16 March 2018

Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By email: lacsc@parliament.qld.gov.au

Dear Committee Secretary

Guardianship and Administration and Other Legislation Amendment Bill 2018

Thank you for the opportunity to provide comments on the Guardianship and Administration and Other Legislation Amendment Bill 2018 (the Bill).

The Queensland Law Society (QLS) appreciates being consulted on this important legislation. QLS notes that the Bill is substantially the same as the previous version of the Bill, introduced in 2017.

Please find enclosed the submissions made by the QLS in relation to the previous bill. QLS repeats and relies on our earlier submissions, and requests that the Committee consider the concerns raised therein during the current inquiry.

If you have any further enquiries or would like to discuss the content of our submission, please do not hesitate to contact Senior Policy Solicitor, Vanessa Krulin, on (07) 3842 5872 or by email V.Krulin@qls.com.au

Yours faithfully,

Ken Taylor
President

Enclosure
21 September 2017

Our ref: Succession/Elder/Health/VK

Acting Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: lacsc@parliament.qld.gov.au

Dear Acting Committee Secretary

GUARDIANSHIP AND ADMINISTRATION AND OTHER LEGISLATION AMENDMENT BILL 2017

Thank you for the opportunity to comment on the Guardianship and Administration and Other Acts Amendment Bill 2016 (the Bill). The Queensland Law Society (QLS) welcomes the opportunity to provide feedback on the draft Bill.

QLS is supportive of efforts to improve the efficiency of Queensland’s guardianship system and to advance clarity in relation to the current guardianship legislation. The attached submission is written with the assistance of the Succession Law, Health & Disability, and Elder Law committees.

Please do not hesitate to contact our Senior Policy Solicitor Vanessa Krulin on (07) 3842 5872 or via email at v.krulin@qls.com.au should you wish to discuss.

Yours faithfully,

Christopher Coyne
Vice President
Submission

Guardianship and Administration and Other Legislation Amendment Bill 2017

Legal Affairs and Community Safety Committee

A Submission of the
Queensland Law Society

21 September 2017
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Overall observations

QLS commends the Attorney and the Department for the consulting on this Bill that it undertook earlier this year, prior to its introduction into Parliament. The Society’s view is that early consultation is the key to good law. QLS is grateful that an opportunity was provided to make comments at that time, and is pleased that several of the recommendations which were made have come to fruition in this iteration of the Bill.

QLS is also pleased that the Bill title appropriately recognises the Bill as an omnibus bill. To this end, QLS commends the Attorney and the Department for this recognition and transparency as the Society considers it is important that omnibus bills be distinguished from standalone bills.

The QLS submission includes input from the Succession Law, Health & Disability Law and the Elder Law committees. The Society largely supports the proposed amendments contained in the Bill, and would like to draw the Legal Affairs and Community Safety Committee’s (the Committee) attention to some specific issues raised by our committees with respect to the Bill which, in our view, are deserving of additional consideration.

2. Specific issues

Amendments to the Guardianship and Administration Act 2000

2.1. Clause 8 – Insertion of s 11B (General principles)

The insertion of a new Chapter 2A and the inclusion under this chapter of a new s 11B has the effect of bringing the general and health care principles which were previously found in the Schedule forward, to the front of the Guardianship and Administration Act 2000 (the Guardianship Act). Section 11B effectively adopts the recommendations of the Queensland Law Reform Commission (the QLRC) report1.

In addition to the QLRC recommendations, the clause adds a ‘Liberty and Security’ general principle which confirms that an adult has a right to liberty and security and should not be deprived of their liberty except in accordance with the law.

In relation to General Principle 10 – Structured Decision-Making which is contained within clause 8 of the legislation, the explanatory notes and the QLRC report demonstrate a clear intention that the approach set out in subsections (2) to (5) is a mutually exclusive order of priority however, the language does not make that clear. That is, it should be clear that when a decision-maker is performing a function or exercising a power under this Act, the application of this section is to be carried out by following and prioritizing the values in the order in which they are listed in the clause. QLS considers that the legislation should be amended to make this intention clear.

We note that an aspect of this general principle as it appeared in the QLRC report has not been included in the Bill, that being, an injunctive that the substituted decision-maker must recognise and take into account any other consideration that an application of the general principles might require. QLS considers this element important, as it is a reminder that all considerations which arise pursuant to the general principles must be contemplated and weighed up in the process of decision-making on behalf of an adult. The Society recommends that a similar obligation be included in this section.

**Insertion of s 11C (Health care principles)**

We note the insertion of the words “within a reasonable time” into the health care principles at 3(e), amending the Guardianship Act. There is no guidance in the Guardianship Act as to what constitutes a ‘reasonable time’ when considering whether the proposed health care can be postponed because a better health care option may become available.

QLS suggests that the legislation be amended to include guidance in this respect.

**2.2. Clause 9 – Insertion of new ss 12A and 12B**

The amendments allow for appointment orders exercisable when the tribunal is satisfied that an adult is a missing person. QLS supports the insertion of these provisions into the Guardianship Act.

**2.3. Clause 10 – Amendment of s 14 (Appointment of one or more eligible guardians and administrators)**

It appears that the amendment intends to deal with appointment orders for a parent, and the non-binding requirement on the tribunal to alert a parent of its
power to make successive appointments. QLS considers that clarification is required as to whether this amendment will mean that the notice provided to parents will extend to a 2nd or additional appointments to be made at a later date, or to a ‘double-headed’ appointment at the outset. Should the amendment intend the latter, it would allow for a parent to be made aware of who would follow the parent in the decision-making role, and potentially allow the parent to be involved in who would succeed them as appointee once they can no longer act.

2.4. Clause 16 – Insertion of new Chapter 3, Part 3, Division 1A
Similarly to the proposed amendments in clause 9, this amendment seeks to provide clarity to the extent that it states the appointee needs to be satisfied that the adult is missing.

QLS supports the inclusion of this clause to the Guardianship Act.

2.5. Clause 20 – Amendment of s 37 (Avoid conflict transaction) and clause 35 – Replacement of s 152 (Tribunal authorisation or approval)
QLS welcomes the proposed amendments to clarify the meaning of conflict transactions. The proposed amendment provides for prospective authorisation of conflict transactions, as well as additional examples of conflict transactions and clarification on when they may arise as a result of a relationship status, or gifts (s 54 of the Guardianship Act). Whilst QLS supports this amendment generally, we suggest that the Committee consider a stronger deterrent to an appointee who may enter a conflict transaction and then beg forgiveness later. In this case, the tribunal must be satisfied that reasonable action has been taken to avoid a conflict and should only provide approval if it is demonstrably in the interests of the principal.

2.6. Clause 26 – Insertion of new ss 60A and 60B
QLS strongly supports the insertions of these sections and is of the view that the statutory exception to ademption provided for in the Bill largely reflects section 23 of the Powers of Attorney Act 2003 (NSW).

2.7. Clause 44 - Insertion of new Chapter 11, Part 4A, proposed section 250
This amendment seeks to provide clarity to the extent that it states the appointee needs to be satisfied that the adult lacks capacity.
QLS considers that a medical certificate, for example, is somewhat helpful and might be used to establish capacity, however, the Society notes that it will largely depend on how the order is structured and the experience of a practitioner as to whether difficulties will manifest into dispute. QLS is aware of an instance where a dispute has occurred between substitute decision-makers as to whether medical advice on capacity should be accepted.

**Amendments to the Powers of Attorney Act 1998**

**2.8. Clause 56 – Insertion of new Chapter 1A**

QLS supports the insertion of the general principles and the health care principles into the *Powers of Attorney Act 1998* (the POA Act).

The explanatory notes and the QLRC report demonstrate a clear intention that the approach set out in subsections (2) to (4) is a mutually exclusive order of priority however, the language does not make that clear. That is, it should be clear that when a decision-maker is performing a function or exercising a power under this Act, the application of this section is to be carried out by following and prioritizing the values in the order in which they are listed in the clause.

QLS considers that the legislation should be amended to make this intention clear.

**2.9. Clause 58 – Amendment of eligible witness**

QLS considers that the amendment to s 31(1)(f) is acceptable. However, the Society considers that further amendment is required; namely that an enduring powers of attorney ought to be signed off by an independent medical practitioner.

This is particularly relevant given that Australia's population of elderly people is increasing, and with it, the potential for elder abuse. Medical practitioners are usually located in communities and are therefore relatively accessible. Further, medical practitioners have completed some level of formal training in evaluating cognitive ability, and in that respect have a more structured knowledge of the subject than legal practitioners, justices of the peace or commissioners for declarations.
2.10. Clause 59 – Amendment of s 32 (Enduring powers of attorney)

The amendment clarifies that a person outside the State can make an enduring power of attorney, a clarification that is supported by the Society. We suggest that consideration might also be given to the interrelationship of multiple enduring powers of attorney for different States.

2.11. Clause 62 – Amendment of s 41 (Principal’s capacity to make an enduring power of attorney)

The amendment provides the test for making an enduring power of attorney and supersedes the general definition of capacity in the Schedule. QLS supports the amendment, however suggests that it does not go far enough to ensure that a witnessing party is aware of the requirements of capacity and appropriately employs their discretion. The Society supports closer professional liaison between legal and medical practitioners to provide appropriate training and knowledge development for and of witnesses.

2.12. Clause 63 – Replacement of s 42 (Principal’s capacity to make an advance health directive)

QLS objects to the structure of an advance health directive (AHD), that is, the option of including an enduring power of attorney within an AHD. This structure causes confusion at both practitioner and layperson levels, particularly as an enduring power of attorney may have already been entered into as a standalone document. An inadvertent completion of the enduring power of attorney within the AHD could easily bring about two conflicting documents.

QLS strongly supports the removal of the enduring power of attorney form from the advanced health directive form.

2.13. Clause 64 – Amendment of s 43 (Appointment of one or more eligible attorneys)

We note the inclusion of the wording “for a matter” in the proposed amendment to s 43 of the POA Act. This wording is supported, as it will ensure that the clause does not cause difficulty in the case of a long form power of attorney where, for example, three attorneys might be appointed for financial matters and three might be appointed for personal and/or health matters.

Rather, the clause appears to intend to impose a limit on how many joint attorneys can be appointed. To add further clarification, QLS suggests that the
clause be amended to replace "4 attorneys acting jointly" with the wording "4 joint attorneys", which should alleviate any confusion in this respect.


QLS strongly supports the insertions of these sections and is of the view that the statutory exception to ademption provided for in the Bill largely reflects s 23 of the Powers of Attorney Act 2003 (NSW).

2.15. Clause 68 – Amendment of s 73 (Avoid conflict transaction)

QLS notes that the proposed amendment is similar to the proposed changes for approving of conflict transactions, as dealt with in clause 20.

Further, clause 68 includes provision for a principal to retrospectively ratify a conflict transaction. QLS reiterates the response to clause 20 with respect to situations where the principal is incapable of retrospectively authorizing the conflict transaction under s 73 and tribunal approval is required.

2.16. Clause 70 – Replacement of s 88 (Gifts)

The insertion of the expression "unless otherwise authorised under this Act", which replaces the previous wording "unless there is a contrary intention expressed in the enduring power of attorney" is not supported.

This subtle change has the effect of removing the principal's capacity to determine what are appropriately gifts or donations. QLS suggests that the previous wording be reinstated to this section.

2.17. Clause 73 – Amendment of s 102 (Protection of health provider unaware of health directive)

QLS strongly suggests that this section ought to go further, placing an express onus on health professionals and health services to make a reasonable attempt to check whether a person has an enduring document in place.

An amendment of this sort might be appropriately positioned after s 44 of the current POA Act.

2.18. Clause 74 – Replacement of s 106 (Compensation for failure to comply)

The proposed inclusion of the principal's estate is welcomed by the Society. QLS considers that the section should go further to include an express retrospective effect.
Amendments to the *Public Guardian Act 2014*

2.19. Clause 86 – Amendment of s 6 (Principles for adults with impaired capacity for a matter)

QLS generally supports the amendments to the *Public Guardian Act 2014* (the PG Act). However, we consider that the reforms could go further, particularly, to ensure that the tribunal has jurisdiction to deal with a former administrator where a person seeking compensation has regained capacity.

Further, it is the Society’s view that the tribunal ought to act to safeguard the rights of people who are the subject of an application, and suggests that broadening s 6 so that it reflects s 4 of the *Guardianship and Administration Act 1990* (WA) would be appropriate. This broader focus would require amendment to s 11A of the Guardianship Act.

2.20. Clause 87 – Amendment of s 19 (Investigate complaints)

The proposed amendment will allow the Public Guardian to investigate a complaint or allegation even after an adult’s death. QLS welcomes this amendment, which reflect both the recommendations of the QLRC report and the more recent inquiry undertaken to assess the adequacy of existing financial protections for seniors.

We note that this amendment may have considerable resourcing implications for the Office of the Public Guardian.

2.21. Clause 90 – Replacement of s 31 (Report after investigation or audit)

QLS supports the proposed amendment, which will give the Public Guardian the ability to inform a person who has requested an investigation and other parties about the result of an investigation or audit (in such a way that the Public Guardian considers appropriate).

The Queensland Law Society would welcome further consultation on the issues raised in this letter and on the Bill more generally. Thank you again for providing QLS with an opportunity to comment on the Bill, and for the Committee’s consideration of QLS feedback.
18 October 2017

Our ref: Succession/Elder/Health/VK

Acting Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: lacsc@parliament.qld.gov.au

Dear Acting Committee Secretary

GUARDIANSHIP AND ADMINISTRATION AND OTHER LEGISLATION AMENDMENT BILL 2017 – Supplementary submission

Thank you for the opportunity to appear at the public hearing on the Guardianship and Administration and Other Acts Amendment Bill 2016 (the Bill). The Queensland Law Society (QLS) appreciates being consulted on this important legislation.

At the hearing, QLS took two questions from the Legal Affairs and Community Safety Committee (the Committee) on notice. The supplementary submission is written with the assistance of the QLS Succession and Elder Law committees.

QLS was asked to provide a further response in relation to two issues:

1. Whether the potential that a conflict of interest might be so great that a person who is an executor of an estate ought to be legislatively excluded from also being an attorney for the principal of that estate; and

2. Whether the introduction of discrete criminal offences for elder abuse into Queensland’s Criminal Code is an appropriate response to addressing elder abuse.
GUARDIANSHIP AND ADMINISTRATION AND OTHER LEGISLATION AMENDMENT BILL
2017 – Supplementary submission

The Society responds as follows:

1. Whether the potential that a conflict of interest might exist to the extent that a person who is an executor of an estate ought to be legislatively excluded from also being an attorney for the principal of that estate?

QLS strongly disagrees with the suggestion that an executor of an estate ought to be automatically excluded from acting as an attorney for the principal, pursuant to a properly made power of attorney. We suggest that, in many cases, the holding of dual roles by one person is appropriately and compliantly exercised, and represents the exact wishes of the principal who has appointed that person to both positions. It would be extremely unsettling to many established family and principal/attorney relationships if this change were to be introduced.

Further, QLS submits that the proposed changes to the Public Guardian Act 2014, specifically the amendment of section 19 which will allow the Public Guardian to investigate a complaint or allegation even after an adult’s death, will alleviate these issues and mitigate the risk of a conflict of interest arising.

2. Whether the introduction of discrete criminal offences for elder abuse into Queensland’s Criminal Code is an appropriate response to addressing elder abuse.

As the members of the Committee undoubtedly appreciate, the question of whether the introduction of discrete criminal offences for elder abuse is an appropriate response to the issue is a complex and multi-faceted one. It would be inappropriate for QLS to form a view on this without thorough examination of the issue, which cannot be completed within the timeframe provided.

However, the Society wishes to advise the Committee that this question is a ‘live’ issue for our members and is currently under consideration by several QLS Policy Committees.

The Committee may wish to review the Society’s June 2011 ‘Joint issues paper: elder abuse’, and note item 8 (pages 6-7) which describes some of aspects of this issue which have previously been considered by QLS. A copy of the report is attached.

Please do not hesitate to contact our Senior Policy Solicitor Vanessa Krulin on (07) 3842 5872 or via email at v.krulin@qls.com.au should you wish to discuss.

Yours faithfully,

Christopher Coyne
Vice President
Report

Joint issues paper: elder abuse

June 2011
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1. Acknowledgments

1.1 Brian Herd, Chair Elder Law Section, Queensland Law Society
1.2 Elder Law Section, Queensland Law Society
1.3 Mark O’Connor and Stuart Naylor, Litigation Rules Section, Queensland Law Society
1.4 Criminal Law Section, Queensland Law Society
1.5 Louise Pennisi, Policy Solicitor, Queensland Law Society
1.6 External stakeholders – refer to Appendix 1

2. Background

2.1 On 17 June 2010 Queensland Law Society, together with the Public Advocate of Queensland, released a joint issues paper on Elder Abuse.
2.2 The issues paper examined concerns regarding elder abuse including its definition, financial abuse and neglect, common law and equitable remedies, civil law, criminal law and the guardianship regime.
2.3 It also considered the legal responses in international jurisdictions.
2.4 The Society held a two-month consultation period, inviting public consultation and discussion as to how the law can adequately address and protect older Queenslanders from physical, emotional and financial abuse and neglect.
3. Executive summary

3.1 Over the two-month consultation period, the Society received more than fifteen submissions in response to the Joint Issues Paper on Elder Abuse, released 17 June 2010.

3.2 As a result of the Joint Issues Paper and community and stakeholder comments, the Society recommends the following:

(a) Amendment to section 52(2) of the Civil Liability Act 2003 as discussed in Section 7 of this report;
(b) Amendment to regulation 13 of the Personal Injuries Proceeding Regulations 2002 as discussed in Section 7 of this report;
(c) Consultation with COAG and state and territory governments in introducing uniform enduring powers of attorney;
(d) State-based education and awareness campaigns which includes specific target groups such as the Queensland Police Service, community members, Justices of the Peace, the elderly and powers of attorney, to identify and prevent elder abuse and conflict transactions as discussed in Section 8 of this report;
(e) Establishment of a specialist unit within the State Crimes Operations Command to investigate complaints of elder abuse, as discussed in Section 8 of this report; and
(f) Considering an extension of the current state domestic violence laws, so that a protection order may be available in circumstances of abuse in a formal care relationship, as discussed in Section 8 of this report.

3.3 That proposed reforms address elder issues with consideration to anticipated population projections for 2066 and 2101, as discussed in Section 5 of this report.

4. Summary of community and stakeholder comments

4.1 The Society received community and stakeholder comments and suggestions to strengthen guardianship laws during a period of public consultation in the latter half of 2010. These included:

(a) Reciprocal recognition of appointed attorneys, administrators and guardians throughout the states and territories;
(b) Uniformity of guardianship laws throughout the states and territories;
(c) A register of appointed attorneys, guardians and administrators;
(d) Improving court procedures involving elderly persons so that matters are heard as expeditiously as possible and with compassion;
(e) That Queensland improve regulation and enforcement of guardianship matters;
(f) That banks, credit unions and other financial institutions regularly monitor and notify seniors of large or unusual withdrawals from their accounts; and
(g) That there be better education:
   (i) for the public and the Queensland Police Service to recognise and prevent elder abuse;
   (ii) to assist the public, the Queensland Police Service and professionals in interacting with elderly or vulnerable persons; and
   (iii) for family members, elderly and vulnerable persons and high school aged children on the importance and benefits of succession planning.
4.2 Specific areas of law addressed by the community and stakeholders were:
(a) guardianship laws;
(b) duty of care and tort law;
(c) workplace health and safety;
(d) family law;
(e) criminal law including the Peace and Good Behaviour Act 1982 (Qld); and
(f) civil procedure.

4.3 In addition to submissions on this issue, the Society received a signed petition from over forty signatories advocating for law reform to criminalise elder abuse.

5. Population projection and elder issues

5.1 Presently Australia's resident population is estimated to be 22.5 million people.1

5.2 The Australian Bureau of Statistics estimates that Australia's resident population will be:
(a) Between 30.9 million and 42.5 million in 2056; and
(b) Between 33.7 million and 62.2 million in 2101.2

5.3 The Australian Bureau of Statistics has also predicted that:
"By 2056 there will be a greater proportion of people aged 65 years and over than at 30 June 2007, and a lower proportion of people aged under 15 years. In 2007 people aged 65 years and over made up 13% of Australia's population. This proportion is projected to increase to between 23% and 25% in 2056 and to between 25% and 28% in 2101."3

5.4 Therefore it is the Society's view that if one quarter of Australia's resident population will be aged 65 years and over by 2056, substantial law reform, addressing both elder abuse and aged care issues, is required to sustain this anticipated population shift as well as address present lacunas in the law.

6. Guardianship law

Reciprocal recognition of enduring powers of attorney

6.1 Feedback received from the two-month consultation period revealed the public perception that there is a lack of reciprocal recognition of guardianship documents and orders between the states and territories.

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6.2 Already Queensland law recognises that an enduring power of attorney made in another state will be valid in Queensland. However, that enduring power of attorney needs to comply with the powers and obligations set out in Queensland law. Section 34 of the Powers of Attorney Act 1998 relevantly states:

34 Recognition of enduring power of attorney made in other States

If an enduring power of attorney is made in another State and complies with the requirements in the other State, then, to the extent the powers it gives could validly have been given by an enduring power of attorney made under this Act, the enduring power of attorney must be treated as if it were an enduring power of attorney made under, and in compliance with, this Act.

6.3 Given the differing enduring powers of attorneys between the states and territories and that in most cases there is a real risk that an interstate enduring power of attorney will not comply with section 34 of the Powers of Attorney Act 1998, there is a strong call for uniform forms and rules.

6.4 The Society recommends that there be further consultation with state and territory governments on this issue and this issue be brought to the attention of COAG.

7. Civil law – personal injuries and tort law

7.1 The regime that governs the running of public liability personal injury claims in Queensland is the Personal Injuries Proceedings Act 2002, the Civil Liability Act 2003 and corresponding regulations.

7.2 Elderly people who suffer injury are generally not in paid employment and therefore have no claim for economic loss as a part of their personal injury claims. Their personal injury claims are generally limited to claims for general damages, domestic assistance and medical expenses.

7.3 General damages awarded under the regime are often modest.

7.4 If elderly people suffer a personal injury because of neglect, as opposed to an intentional act done with the intent to cause personal injury, they would not be eligible for exemplary, punitive or aggravated damages in accordance with section 52 of the Civil Liability Act 2003.

7.5 Elderly people are also limited to the amount of legal costs they can recover as a result of personal injury, where under regulation 13 of the Personal Injuries Proceedings Regulation 2002:

(a) If they are awarded less than $35,340: the injured person pays his or her own costs and the defendant pays his or her own costs;
(b) If they are awarded $35,340–$58,900: the maximum costs and outlays an injured person can recover is $2,950;
(c) If they are awarded over $58,900: the usual cost recovery rules apply. However as general damages awarded under the regime are modest, it would be difficult for an injured person to be awarded over $58,900 if their injury was caused because of neglect.

7.6 In summary, elderly people are discouraged from making a claim, as the award for general damages is not adequate to compensate them for their injury or to cover medical and legal costs and outlays. Further difficulties arise if the defendant is uninsured.
7.7 The Society recommends that these issues be addressed by:

(a) widening s52(2) of the Civil Liability Act 2003 (Qld) to include negligent acts and omissions against vulnerable persons; and

(b) reconsidering regulation 13 of the Personal Proceedings Regulation 2002 in accordance with section 75A of the Personal Proceedings Act 2002 with special consideration and indexing amounts for vulnerable persons and persons on a pension or low income.

7.8 In the Society’s view, by recognising in statute that vulnerable persons may be eligible for exemplary, punitive or aggravated damages following a negligent act or omission, together with a review and indexing of legal costs recoverable to elderly and vulnerable persons, this would improve elderly and vulnerable persons access and attainment of justice with respect to personal injury claims.

8. Criminal law

8.1 Queensland’s Criminal Code provides general offences of:
- physical and sexual assaults;
- neglect;
- domestic violence; and
- fraud and stealing

which may be applied to situations of elder abuse.

8.2 However, in the past there have been inherent difficulties in the prosecution of elder abuse offences.

8.3 To address this problem, the Society recommends the following initiatives:
- State-based education and awareness campaigns which includes specific target groups such as the Queensland Police Service, community members, Justices of the Peace, the elderly and powers of attorney to identify and prevent elder abuse and conflict transactions;
- Establishment of a specialist unit within the State Crimes Operations Command to investigate complaints of elder abuse; and
- Considering an extension of the current state domestic violence laws, so that a protection order may be available in circumstances of abuse in a formal care relationship.
8.4 The Society has also considered a proposal for inserting examples of elder abuse under the general offences in the Criminal Code. For example:

- a boxed example in Schedule 1 of the Criminal Code 1999 (QLD) under s408C(1)(b) as follows:

  Example: A person who dishonestly induces or compels an elderly person to transfer property to them without legal justification may be considered to have committed the offence of fraud.

- examples for other general offences in the Criminal Code, such as:
  - Misappropriation of monies, valuables or assets of an elderly person;
  - Forging signatures or cheques or counselling or procuring an elderly person to sign documents or cheques; or
  - A carer failing or neglecting to provide an elderly person with the necessities of life.

8.5 As there are divergent views as to the benefit and utility of this proposal, the Society has not formed a view as to whether examples of elder abuse should be inserted under the general offences in the Criminal Code.

9. Conclusions

9.1 The proportion of ageing residents is steadily increasing, set to represent 25% of the population by 2056. Therefore substantial law reform is required to address this growing demographic.

9.2 The Joint Issues Paper and community and stakeholder consultation discussed and highlighted critical issues and concerns regarding elder abuse.

9.3 The Society recommends the steps set out in the Executive Summary of this Report be considered in order to protect elderly and vulnerable persons and prevent the occurrence of elder abuse.

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4 s408C (1) A person who dishonestly— ...
5 "3222.0 – Population Projections, Australia, 2006 to 2101."
Appendix 1

This document represents the views of Queensland Law Society. However, a number of other agencies and individuals contributed to the development of this paper. Queensland Law Society would like to acknowledge the following:

All signatories to the petition organised by Mrs J Bernie
- Australian Lawyers Alliance
- Mrs J Bernie
- Ms Elley Browning
- Caxton Legal Centre
- Robyn Challiner
- Jacinta Curbis
- Department of Communities, Queensland
- Heather Isaacs
- Chris Jenkinson
- Ms L Jilkins
- Older People Speak Out
- Dr Maged Rofail of the University of Queensland
- Janene Watts.