



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: ELCSC:JBml060225

6 February 2025

Dr. James Popple
Chief Executive Officer
Law Council of Australia
PO Box 5350
BRADDON ACT 2612

By email: janina.richert@lawcouncil.au

Dear Dr Popple,

NATIONAL PLAN TO END THE ABUSE AND MISTREATMENT OF OLDER PEOPLE 2024-2034

Thank you for the opportunity to contribute to the Law Council's submission in response to the consultation by the Attorney-General's Department on the National Plan to End the Abuse and Mistreatment of Older People 2024-2034 (**National Plan**). The Law Society's Elder Law, Capacity and Succession Committee contributed to this submission.

As suggested in the Law Council's Memorandum, we comment on the priority actions of Focus Area 2: Enhance legal frameworks and adult safeguarding responses.

Priority action 2.1: continue efforts to achieve greater national consistency in enduring power of attorney (EPOA) laws

We consider that the issue of greater national consistency in EPOA laws is important, but note that the states and territories struggle to find common ground on this issue. This is made more difficult by the transition to the 'supported decision making model' in some jurisdictions, resulting in changes or proposed changes to the frameworks for guardianship laws and powers of attorney. We believe that it would be helpful, while continuing to work towards national consistency, for an information form to accompany the power of attorney template form for each state and territory. Though there are many resources online, we believe including the information on the form would be highly beneficial. The form could include information such as, 'what is a power of attorney', rights of the principal, the role, duties and liabilities of the attorney, and what a breach of their duty entails (i.e. possible legal action and when legal action may be taken). The form could also include a note or 'warning' to the principal about financial abuse and the need to exercise care when appointing an attorney. Such information may at least assist in putting attorneys on notice and remove any excuse for lack of awareness.

Priority action 2.2: continue to raise awareness about the importance of planning ahead for decision making in later years and rights and obligations in relation to enduring instruments

The focus of the draft National Plan on protective preventative measure including planning ahead for later life is welcome. Putting in place future planning documents such as an EPOA, Enduring Guardianship, and wills, helps to prevent elder abuse, as evidenced in the National Elder Abuse Prevalence Study.¹

Priority action 2.4: strengthen safeguarding frameworks and clarify pathways for abuse and mistreatment to be reported and addressed

We support an increase in access to support for victims of abuse, including increases in legal support and government compensation, and a move to simplify access to compensation and counselling for victims of crime.

We consider that the National Plan should also address the issue of providing more accessible legal remedies to assist in the removal of adult children, who are perpetrators of financial, psychological and/or physical abuse, from their elderly parents' family home, when they have no legal right to remain. Our members have noted that currently, the *Inclosed Lands Protection Act 1901* (NSW) is relied on to establish a civil trespass. The police are then relied upon to remove the adult children, which we understand has been successful in some matters, but has not been without practical difficulties. Failing this option, the elderly parents can seek an injunction from the Supreme Court to remove their adult children, but this is not a quick process nor is it a very accessible process for many older people.

Consideration should be given to making remedies easier to access and enforce where attorneys exercise their powers to financially abuse older people.

We suggest there should be more focus in the National Plan on the impact and consequence of elder abuse and mistreatment. An analysis by *The Guardian* of government data has found that in the 10 years to 2023, nearly 200 women over the age of 55 were allegedly killed in family violence related homicides, where sons, as well as intimate partners, have been perpetrators.²

Priority action 2.5: explore enhancements to the role of institutions in preventing and responding to financial abuse

We recognise the important role of banking and financial service providers role in preventing and responding to elder abuse. However, it needs to be acknowledged that the move to electronic access to bank accounts and the closure of branches make many older Australians more vulnerable to abuse, as

¹ Australian Institute of Family Studies, *National Elder Abuse Prevalence Study: Final Report* (2021): <https://saifs.gov.au/research/research-reports/national-elder-abuse-prevalence-study-final-report>, 98.

² Kate Lyons, 'Older women allegedly killed by family members a 'silent crisis', experts say', *The Guardian*, (online, 27 January 2025): <https://www.theguardian.com/global/2025/jan/27/older-women-killed-by-family-members-a-silent-crisis-no-one-is-talking-about-experts-say-ntwnfb>.

they rely on adult children and other trusted people to manage their money. It can be difficult for some older Australians to have access to their bank account transactions and balances due to the digital divide.

We note that the National Plan has limited focus on the effect of the digital and technological transformation of government services, legal services (including courts and tribunals) and financial services on the elderly. The abolition of cheques, limiting the use of cash, and the closure of face-to-face services, are some of the ways many elderly people are being excluded from accessing these services themselves.

We believe that both government services and large corporations often fail to appreciate the extent to which many in our community, and the elderly in particular, do not have the digital literacy (or indeed basic literacy) skills or means to access services provided online, especially in rural and regional areas. There is also a lack of acknowledgement of the benefit of face-to-face service in picking up on issues such as elder abuse in ways that online services cannot.

Online information hubs such as the compass.info website provide valuable resources, but in our members' experience, many people over the age of 65 do not have the skills to find or navigate this website. This includes people in rural or regional areas who may have worked in trades, rural, retail and other non-office jobs.

The National Plan does not include discussion about the impact of the decline in telecommunication services in rural and regional areas or the limited telecommunications coverage in many areas. Transport is also an issue that should be addressed, as once an elderly person loses their drivers licence, they often lose their independence in mobility and become much more vulnerable to abuse.

We suggest that service providers consider, where possible, reopening face-to-face services for older people, especially in rural and regional areas. We also suggest there is a need for banking and financial service providers to create products tailored to the needs of older people, including a safe third-party access product. The 'companion card' being used by some banks in the United Kingdom is a good example, where an older person may top up the card and give it to a carer to make purchases on their behalf, without giving carers access to their bank account.³

Finally, in response to the growing need of older people for expert advice to navigate complex legal problems, we note that the Law Society's new Specialist Accreditation program in Elder Law, has been

³ NatWest Group, 'Companion card launched for carers supporting vulnerable customers', <https://www.natwestgroup.com/news-and-insights/news-room/press-releases/diversity-equity-and-inclusion/2020/apr/companion-card-launched-for-carers-supporting-vulnerable-custome.html#:~:text=NatWest%2C%20Royal%20Bank%20of%20Scotland,pay%20for%20their%20essential%20goods>.



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launched to recognise advanced expertise in Elder Law. The program will be offered for the first time in 2026 and will be open to solicitor members of our counterpart organisations in multiple jurisdictions.⁴

If you have any queries about the items above, or would like further information, please contact Mimi Lee, Policy Lawyer, on 02 9926 0174 or mimi.lee@lawsociety.com.au.

Yours sincerely,

Jennifer Ball
President

⁴ The Law Society of NSW, 'Specialist Elder Law Program to Benefit Older Australians': <https://www.lawsociety.com.au/specialist-elder-law-program-benefit-older-australians>.