal with property, interests or relationships in different states. A national register would allow an attorney's authority and powers under their respective state or territory laws to be quickly verified, and would reduce the risk of a person passing themselves off as an attorney using a falsified, expired or invalid instrument. A national register was proposed in 2017 in an Australian Law Reform Commission Report (*Elder Abuse – A National Legal Response*), at recommendation 5.3, and in the first *National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019-2023*, under initiative 4.2, and should appear in the current Plan.

Recommendation 14: That every Australian jurisdiction should have a mechanism to allow a court or tribunal to make a compensation order against an attorney when they cause damage or loss to the principal through a breach of their obligations.

Recommendation 15: That Australia establishes a national EPOA register.

8. Sustainability and expansion of specialist elder abuse legal services

- 8.1 The Plan refers to the important role of specialist legal and multidisciplinary services, including health-justice partnerships, in the context section of Focus Area 3. The Network strongly agrees that specialist elder abuse services, including multidisciplinary legal services and health justice partnerships, play a critical role in identifying and responding to the abuse of older people.
- 8.2 People experiencing abuse will often have complex and overlapping health, social, legal and financial problems, and specialist elder abuse services (including 'wrap-around' services) are more likely to have the expertise and skillsets to provide trauma-informed and expert support and meet their needs. Specialist elder abuse services are usually well connected and can help reduce the burden of navigating complex service systems, as well as reducing the risk of re-traumatisation from having to repeat their story to multiple services. In addition, specialist services engage in community engagement and awareness raising initiatives to

raise the profile of elder abuse, as well as contributing to important law reform and systemic advocacy in light of trends gleaned from casework.

- 8.3 The sustainability and expansion of specialist legal and multidisciplinary elder abuse services is not sufficiently addressed in the Plan, in the Network's view.
- 8.4 Focus Area 3 under the Plan, which speaks to strengthening the capacity and capability of services, makes some pertinent observations about equity of access to services, including stating that: 'geographic and other gaps remain in terms of the array of services available nationally'.¹⁴ It also outlines some ambitious aims that the Network supports, including 'increasing equity of access and removing barriers to seeking help and support.'¹⁵ The Plan also acknowledges that it is the responsibility of the Commonwealth Government to 'contributing to funding legal assistance'.¹⁶
- 8.5 Although the Network is supportive of these comments, it is noted that, without sustainable funding, they will not be possible to implement.
- 8.6 In the Network's view, the Plan as a whole does not communicate an appreciation of the fundamental services that specialist elder abuse legal and multidisciplinary services, delivered by CLCs, provide. In addition it does not convey that the ambitious aims outlined under Focus Area 3 – and the Plan more broadly - cannot be fulfilled without sustainable and significantly increased funding for specialist legal elder abuse services.
- 8.7 Due to a lack of resourcing and a broader service system that is not yet universally equipped to respond to elder abuse, there is inequity when it comes to accessing services, in the Network's experience. Some older people experiencing elder abuse can access appropriate services whereas many cannot. This is particularly true of rural and regional areas, where there are more older people per capita and services are often less-accessible. In rural Victoria, for example, there are no specialist elder law services outside metropolitan Melbourne or streams of funding for rural and regional CLCs. The one specialist CLC in Melbourne is very small, with approximately three full-time equivalent lawyers and the same number of social workers to service the whole of Victoria.
- 8.8 Some of the Network's members' are run without dedicated funding in an attempt to meet the need of older people in their communities. For example:
- 8.8.1 Peninsula Community Legal Centre in Victoria (PCLC) has run a specialised elder law service for four years, two days a month, from two different office locations, without specific funding. The service is staffed by one of PCLC's family violence lawyers, along with a pro bono lawyer from a private law firm with expertise in elder law. Demand for this service far exceeds the number of appointments that are able to be offered; and
- 8.8.2 Loddon Campaspe and Goulburn Valley CLCs both assist clients with elder abuse matters without any specific funding for elder abuse. Instead, they use generalist funding, a civil stream of funding specific to Goulburn Valley CLC, and flood funding.
- 8.9 It is unacceptable, in the Network's view, that CLCs are running unfunded specialist programs to support community members who are experiencing elder abuse, due to inadequate funding.
- 8.10 Where specialise elder abuse services have been funded and their outcomes measured, there is evidence that they provide excellent value for taxpayers' money. For example, the first National Plan to Respond to the Abuse of Older Australians led to the establishment of

¹⁴ Page 54.

¹⁵ Page 55.

¹⁶ Page 32.

special elder abuse service trials in 2019. Inside Policy conducted an evaluation for the Commonwealth Attorney-General's Department in 2021, finding that the services led to benefits including positive client feedback, tangible outcomes for clients, and a social return on investment (SROI) of \$3.69 for every \$1 invested.¹⁷ Despite this, the Plan does not build on these results, either through further trials or recommendations for ongoing secure funding.

- 8.11 Additionally, there is evidence available for policy-makers from the family violence sector. There, needs-based funding has proven more effective than per-capita funding. Needs-based funding ensures that resources are allocated in such a way as to recognise the unique challenges in identifying and dealing in elder abuse, and are not simply concentrated in major cities.
- 8.12 There must be an increased focus on sustainable resourcing and funding for specialist elder abuse legal and multidisciplinary service provision under the Plan, in the Network's view. Sufficient funding should be made available, by Commonwealth, State and/or Territory governments, so that:
- 8.12.1 every older person who is experiencing elder abuse can access at least an initial appointment with a specialist elder abuse service, and ongoing support from a relevant service as needed, regardless of their gender, cultural identity, or geographical location;
 - 8.12.2 specialist elder abuse legal services can be properly embedded within broader service systems to provide accessible and co-ordinated support;
 - 8.12.3 specialist multidisciplinary elder abuse response services can be developed, such as legal, financial, psychosocial, and health services, including health justice partnerships, family engagement, and mediation; and
 - 8.12.4 services can be made available for older people in the general community as well as older people in residential aged care.

Recommendation 16: That the Plan and Action Plans emphasise the crucial importance of the sustainability and expansion of specialist legal and multidisciplinary elder abuse services, including helplines, and clearly specify responsibility for funding.

9. Safeguarding

- 9.1 Safeguarding in the context of elder abuse is an amorphous concept that is interpreted differently by different people. In the Network's view, the definition and understanding of 'safeguarding' under the Plan is not sufficiently clear. A broader interpretation of the term 'safeguarding' may encompass a broad range of protective measures aimed at preventing harm, empowering older people, and ensuring their rights are upheld, including legal protections, service interventions (including police), advocacy, and systemic safeguards to prevent abuse, neglect, and mistreatment. However, in the context of the Plan, the term 'safeguarding' appears to have a narrower interpretation being limited specifically to adult safeguarding bodies. That said, we have included policing below under this safeguarding section, as we see the police's role as falling within the scope of safeguarding.

Adult safeguarding bodies

- 9.2 In relation to adult safeguarding bodies, the Network recognises the different approaches taken by different jurisdictions, as is acknowledged under the Plan. Some members support

¹⁷ Final Evaluation of the Elder Abuse Service Trials Final report, Inside Policy, 6 August 2021, https://www.ag.gov.au/sites/default/files/2023-02/final-evaluation-of-the-elder-abuse-service-trials-report_0.pdf

adult safeguarding bodies with investigative and interventionist powers, so that they are can investigate instances of elder abuse and take action where appropriate. In the Network's view, all safeguarding bodies should be rooted in the same principles of human rights that underpin the Plan.

- 9.3 The Network supports enhanced oversight mechanisms for adult safeguarding bodies to prevent and address systemic failures that may result in older people remaining unsafe despite encounters with an adult safeguarding body. Systemic failures may include, for example, under-funding for adult safeguarding bodies which means that they are ill-equipped to respond appropriately to elder abuse; inappropriate powers or legislative remit; or poor decision-making.

Recommendation 17: That the definition of safeguarding is clarified under the National Plan. This definition should be underpinned by the human rights principles under the Plan.

Recommendation 18: That adult safeguarding bodies are given sufficient powers and resourcing to investigate and intervene in elder abuse cases, and that enhanced oversight mechanisms are built into adult safeguarding bodies to prevent and address systemic failures.

Police

- 9.4 The Network acknowledges the critical role that police play in responding to crises, including those relating to elder abuse. In our view, despite being a state and territory responsibility, police must be more of a focus of the National Plan.
- 9.5 The Network notes that the approach taken by police when responding to elder abuse matters is inconsistent, both within each jurisdiction and across the country. In the Network's view, this may result from:
- 9.5.1 inexperience or lack of knowledge of elder abuse;
 - 9.5.2 disbelief or denial that elder abuse is occurring, perhaps due to:
 - (a) ageist beliefs;
 - (b) an assumption the older person lacks capacity; or
 - (c) an inclination to defer to a younger family member rather than listening to an older person,
 - (d) the assumption that anything involving money is a 'civil matter'; or
 - 9.5.3 a reluctance to act.
- 9.6 In some jurisdictions, police only intervene when certain thresholds are met. For example, one member has observed that in the Northern Territory, police often will not intervene in elder abuse matters unless there is serious physical or sexual harm involved.
- 9.7 More generally, the Network has observed from its front-line experience that police may be reluctant to take action when:
- 9.7.1 elder abuse is being perpetrated by another family member. In this instance, police sometimes perceive it is a civil matter rather than a criminal matter, and therefore not within their remit;
 - 9.7.2 the older victim-survivor is a male, in which case police sometimes assume they are in fact the one perpetrating the abuse, or mis-identify the victim-survivor as someone else; or

- 9.7.3 the older person suffers mental health conditions, cognitive decline, or has limited English.

Case study – Paul

80yo Paul was an independent man living with a minor hearing impairment. Things altered drastically for Paul when his adult son came to live with him after a relationship breakup, then refused to leave. His son did not contribute to household expenses and then started abusing Paul. He used verbal, psychological, and physical abuse daily, frequently threatening to kill Paul. Once, he pushed Paul to the ground and narrowly missed striking Paul with an iron pole. He wreaked damage to Paul's house by bleaching carpets, pulling apart appliances and plumbing, and destroying furniture. Paul confined himself to his bedroom, fearing for his life. Paul's calls to police for went unheard - the police claimed they could not intervene, as it was a civil dispute. Eventually, Paul fled his home.

Recommendation 19: That policing is highlighted as an essential focus area within the National Plan and that specific actions relating to policing are included in the Action Plans, including actions relating to improving consistency in identifying and responding to elder abuse, and consistent and ongoing training and practice improvements.

10. Post-intervention, healing, and recovery

- 10.1 When older people are victim-survivors of abuse, the perpetrator or person causing harm is often the person closest to them - usually their adult child. Such abuse can cause lasting harm to an older person which can continue even if the immediate damage – such as a theft of money – is amended. In some cases, an older person has no means of recovery as they cannot work, and so are left in financial distress for the rest of their life.
- 10.2 The Plan includes “understanding the abuse and mistreatment of older people over the life course, including a focus on recovery and healing” as an area for further research in Focus Area 4 (Address gaps in the evidence base and increase collaboration). However, it does not address recovery at any other point. In the Network's view, this is one of the greatest omissions of the Plan.
- 10.3 Older Australians who have been victims of abuse often desire further and ongoing support, in the Network's experience. However there are a range of barriers to older people accessing post-intervention services. These include a lack of fit-for-purpose services with the specialist knowledge to address the needs of older adults.
- 10.4 Even if there are services available, for example mental health services, older adults are less likely to use such services than younger adults.¹⁸ In addition, mental health services do not always bulk-bill to Medicare and pensioners may not be able to afford to access them.
- 10.5 These factors are compounded for older people from CaLD backgrounds. Language barriers can make it harder for these individuals to seek mental health services, they may be unwilling to discuss mental health concerns through a translator, and their attitudes towards mental illness may be influenced by cultural or religious factors which are not taken into account by mainstream services.¹⁹ Other victim-survivors of abuse, including men, may also face additional barriers to seeking post-intervention supports.

¹⁸ Geneva Batten, 'Normalising mental illness in older adults is a barrier to care', Australian Institute of Family Studies, February 2019, available [here](#).

¹⁹ Reshmy Radhamony, Wendy M. Cross, Louise Townsin & Biswajit Banik, 'Perspectives of culturally and linguistically diverse (CaLD) community members regarding mental health services: A qualitative analysis', *Journal of Psychiatric and Mental Health Nursing*, 22 March 2023, Volume 30, Issue 4, August 2023, pages 850-864.

Recommendation 20: That post-intervention supports, recovery, and healing initiatives are prioritised and embedded in the Plan.

11. Data

- 11.1 The Network supports the intention of Focus Area 4 to address gaps in the evidence base and increase collaboration, but considers that it should also include:
- 11.1.1 further details under Priority Action 4.1 regarding a commitment to standardise baseline data collection for specialised support services, including the Elder Abuse Helplines;
 - 11.1.2 funding for specialised support services to use additional resources to obtain accurate data;
 - 11.1.3 collection of data regarding making and use of substitute decision-making documents;
 - 11.1.4 recognition of the relative lack of data for LGBTQIA+ older persons (see Recommendation 7);²⁰
 - 11.1.5 consideration of the role of a central coordinating agency for data collection and analysis;
 - 11.1.6 the effects of gender in reporting data.
- 11.2 Collection of better data would assist support services in proactive identification of emerging risks, such as grandparent alienation and inheritance impatience. It should be ensured that future research does not limit the data it collects, as can frequently happen with older persons. Specifically:²¹
- 11.2.1 there should not be comorbidity exclusions. Many older people have comorbidities and excluding these people from research means that representative data will not be possible;
 - 11.2.2 communication about the research should be accessible to older persons;
 - 11.2.3 there should be alternatives to digital data collection, again for accessibility and inclusion purposes; and
 - 11.2.4 the impacts on the older person should be taken into account and planned for, for example, trauma-informed research approaches should be implemented.

Recommendation 21: That Priority Action 4.1 provides further details regarding the national framework, including standardised baseline data collection, and consideration of the role of a central coordinating agency for data collection, analysis and research.

Recommendation 22: That Priority Action 4.3 is amended to ensure that older persons are appropriately included in the research to ensure it is reflective of lived experiences.

²⁰ Gutman, G, Robson, C and Marchbank, J (2020), "Elder Abuse in the LGBT Community" in Phelan, A (ed.) *Advances in Elder Abuse Research* (pp. 149-164).

²¹ Victoria A. Goodwin et al (2023) "Including older people in health and social care research: best practice recommendations based on the INCLUDE framework", *Age and Ageing*, 52, pp. 1-9.