QPS-SLASS Collaboration on Responding to Elder Abuse in the Community

Briefing Paper & Draft Protocol

PART 1: OVERVIEW

The Queensland Police Service (QPS) and the Seniors Legal and Support Service (SLASS) play key roles in the prevention of and response to elder abuse in Queensland. The purpose of this Briefing Paper is to collaborate with QPS in developing a shared understanding of the appropriate and lawful response to when an older person wishes to have police assistance in removing an adult child from their residence.

CONTEXT AND BACKGROUND INFORMATION

The Seniors Legal and Support Services assists older persons who are experiencing or at risk of experiencing elder abuse. Elder abuse is generally understood as being,

> "a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person."[1]

There are a number of forms of elder abuse, but the most widely recognised common forms of abuse relate to physical, psychological, financial, sexual and social abuse, together with neglect. Sadly, this abuse is very prevalent in Australia, occurring across close or intimate relationships, and also in consumer and social relationships.[2]

It is a complex problem to tackle because of the elements of interpersonal influence involved (especially in families where abuse is common) and because of the shame that victims feel in reporting and responding to abuse. Elder abuse may be overt or covert and can be particularly pernicious when the abuser and the abused live at the same residence and/or are related. Elder abuse clients often have multiple legal needs involving a wide variety of areas of law.

Living with perpetrators is an established risk factor for elder abuse.[3] Where the living arrangements of victims is recorded, victims were most frequently living with perpetrators (37.6% of all cases)[4]. This figure probably underrepresents the population because cohabitation reduces the likelihood of engaging with support services[5].

The various Seniors Legal and Support Services (SLASS) are made up of lawyers and social workers who work collaboratively to provide integrated legal and support services to elder abuse clients. Five community legal centres (CLCs) deliver SLASS services programs in Queensland, and a number of other services, such as Relationships Australia Queensland (RAQ) and the Elder Abuse Prevention Unit (EAPU) deliver elder abuse case management, referral and support services. Through this work, SLASS has

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[1] World Health Organisation. (2002). *The Toronto Declaration on the Global Prevention of Elder Abuse.* Geneva. WHO. Retrieved on 16.5.20 from https://www.who.int/ageing/publications/toronto_declaration/en/

[2] EAPU. (2019). *Year in Review 2018-19 Key Findings.* Retrieved on 16.5.20 from https://www.eapu.com.au/uploads/research_resources/EAPU%20Key%20findings.pdf

[3] Australian Law Reform Commission Report (2016). *Elder Abuse – A National Legal Response*

[4] EAPU 2019

[5] Burnes, D., Breckman, R., Henderson, C. R., Lachs, M. S., & Pillemer, K. (2019). Utilization of formal support services for elder abuse: Do informal supporters make a difference? Gerontologist, 59, 619–624 doi:10.1093/geront/gny074

developed detailed understandings of and strategies for dealing with the many complex manifestations and adverse impacts of elder abuse. More can be learned about the specialist Elder Abuse service and the multidisciplinary social worker – lawyer intervention model at https://caxton.org.au/wp-content/uploads/2018/11/Specialist-Elder-Abuse-Service-Model-1.pdf.

There is also a Health Justice Partnership delivering elder abuse services to patients at the Princess Alexandra Hospital and wider Metro South Queensland Health Region, both as inpatients and upon discharge.

The problem of elder abuse is growing, as was highlighted at Australia's *National Elder Abuse Conference* (NEAC) in 2019. This is a huge issue given that Australia's ageing population is increasing, as is noted in The Australian Law Reform Commission's 2017 Report 131 titled, *Elder Abuse –A National Legal Response*[6] (The ALRC Report). There is also clear evidence that the problem of elder abuse can be particularly complex, confusing and problematic for members of culturally and linguistically diverse (CALD) communities living in Australia, and also for Indigenous people.[7]

A multi-disciplinary approach

One of the key things that SLASS has learned is that our clients are at risk of being poorly serviced if only a lawyer assists them. For each new client the social workers complete an in-depth psychosocial assessment and intake. The social workers then continue to work in tandem with the lawyers to support clients through legal and related processes. Because compromised health is often an issue for older clients, and because we need to carefully screen our clients to ensure that they do have sufficient capacity to give instructions, additional social work support available through the service can make a huge difference in terms of how clients present, interview, give testimony and otherwise cope with the rigours associated with pursuing legal action.

Regrettably, at this point in time at least, there is still no national register for the registration of EPOA documents. This can make it quite difficult for lawyers, the Queensland Police Service (QPS) and other advocates to assess the existence and nature of an adult's substituted-decision-making regime.

It is well known that older clients often lose confidence as their physical strength and health declines with age, and also that the grief and shame associated with being exploited or abused by a trusted family member can result in a client seeming to have limited capacity. This is particularly problematic when a client is anxious, not being provided with proper nourishment or access to appropriate medical care and medication, which can happen when they reside with their abuser/s. It is therefore crucial that service providers and other responders, such as QPS, do not dismiss a client who at first instance might appear to be lacking capacity. Referrals to appropriate support services are vital in this context.

The role of the QPS and a contextualised approach to dealing with elder abuse

In recent years, as the community's and our government's awareness of and understanding about elder abuse has grown[8], we have observed that the QPS is endeavouring to respond to elder abuse reports in a more responsive and informed way.

Firstly, it is worth acknowledging that SLASS has observed that the QPS has become much more cooperative when clients seek help from the QPS in relation to bringing complaints under Queensland's

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[6] ALRC. (2016). *Elder Abuse – A National Legal Response.* Retrieved on 16.5.20 from https://www.alrc.gov.au/publication/elder-abuse-a-national-legal-response-alrc-report-131/

[7] NEAC. (2019). *Conceptualising the Nature of Abuse: Exploring Influence and Shame in Diverse Family and Support Systems.* Retrieved on 16.5.2019 from https://neac2019.com.au/resources/

[8] Commonwealth Government. (2007). *Older People and the Law.* Retrieved on 16.5.20 from https://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=/laca/olderpeople/report.htm

Domestic and Family Violence Protection Act 2014. (The DFVPA). This Act is particularly useful where the abuser is a spouse or other family member, but it also covers abuse by an informal carer (see section 20 of the DFVPA), which is something that we have often encountered.

Within the field of domestic violence, we have also noted that ouster orders gradually are being granted more regularly by Magistrates hearing cases involving elder abuse within a domestic or family violence context, including by way of Temporary Protection Order. This is a very positive development because an ouster order, which can be enforced by police, sometimes is the only thing that really works to secure a client's safety.

Furthermore, the QPS now also has a dedicated resource on its website explaining elder abuse, listing its commitment to responding to the problem and providing resources and referrals. The QPS website says:

> "The Queensland Police Service is committed to working with older people and the community to stop harm to our older people.
>
> It can be challenging to identify elder abuse as there is no single type of person who is at risk or who may cause harm. Elder abuse is everyone's responsibility. Only by working together can elder abuse be prevented."[9]

An emerging debate: Protection versus Autonomy

The Seniors Legal and Support Services have always adopted an approach that respects the autonomy of our clients. Some advocates, on the other hand, argue that a more protective regime is necessary, even if this ignores or overrides an individual's choices. This particular debate amongst stakeholders continues,[10]however, the right to be supported to choose interventions which are tailored to the older person's particular circumstances is generally accepted to be the preferred approach together with appropriate protections when there is serious abuse or the older person's will is overborne by the perpetrator.

Context, relationships and avoiding criminal law systems

As noted at the outset, the facts demonstrate[11] that most abuse is perpetrated by family members. For a recent example involving the 2018-9 reportable year, the EAPU's recent report is a case in point. It received 3118 calls about elder abuse during that last year and the EAPU's detailed data shows that almost all cases of abuse (95.7%, in fact) occurred within family relationships.

Older people (understandably) often have an urge to preserve their relevant family relationships, despite abuse problems, and this is why this area of law is so very complex and difficult to navigate. Elder abuse clients usually want, (1) the abuse to stop and, (2) to continue to live in close connection with their family members. They may not want to enforce their legal rights, per se. When an abuser is living with an older relative in their home, taking steps to have them removed may be the older person's last resort.

When QPS assistance is needed and a proposed protocol for referral pathways

Typically, the family relationship nexus between the parties means that older complainants wish to avoid starting a process that could lead to a family member being prosecuted in the criminal courts, even when relevant behaviour seems to amount to a breach of Queensland's criminal laws. For our clients it is not just the abuser that they worry about in this regard; they worry about the effect criminal action will have on the rest of their extended family and fear further fracturing of their family unit. Often the older person just 'wants the abuse to stop' - usually by having an abuser removed from their (the older person's) home. Typically, such individuals need help with both types of actions and this is one of the key times when we

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[9] QPS. (2020). *Elder Abuse.* Retrieved on 16.5.20 from https://www.police.qld.gov.au/elder-abuse

[10] NEAC. (2018).

[11] EAPU, Op. Cit.

have observed that our clients need very specific help from the QPS. Additional assistance from the QPS may also be needed by elder abuse victims when retrieving or otherwise dealing with their own or others' items of personal property.

Some of the most problematic situations arise when a relative is living with one of our clients, is abusing them in their own home and is refusing to vacate those premises, despite having no legal right to remain on the property. These cases usually involve psychological and financial abuse, which can take some time to properly explore and expose, and where there are multiple abusers the situation is even more complicated. The abuse, especially financial, social and emotional, may have been ongoing and unexposed for many years. The perpetrator may provide some informal care supports and the older person may depend on these supports (for example, banking or shopping). These 'supports' may be facilitating the abuse (for example, misuse of a PIN to withdraw money). When the perpetrator is themselves dependent on the older person for accommodation and financial support the risk of abuse is increased.

Ideally, when vulnerable older people seek police assistance they should simultaneously be connected to multi-disciplinary services, such as the Seniors Legal and Support Service, for more holistic support and advocacy. Similarly, when an elder abuse client consults SLASS , decides to take formal action to remove an abuser from their home and determines that they will need help with this process (as most elderly people do), they need their local police to be responsive and willing to assist them with this process as a matter of priority. They may have civil law options as well, but these are slow to action and, sometimes, police action is the only way to obtain an urgently needed result that will protect the client's safety.

To this end, the development of a protocol has been proposed in general discourse but has not been formalised as yet. A draft Protocol is attached and marked "Attachment A". We note that the EAPU defines a protocol as being a "guide about how an activity should be performed".[12] Accordingly, the suggested draft protocol sets out key steps that (1) the QPS could take to more meaningfully assist vulnerable elder abuse victims responding to complex accommodation disputes – specifically those involving trespass by family members, and (2) that the Seniors Legal and Support Services could take when assisting clients to contact the QPS for assistance about such matters.

LEGAL REMEDIES

Access to justice and access to representation – a complex issue

Caxton sees clients who are affected by all the various types of elder abuse including those who are polyvictims (experiencing multiple forms of abuse at the same time). Much of our work involves helping older clients who have experienced financial abuse and exploitation - including in relation to their living arrangements (for example, granny flat arrangements that have not worked out).

Civil Law Remedies for Elder Abuse

Because elder abuse occurs in so many ways, there may be a suite of civil law remedies available to the older person (acknowledging that pursuing some of these is so costly that it becomes impossible for the older person to follow through on legal advice given)::

- undue influence and unconscionable conduct in relation to contracts and guarantees
- complex debt recovery (typically involving loans that are not properly documented or secured)
- constructive/resulting trusts (typically relating to the funding of the building of a granny flat or other improvements made to property)
- conversion of property
- wrongful withholding of property (detinue)
- bailment

[12] EAPU. (2012). *A Guide for Elder Abuse Protocols.* p. 1. Retrieved on 24.5.20 from https://www.eapu.com.au/uploads/EAPU_general_resources/EA_Protocols_FEB_2012-EAPU.pdf

- property damage
- misuse of trust powers or breach of fiduciary duties (including duties owed as a substituted decision-maker under guardianship and administration law)
- equitable property law claims
- certain aspects of family law
- domestic and family violence
- trespass
- eviction
- banking and credit disputes
- consumer law
- civil assault
- tenancy/rooming accommodation and boarding

Queensland's new *Human Rights Act (2019)* (HRA) also is likely to have an impact in future related disputes.

Relevant criminal laws

Under Queensland's *Criminal Code,* the QPS can bring charges for the offences relating to: stealing, fraud, assault, unlawful wounding, grievous bodily harm, sexual assault, deprivation of liberty, a breach of duty to provide necessaries, neglect, wilful damage of property, torture, negligent acts causing harm, stalking, stealing with violence – extortion by threats, forgery, and related matters. Further, it can charge individuals with trespass under section 11 of the *Summary Offences Act 2005 (Qld)* and it has powers in relation to domestic and family violence offences, with the more severe forms of violence falling under both the *Criminal Code* and the DVFPA. The QPS also had a wide variety of powers under the *Police Powers and Responsibilities Act 2000 (Qld)* (the PPRA) including the power in section 52 to prevent offences.[13]

As has been acknowledged, the QPS has an increasing awareness that elder abuse is not like other forms of behaviour commonly encountered by the police because it is often hidden, unidentified and under-reported. [14]

PART 2: THE ROLE OF THE QPS IN SPECIFIC ACCOMMODATION DISPUTES

A FRAMEWORK FOR QPS RESPONSES CONCERNING THE REMOVAL OF AN ABUSER FROM A RESIDENCE

Overview

As noted, a key issue for us relates to the ability of an elder abuse victim to enlist assistance from the QPS to have an abuser (and their property) removed from the victim's home/residence. .

The QPS OPM already identifies the referral pathway to Seniors Legal and Support Service Centres. Seniors Legal and Support Services regularly receive referrals from QPS. This needs to be progressed one step further to a collaborative response in situations where an older person has decided they want to lawfully remove the abuser from their home with the assistance of Police and without having to apply for an ouster order to do so.

[13] Section 52 PPRA
[14] QPS. Op. cit.

Existing power of the QPS

The QPS OPM provides specific guidance in relation to police attending at accommodation disputes and also in relationship to trespass cases. (Bolding, and colour-coding has been added to key sections.) The OPM states:

> **13.4.8 Accommodation disputes**
> "The priority for officers called to incidents that involve accommodation disputes are to preserve peace, to prevent crime and detect offences. To assist occupiers or be present whilst occupiers of a place remove persons in accommodation disputes should not be considered unless the officer is satisfied a clear legislative authority to do so exists.
>
> Unless a clear legislative authority to remove a person in an accommodation dispute exists, officers could try to resolve these disputes by seeking an agreement from one of the parties to leave the premises voluntarily or refer participants involved to appropriate agencies for legal advice and dispute resolution.
>
> Assisting the occupier of a place to remove other parties (as a trespasser) in accommodation disputes except where a clear legislative authority exists, should only be as a last resort. Officers should request advice from the RDO, DDO, patrol group inspector or shift supervisors based on the specific circumstances of the situation prior to taking this course of action.
>
> Officers are not to provide legal advice to the parties involved in any accommodation dispute.
>
> For relevant definitions members should consult the Residential Tenancies and Rooming Accommodation Act (RTRAA) and Residential Services (Accreditation) Act (RS(A)A)."[15]

The manual later goes on to say in relation to applicability of the *Residential Tenancies and Rooming Accommodation Act* (the RTRAA):

> "Section 32: 'Boarders and lodgers' of the RTRAA provides that the RTRAA does not apply to a residential tenancy agreement if the tenant is a boarder or lodger.
> ...(and)...
> Section 44: 'Rooming accommodation agreements to which the Act does not apply' of the RTRAA provides that the RTRAA does not apply to a rooming accommodation agreement relating to the following rooming accommodation:
> (i) accommodation provided by a person in premises if:
> (a) the premises are the person's only or main place of residence; and
> (b) not more than three rooms in the premises are occupied, or available for occupation, by residents;..."[16]

The OPM addresses the topic of 'Attendance at Disputes (establish status of person obtaining accommodation)', and states:

> "Officers attending accommodation disputes should establish whether the person obtaining the accommodation is a:
> (i) tenant within the meaning of s. 13 of the RTRAA;
> (ii) boarder/lodger;
> (iii) resident in rooming accommodation within the meaning of s. 14 of the RTRAA;
> (iv) resident in rooming accommodation which does not come within a rooming accommodation agreement and is not regulated by another act; or
> (v) resident in rooming accommodation regulated by another act such as the Private Health Facilities Act.
>
> In determining whether a person is a:

[15] QPS. (2020). *Home Operational Procedures Manual Issue 75 Public Edition.* Brisbane. Retrieved on 17.5. 20 from https://www.police.qld.gov.au/sites/default/files/2020-04/OPM%20-%20Chapter%2013%20-%20Miscellaneous_0.pdf Page 24.

[16] IBID

(i) tenant, a residential tenancy agreement should exist. Normally these agreements should be in writing, however they can be verbal or even implied and this can complicate making a determination
(ii) resident for rooming accommodation under the meaning of s. 14 of the RTRAA – a rooming accommodation agreement should exist. Normally these agreements should be in writing, however they can be verbal or even implied and this can complicate making a determination;
(iii) resident of rooming accommodation, to which the RTRAA does not apply and may be regulated by another Act – see s. 44(1)(a) to (k) of the RTRAA; or
(iv) boarder or lodger – officers should consider:

(a) whether there is some other type of contract or agreement (not a residential tenancy agreement or rooming accommodation agreement) to occupy the premises, and if so what are the conditions in the agreement, (including any termination clause);
(b) whether other guests are allowed to stay in the premises;
(c) the amount of rent, the method of payment and the continuity of occupation;
(d) the intention of both parties on entering into the agreement;
(e) whether the occupant has control over the premises or part of the premises or whether control remains with the owner or manager;
(f) whether the owner/manager resides on the premises;
(g) the provision of services by the owner/manager, such as cleaning and meals;
(h) what do the premises consist of, what are the inclusions in the premises as part of the occupancy; and
(i) whether there are shared facilities such as bathrooms and kitchens. **Generally if the occupant of the premises has control over all of the facilities associated with the accommodation (bedroom, kitchen, shower and toilet) it may well be that the occupant is a tenant and the tenancy of the residential premises is subject to the provisions of the RTRAA and a residential tenancy agreement."***[17]

Under the heading, 'Attendance at disputes (action to take once status of person obtaining accommodation is established)', the OPM states:

"When an officer has made a determination about the person obtaining accommodation in an accommodation dispute, and that the person is considered a:

(i) tenant within the meaning of the RTRAA – officers are to see subsection 'Residential tenancy agreements and removal of residents' above or refer participants to other agencies listed below for dispute resolution and advice;
(ii) resident for rooming accommodation under the meaning of s. 14 of the RTRAA – officers are to see subsection 'Rooming accommodation agreements and removal of residents' above or refer participants to other agencies listed below for dispute resolution and advice;
(iii) resident of rooming accommodation which does not come within a rooming accommodation agreement but is regulated by another act – officers are to refer participants to other agencies listed below;
(iv) resident of rooming accommodation which does not come within a rooming accommodation agreement and is not regulated by another act or is a boarder/lodger, where:
(a) the person's licence to occupy the premises has been validly revoked; and
(b) the person fails to leave after having been asked to by the owner/manager of the premises,

that person may become a trespasser. *

If so, on the expiration or withdrawal of the licence to occupy, trespassing occupants should be given a reasonable time to leave and to remove their possessions from the premises. The provisions of s. 13.17.2: 'Requests to remove person(s) from a place, etc. for trespass or disorderly conduct' of this chapter apply.

Referral agencies
Appropriate referral agencies for dispute resolution or advice may include:

[17] (*Emphasis added.)

(i) the Residential Tenancies Authority, for matters that are or are believed to be pursuant to the RTRAA;
(ii) the Tenants Union of Queensland (now called Tenants Queensland);
(iii) the Department of Human Services (Cwlth) for aged care accommodation provided by an approved provider under the Aged Care Act (Cwlth);
(iv) Queensland Health – Mental Health Branch for accommodation provided at an authorised mental health service under the Mental Health Act;
(v) the Office of Fair Trading for student accommodation;
(vi) the Department of Social Services for accommodation provided under the program known as the Supported Accommodation Assistance Program (also known as the National Affordable Housing Agreement);
(vii) the Department of Housing and Public Works, Aboriginal and Torres Strait Islander Partnership (ATSIP) or the Office of Fair Trading for accommodation provided under funding given by, or in premises owned by, Aboriginal Hostels Limited; and
(viii) the Department of Child Safety, Youth and Women, Seniors Legal and Support Service Centres or the Office of Fair Trading for accommodation for a person at a retirement village if the person resides in the accommodation under the RVA. Contact details for the relevant agencies are included in the SMCD."[18]

The matter of trespass then is specifically addressed at point 13.17 and provides:

13.17.1 When to take action for trespass
POLICY
Trespass on land is actionable as a civil wrong. However, trespass may, in some circumstances, also amount to a criminal offence.
The decision by police to take action for this type of criminal offence should therefore only be made when:
(i) one or more of the following requirements is present:
(a) where specific legislation exists;
(b) the police officer has a reasonable suspicion the person trespassing is committing, or has committed or is intending to commit an offence;
(c) the person trespassing is committing a breach of the peace;
(d) an issue of safety arises; or
(e) the person in peaceful possession of the land/place is not able to readily remove the person; and*
(ii) the provisions of s. 3.4.3: 'The discretion to prosecute' of this Manual have been fulfilled.

When does a trespass on a person's property go beyond the realm of civil trespass Section 11: 'Trespass' of the Summary Offences Act and s. 48A: 'Unlawful entry of dwelling houses' of the Invasion of Privacy Act are similar in respect to 'unlawful trespassing'.
These provisions are not intended to prohibit persons entering upon another person's property for lawful purposes. For example, to knock at a person's door to seek a direction or look for some person.

Pursuant to this legislation an offence is committed if something more than 'trespass' in the civil sense is proved. For example, the continual trespassing of children onto a neighbour's property to retrieve a football or other article would be trespass in the civil sense, whereas a trespass by a person intending to commit an offence or a 'peeping tom' could well be trespassing in the criminal sense. Nevertheless, it is not the intention of this legislation to make every civil trespass a criminal offence.

PROCEDURE
Officers investigating complaints under these two Acts should **consider the intention of the person against whom the complaint is made as well as their reasons for entering or being on the premises, prior to commencing a prosecution.**
Officers should also note that an offence against s. 11 of the Summary Offences Act is a declared offence for the purposes of s. 634: 'Safeguards for declared offences under Summary Offences Act' of the PPRA. See also s. 13.17.5: 'Trespass in shopping centres' of this chapter.

13.17.2 Requests to remove person(s) from a place, etc. for trespass or disorderly conduct

[18] IBID. Pages 24-27.

Officers, assisting persons in the peaceable possession of any land, structure, vessel or place to lawfully remove persons improperly there, are taken to be acting in the exercise of their duty despite the fact that such assistance could be provided by a person who is not an officer (see s. 792 of the PPRA).

PROCEDURE

Officers requested to assist to remove person(s) from any land, structure, vessel or place should refer to s. 277: 'Defence of premises against trespassers – removal of disorderly persons' of the Criminal Code. This section authorises a **person in peaceable possession of any land**, structure, vessel or place, or who is **entitled to the control or management of any land**, structure, vessel, or place, and for **any person lawfully assisting him or her or acting by his or her authority, to use such force as is reasonably necessary in order to:**

(i) prevent any person from wrongfully entering upon such land, structure, vessel, or place; or

(ii) to remove there from a person who:

(a) wrongfully remains therein; or

(b) conducts himself or herself in a disorderly manner therein; provided that he or she does not do grievous bodily harm to such person.

Officers should first satisfy themselves that they can place reliance on the statement of the person in authority before assistance is given, e.g. assisting the person in control of a household to remove another person from that dwelling. Also, officers should record in their official police notebook the nature of the request of the person in authority for police assistance. The person in authority should then be requested to sign the officer's notebook.

When officers are called upon to assist and it is ascertained that the trespasser has committed, or is committing an offence, or is a party to a breach of the peace then appropriate action should be taken to prosecute the offender. See Chapter 3: 'Prosecution Process' of this Manual."[19]

Additional Relevant Provisions

Queensland's *Criminal Code (1899)*[20] provides as follows:

277 Defence of premises against trespassers – removal of disorderly persons

(1) It is lawful for a person who is in peaceable possession of any land, structure, vessel, or place, or who is entitled to the control or management of any land, structure, vessel, or place, and for any person lawfully assisting him or her or acting by his or her authority, to use such force as is reasonably necessary in order to prevent any person from wrongfully entering upon such land, structure, vessel, or place, or in order to remove therefrom a person who wrongfully remains therein, provided that he or she does not do grievous bodily harm to such person.

(2) It is lawful for a person who is in peaceable possession of any land, structure, vessel, or place, or who is entitled to the control or management of any land, structure, vessel, or place, and for any person acting by his or her authority, to use the force that is reasonably necessary in order to remove therefrom any person who conducts himself or herself in a disorderly manner therein, provided that he or she does not do the person grievous bodily harm.

(3) In this section – "place" includes any part of an enclosure or structure, whether separated from the rest of the enclosure or structure by a partition, fence, rope, or any other means, or not.

Further, the *Police Powers and Responsibilities Act 2000 (Qld)* states:

792 Performance of duty

A police officer performing a function of the police service is performing a duty of a police officer even if the function could be performed by someone other than a police officer. Example – An occupier of a place who may remove a trespasser from the place asks a police officer to remove the trespasser. The police officer, when removing the trespasser at the occupier's request is performing a function of the police service[21].

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[19] IBID, pages 82-83.

[20] *Criminal Code Act (1899) Schedule 1 The Criminal Code* Retrieved on 28.5.20 from https://www.legislation.qld.gov.au/view/html/inforce/current/act-1899-009#sch.1

[21] *Police Powers and Responsibilities Act Qld (2000)* Retrieved on 25.5.20 from https://www.legislation.qld.gov.au/view/pdf/inforce/2017-09-13/act-2000-005

RELEVANT ACCOMMODATION DISPUTES

Different types of relevant living arrangements in the context of elder abuse

As is clear from the OPM, there are many different types of living arrangements that can become problematic, and the law governing each type varies. Arrangements may involve: homeowners, tenants, residents in rooming accommodation, boarders, lodgers, invited visitors/guests and individuals providing care or services. (Holiday rentals, employee accommodation, and accommodation that is governed by other specific pieces of legislation clearly are additional accommodation categories, but they are not relevant for our particular purposes.) Some of the residents will be relatives; some will not be related at all. Our protocol is focused on accommodation disputes involving relatives.

Types of residence, including managed living situations

The relevant residences where disputes arise may be houses, units/apartments, town houses, residences in social housing complexes, flats, retirement village units, manufactured homes, caravans (including vans in caravan parks or at manufactured home parks or on an individual's private land, such as in a back yard or on acreage), detached 'granny flats', residences at rooming accommodation complexes, and boats. Elder abuse could happen in any of these living situations, although the majority of the cases that we see tend to involve an older person's home where they still reside.

The accommodation provided to the relative may be part of the main residence, or the accommodation may be a self-contained 'granny flat'. Sometimes this is a separate structure on the land and sometimes it may be part of the main dwelling. In the latter scenario the 'granny flat' tends to be somehow closed off from the main residence and will have separate conveniences and a separate entrance. For example, the downstairs of a family home may have been converted into a self-contained residence that is fully lockable and separate in all meaningful respects.

Retirement village situations and rooming accommodation captured under the RTRAA both tend to be managed living situations with an onsite manager/s and perhaps there is less scope for an abusive family member (or indeed other visitors or boarders) to force their way into being able to dominate, oppress and exploit an older person in those types of living situations. Social housing providers may allow additional relatives to be added to the lease of an older tenant, but may not be informed about abusive behaviour by the additional tenant. Sometimes relatives may move in without formally advising the housing provider. Social housing providers usually offer some monitoring[22] and involve reporting regarding who can reside in a social housing residence. That said, we have responded to many elder abuse cases affecting vulnerable clients living in public and other social housing.

Different family scenarios

In terms of the elder abuse clients that we see where accommodation disputes have emerged, there can be quite a variety of family relationships and legal structures at play. Abusers who are invited into or who inveigle their way into an older relative's home and who later refuse to leave may be: adult children, grandchildren or other relatives. Adult children seem to be the most common relatives that our clients seek advice about, although we have also seen some graphic cases of abuse involving adult grandchildren. In some situations, these individuals also will have certain of their own family members living with them. For example, an adult grandchild who moves in with his/her grandparents may also bring with them into the residence their own partner and children.

Different living/accommodation arrangements and the status of home-owners

Some of the common arrangements that can be encountered in elder abuse cases are set out below. Before turning to these arrangements, however, it is important to consider the status of a home-owner. In

[22] Queensland Government. (2016). *Tenant Behaviour.* Retrieved on 25.5.20 from https://www.qld.gov.au/housing/public-community-housing/public-housing-tenants/during-your-tenancy/tenant-behaviour

Queensland, if someone is a registered owner of a home (e.g. a house, a unit, a townhouse etc.) they have significant recognised legal rights when it comes to deciding who can visit and stay at their home. They are regarded as being the lawful occupier of the property, unless they lease out the property, and have the right to decide who can visit their property and how long they can stay there. The owner can invite people onto their property and, equally, later withdraw that permission. They have the legal right to have someone removed from their property if that person is there illegally and they can contact the Queensland police for assistance regarding removal of the trespasser. (The OPM contains a detailed list of relevant considerations in trespass claims, as was noted earlier.)

Some problematic and abusive family members can be co-owners of a property with an older relative. In extreme situations that cannot be resolved through mediation, an elderly co-owner will likely need to retain a lawyer and use property law processes to force a sale of the property or seek some other equitable or injunctive relief. They may also be able to obtain some relief under the DVFPA (for example, with an ouster order) in appropriate circumstances. Police can, of course, be called where criminal law offences occur, such as assault, theft or wilful damage to property. Unfortunately, co-ownership property law disputes are not usually cases where Seniors Legal and Support Services have the resources to act for clients.

Other scenarios we encounter in our elder abuse work include the following types of arrangements:

1. Residential tenancy agreements (leases) – homeowners

- Sometimes adult children/grandchildren or other relatives will be (or will at some time have been) paying a set amount of rent in exchange for accommodation at their elderly relative's home in accordance with a duly documented **residential tenancy agreement**. These arrangements clearly are covered by the RTRAA.
- At this point in time, the RTRAA allows a lessor to terminate a tenancy without grounds (see section 291) although it is possible that this law will be changing in the future.[23] The RTRAA also provides processes for issuing a notice to remedy breach (e.g. where rent is owing) and provides various options for the lessor to seek a termination order of the lease at QCAT. Grounds may include, for example, failure to leave as required (section 294), excessive hardship (section 295), damage or injury (section 296), objectionable behaviour (section 297) or repeated breaches (section 299). The Act also provides for additional processes to evict the offending party. Although it is tedious for an older person to have to work through the requirements set out in the RTRAA to get to this point, the mechanism for removing their tenant/s is clear. The OPM sets out in detail the law and police processes relating to removal of persons under a RTRAA tenancy. There is therefore no need to revisit that analysis, which is very clear.
- In certain situations, where no actual lease was signed, there can be disagreements as to whether the agreement is, in fact, a residential tenancy agreement or is actually a boarding/lodging arrangement and was only ever intended to be that sort of arrangement. Unfortunately, when an abuser asserts – contrary to our client's instructions - that a lease existed, the abuser typically will be able to buy time to remain on the property and may end up forcing our elderly clients to have to go through the stressful process of obtaining and actioning a warrant of possession (see sections 350-353 of the RTRAA). There may be times when SLASS wants to help liaise with the QPS on behalf of the client in relation to necessary police action associated with a warrant of possession.
- The RTRAA provides that although a tenancy agreement under the Act is required to be in writing, a mere verbal agreement can be still be captured by the RTRAA as a residential tenancy agreement.[24]
- In our experience, in addition to cases where a residential tenancy agreement under the RTRAA was signed, a lease is more likely to exist where, (a) the family member is living in a separate self-

[23] Queensland Government. (2019). *A Better Renting Future.* Retrieved on 25.5.20 from https://www.yoursayhpw.engagementhq.com/RentingInQLD

[24] *Evans v Ramsay [2011] QCATA 199*

contained, independent and lockable part of the property, such as a purpose-built granny flat or self-contained studio with its own bathroom, kitchen and living quarters, (b) parties negotiated payment of rental payments in exchange for the accommodation (even though the rent may not subsequently have been paid in accordance with the agreement), (c) parties intended that the arrangement should be a lease – especially when they used this particular language in their discussions, (d) any of the Residential Tenancies Authority (RTA) tenancy forms were used by the parties, (e) though the home-owner may have keys to this space, it was never intended that they could just randomly come into the space – and they agreed to give notice if they needed entry for the purposes of conducting repairs[25] or doing an inspection. In short, the tenant has a right to exclude the lessor.[26] Most importantly, one needs to consider the actual nature of the rights given and the true intention[27] of the parties.[28]

- In residential tenancy disputes strict requirements are set out in the Act for terminating leases, obtaining relevant orders from QCAT, and recovering possession (See Chapter 5 – Ending of agreements, and Division 7, Recovery of possession of premises in the RTRAA). Dispute Resolution is also available via the RTA in these matters.
- The ability to exclude all other parties and be in exclusive possession of the particular part of the property is a key issue, although there have been cases where a lease has been found to exist even when this has not been established.[29]
- In the QCAT case of *Mann v Hamilton Island Enterprises Ltd [2012] QCATA 142,* the Honourable President of QCAT, Justice Wilson, in considering whether the factual matrix of that case evidenced a lease under the RTRAA or a boarding/lodging scenario, pointed to section 53 of the RTRAA which forbids contracting out of the RTRAA where the substance of an agreement actually is a residential tenancy agreement. It is our submission that this case turns on its own particular facts, which involved employees of a business in dispute with their employers about the nature of the accommodation arrangement. When SLASS gets involved in relevant matters, we are helping people who desperately need to be able to recover control of their own home in which they are living, so that they can be free from their abusers and unfair financial exploitation. The majority of the clients we advise in relation to 'accommodation disputes involving family members' never intended to enter into leases with their family members and fully expected that they would retain their full rights as the person in possession of their own property. When Police respond to a call for help at an accommodation dispute (when SLASS has not been involved), they should not simply accept at face value that a lease exists and should be willing take more active steps to assess relevant facts. Where SLASS has been involved, we will have engaged with the client to carefully ascertain the true nature of any relevant accommodation arrangements.

2. Residential tenancy agreements (leases) – Co-tenants and Sub-tenants

- Sometimes, our older clients do not own their own home and instead are themselves renting property under a residential tenancy agreement. Where abusive family members are co-tenants with the older person under an acknowledged lease, Queensland's Tenancy laws provide specific relief for the termination of tenancies in situations of damage or injury or excessive hardship (see sections 312, 344, 310 and 343 of the RTRAA).
- QCAT also has power to hear urgent applications in these cases (see section 415 RTRAA). Domestic violence must be considered by QCAT when dealing with cases for termination of a tenancy relating to injury and damage. (See sections 312 and 343). Under the OPM, the QPS can act to assist with the enforcement of appropriate orders made under the RTRAA by QCAT.

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[25] *Street v Mountford [1985] 2 All ER 289.*
[26] *Torrissi v Oliver (1951) VLR 380.*
[27] *Radaich v Smith (1959) 101 CLR 209.*
[28] *Lewis v Bell [1985] 1 NSWLR 731*
[29] *Mann v Hamilton Island Enterprises Ltd [2012] QCATA 142* Retrieved on 20.5.20 from https://www.sclqld.org.au/caselaw/QCATA/2012/142

- If our clients are head-tenants who are sub-leasing to a sub-tenant, they are also able to take advantage of provisions in the RTRAA to terminate a lease in situations of damage, injury, objectionable behaviour and failure to leave in response to a termination notice, which may include unremedied breach (See sections 281, 293, 295-297).

3. Boarders

- Section 32 of the RTRAA excludes boarders and lodgers from coverage under the RTRAA. Therefore, in these situations the common law applies.
- Sometimes relatives will be (or will have been) paying money in exchange for accommodation and meals[30] or other services as **boarders**[31] and they will not enjoy full possession of the property – instead being subject to the resident owner's control of the premises. (A good example would be an adult child studying at university and living at home paying board that covers accommodation, a share of utility bills, food and laundry).
- In *Noblett & Mansfield v Manley [1952] SASR 155,* Mayo J. said:

  > A "boarder" is one who...has his food, or food and lodging, at the house of another for compensation; one who lives in a boarding-house or with a family as one of its members, at a fixed rate' one who has food at another's table, or meals and lodgings in his house, for pay, or compensation of any kind. In ordinary circumstances with both lodger and boarder, legal possession remains in the person who provides room or rooms, or meals. He retains possession and control over rooms and means of ingress and egress but grants licence to guests who pay, or give consideration for the privilege."[32]
- Similarly, in the 1999 ACTAAT decision of *Kesteven and Commissioner for ACT Revenue*[33], in discussing boarders, the court also referred to this element of a boarder living in a boarding house or with a family for a fixed rate as one of its members.
- Boarding arrangements may be set out in a written agreement or, more commonly, they may rely on a simple verbal agreement. Often the terms of these agreements are somewhat vague. Where younger family members are boarders, it is likely to be understood that the home owners will set 'the accommodation rules'. However, where the relative/s involved are older, the terms may be more difficult to clarify in the absence of a written document – particularly in relation to the amount of notice required if the home owner wants the relative boarder/s to leave. Because a boarding arrangement is regarded as involving a mere **licence**, not an "interest" in property, it can be withdrawn – either in terms of any agreement on point or on the giving of reasonable notice.
- Many of the elder abuse arrangements that SLASS has encountered involved a family member moving in with an aged relative on the basis that they would pay some sort of nominal board or payment, but they subsequently just stop paying as agreed and refuse to leave. These are clients who need our help and once we can establish that proper notice to leave has been given and is being ignored, by law the boarder becomes a trespasser. They no longer have a right to be on the property.
- In the absence of any agreement regarding notice, the common law simply requires the owner to give "reasonable notice" if they want the boarder or lodger to leave. What is reasonable will vary depending upon the circumstances and, unfortunately, there is no definition of the term, *reasonable notice*.
- In a situation where the owner has been injured or threatened by the boarder, or where the boarder has damaged the owner's property and the owner is afraid, notice could be a very short period – arguably even a matter of hours – especially where the police are called to prevent further

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[30] *Olney v Commissioner for ACT Revenue* (Administrative Review) [2019] ACAT 122 Retrieved on 23.5.20 from https://jade.io/article/698600

[31] *Noblett v Manley [1952] SASR 155; Kesteven and Commissioner for ACT Revenue [1999] ACTAAT 35.*

[32] IBID [1952]. Extract retrieved on 27.5.20 from http://austlii.community/foswiki/pub/publish/file/WARTenancyLP/Miscellaneous.html

[33] *Kesteven and Commissioner for ACT Revenue [1999] ACTAAT 36* referred to in *Olney v Commissioner for ACT Revenue* (Administrative Review) [2019] ACAT 122 at paragraph 63.

offences from occurring. It is arguable that reasonable notice in other non-urgent situations is likely to be anywhere from 7 to 28 days. Some people will act cautiously and will mirror the 2-month notice period often applied under RTRAA residential tenancies, but this certainly is not required by law in boarding/lodging situations.

- Tenancy advocates will argue that the time needs to be longer because it is so difficult for people to find affordable housing. However, when an elderly person is residing in a property with a boarder or lodger who, for example, has ceased to pay the sum they agreed to pay (e.g. for accommodation – including food - and perhaps a share of utility bills) and is thereby financially exploiting the home-owner, or has damaged property, or has threatened, intimidated, or injured the older person, or has prevented them from enjoying being able to live in their own home by behaving in an offensive or aggressive way towards the home-owner's other visitors, it is appropriate that the homeowner (being a victim of elder abuse) ought to be able to have the boarder or lodger removed in a prompt fashion. Ultimately, safety matters in such cases.
- Once the home-owner has withdrawn a boarder's or lodger's licence and the relevant notice period has expired, then the boarder/lodger becomes a trespasser. Section 277 of the *Criminal Code* specifically acknowledges that the home-owner can use reasonable force to remove someone from their property who has no lawful basis for being there; however, our elderly clients are simply not capable of removing an unwanted boarder/lodger. They would be fearful of being injured in the process, and it must be noted that older people often tend to have some level of physical impairment as they age and so are indeed at risk in such an altercation. Furthermore, they will be fearful that they might be accused of assault and/or of committing a trespass to the chattels of their boarder/lodger if they try to adopt a self-help response to the problem. The appropriate action is to call the QPS to ask for assistance to have a trespasser removed. SLASS is sometimes called upon by clients to help organise this and we have determined that a more structured approach to our contact with the QPS would be beneficial. Our suggestions are contained in Attachment "A".

4. Lodgers

- Sometimes payment is made in exchange simply for provision of accommodation[34] involving a bedroom and access to shared bathroom and kitchen without any other benefits (such as food)[35] being included in the arrangement and subject to the resident owner's overarching possession and control of the overall premises. This will generally be considered to be a **lodging** arrangement.[36]
- These parties also only have a mere **licence**[37] to reside at the premises, which can be withdrawn by the owner, subject to any terms that were agreed by the parties. As noted above, a mere licence can be withdrawn upon the giving of 'reasonable notice' to leave.
- In *Mann v Hamilton Island Enterprises Ltd [2012] QCATA 142,* a dispute arose as to whether or not the parties were boarders or had a lease that was covered by the RTRAA. No formal lease or licence had been drawn up, but the Manns' employment offer included employee accommodation and they had been placed in a 3-bedroom unit at the Island. In the course of his decision, the President of QCAT, the Honourable Justice Alan Wilson, considered section 433 of the RTRAA, which lists the factors that are relevant for determining whether someone is a boarder or a lodger. Some of the key elements considered included the question of who had control over the premises and the right to exclude others (for example where keys are needed to access premises and notification is required for entry), who was residing at the premises, what services were provided and whether facilities were shared. The decision acknowledges that at common law a boarder is someone who pays for food and lodging at the house of another person, while a lodger just pays periodically for accommodation in someone else's house.

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[34] *Smart v Trebilcock [2019] SACAT 19*

[35] *Porter v Busch* [1974] 1 NSWLR 593.

[36] Butt, P. (2010). *Land Law. (6th Edition).* Law Book Company.

[37] *Marks-Vincenti v TheQueen [2015] VSCA 54.*

Section 433 of the RTRAA provides:

433 Relevant matters for deciding whether a person is a boarder or lodger

(1) Subsection (2) applies if, in relation to an application for an order under this Act, the tribunal is required to decide whether a person is a boarder or a lodger.

(2) The tribunal must have regard to the following—

(a) the extent to which the person has control over premises;

(b) the extent to which another person, receiving an amount from the person for the right to reside at the premises, has control of the premises;

(c) whether another person, receiving an amount from the person for the right to reside at the premises, also resides at the premises;

(d)the provision of services to the person;

(e)whether the person shares facilities, including the bathroom and kitchen facilities;

(f)anything else the tribunal considers relevant.

Importantly, the judge hearing this case determined that a residential tenancy does not have to involve exclusive possession. That said, it is also important to note that exclusive possession and the ability to assert this possession over the property remains a crucial consideration[38] when ascertaining whether an arrangement is a boarding/lodging situation rather than a lease. That said, specific legislative provisions can alter this common law factor.[39]

5. Guests

- Others relatives may be living at a client's residence, effectively as **guests.** They may have asked to stay with the owner on a temporary basis or have been invited to stay on a temporary basis, but later ignore or actively resist requests by the home-owner for them to move out. Guests are only able to lawfully remain on the premises for as long as the owner consents. As soon as **consent** is withdrawn, they become **trespassers,** irrespective of the family relationship.
- Where there is no commercial aspect to the arrangement at all, there should be no doubt that family member's rights to stay can be immediately withdrawn.
- It can be more difficult when an abusive family member asserts that they are providing services in exchange for accommodation or an interest in property. In the absence of any formal evidence of such an arrangement existing (such as production of a family agreement as discussed earlier), it is our firm view that the "guests" can be removed from the property if they refuse to leave. If they do, in fact, have other equitable entitlements, they can pursue these via civil law claims.

6. Rooming Accommodation

- It is worth noting that family members will not be governed by the Rooming Accommodation laws set out in the RTRAA because the definition of "**resident**" in rooming accommodation in section 14 does not include a "relative" of the provider. It is more likely that the common law relating to boarders and lodgers will apply if someone asserts that they were in rooming accommodation at their relative's home and paying a fee in exchange for this.
- In any case, the rooming accommodation provisions of the RTRAA do not apply if the owner lives in the premises and does not rent out more than 3 rooms (see section 44 of the RTRAA.) It would be rare that one of our clients would be in a position to give up more than 1 or 2 rooms to boarders etc. Our older clients usually only consider such an arrangement when they wish to defray their expenses because they are living on limited incomes (with their home being their only asset) or because they think having a boarder may reduce their sense of loneliness.

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[38] *Thompson v Ward (1871) LR 6 CP 327,361*

[39] *Olney v Commissioner for ACT Revenue [2019] ACAT 122.*

7. Family Agreements

- Some relatives will be receiving accommodation in exchange for providing services around the house or in exchange for providing care services to the older relative. Some may be undertaking services in exchange for a promised interest in the said property or proceeds of its sale. These cases (especially 'asset for care' arrangements) prove more problematic to assess. If a formal "**family agreement**" (also sometimes known as an independent care agreement or a personal service contract or a lifetime care contract)[40] has been properly prepared by a lawyer, this will set out the terms of the agreement in detail and should provide for a solution in the event of a breakdown in relations between the parties.

APPLICATION OF THE DFVPA AND FAMILY LAW ISSUES

Obviously, the DFVPA can be used if family violence becomes an issue in relevant co-habiting family situations and the option to obtain an ouster order under the DFVPA would be useful in such situations. Unfortunately, though the definition of DFVPA does cover domestic violence that takes the form of economic abuse (section 8(c)), coercive behaviour (section 8 (d)), and emotional and psychological abuse (section 8 (a)), the DFVPA is not necessarily guaranteed to deliver to the older person the outcome they want and need, which is to have the abusive family member/s physically removed (along with their possessions) from the older person's home.

It is worth noting at this point that separating couples (and even couples still residing together) have options to seek orders for property settlement and spousal maintenance under *The Family Law Act.* The Family Court and the Federal Circuit Court also have the power to order a sole use and occupancy order in appropriate cases using the Court's injunctive powers. Accordingly, there are a variety of options available in disputes between married and de facto couples where the abused party is elderly.

DE FACTO RELATIONSHIPS

It is not particularly common but we have seen cases where an elderly client (or if that person no longer has capacity, where their Attorney under their EPOA or their Guardian substitute-decision-maker) seeks to remove an unrelated but abusive boarder/lodger from a residence, only to find that person asserts that they have other family law or civil law rights entitling them to remain on the property. This is extremely complex in situations where the older relative has developed dementia.

In particularly insidious cases, a boarder who is an abuser may try to argue that they have property rights as a de facto, even though no de facto relationship ever existed. Where the adult has lost capacity and they have had a limited support network (e.g. because perhaps their adult children live interstate and their own friends are now in nursing homes etc.), assessing the relevant facts can be extremely challenging. This is because, sometimes, the de facto relationship does exist, but has been kept hidden from family and friends.

In a Western Australian case of *Paterson v Vaughn Charles Bunter as Executor of the Will of George Samuel Adolphus Bunter (Dec) [2000] WASC 83*[41], Ms Paterson successfully established that she was not a boarder and had been in a de facto relationship with the other party who had died, although the relationship had been kept private from other family members. In *Delany v Burgess [2007] NSWCA 360*[42] the court in

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[40] Herd, B. (2002). "The Family Agreement – a Collusion Between Love and the Law?" [2002] ALRCRefJl 18. Retrieved on 25.5.20 from http://www.austlii.edu.au/au/journals/ALRCRefJl/2002/18.html

[41] *Paterson v Vaughn Charles Bunter as Executor of the Will of George Samuel Adolphus Bunter (Dec) [2000] WASC 83* Retrieved on 12.5.20 from https://jade.io/article

[42] In Delany v Burgess [2007] NSWCA Retrieved on 12.5.20 from https://www.caselaw.nsw.gov.au/decision/549fd0d53004262463be0bde

considering the NSW *Property (Relationships) Act 1984,* stated that where a de facto relationship was established, the court could consider rights in this context, even if the relevant party was also a boarder. The case of *Collett & Anor. V Knox and Anor. [2010] QSC 132*[43] relates to an estate dispute and an application for family provision under the *Succession Act 1981 (Qld)* including provision for the 100-year-old de facto spouse of the deceased. The case incorporates a detailed consideration of the factors for use in determining whether or not a de facto relationship (as defined in the *Acts Interpretation Act 1954 (Qld)*) can be established. The very unusual facts of the case highlight the extent to which some older people will go in order to hide the existence of their de facto relationship from friends and family. Similarly, in the case of *Mackie, Re the Will of [1988] QSC 439*[44], a claimant asserted, in contrast to the submission of the beneficiary who viewed the claimant as having been the deceased's boarder, that she was in a relationship with the deceased for a number of years. On the facts, including that the claimant had made renovations to the property, had paid for various expenses including the homeowner's hairdressing appointments, and that the parties had enjoyed a connubial relationship, a de facto relationship was acknowledged.

We accept that such cases can be very problematic. Where a home-owner appears to have capacity, denies that there has been a de facto relationship, and instructs that another party is someone who was only ever a mere boarder/lodger or guest who now refuses to leave and is abusing them, we would, (1) assess our client's ability to provide instructions, (2) probe those instructions, (3) where appropriate, advise them to put the other party on notice in writing that they are required to leave the property, and (4) advise clients to contact the police regarding removing that person as a trespasser after the notice period has expired. We would also, of course, urge clients to call the police if threats or violence ensue. If the other party wishes to pursue any family law rights they believe they have, they can take appropriate action in the family court. In normal family law disputes, our clients would be advised about the option of applying for a domestic violence protection order and of the availability of sole occupancy orders in family law proceedings.

SPECIFIC RISKS

If the older person seeking police assistance has lost capacity, we recognise that it may be very difficult to assess relevant facts. If the police are called to attend at a residence and identify that the homeowner does not appear to have capacity and appears to be at risk, they can initiate steps to involve health professionals and the Office of the Public Guardian (OPG). It may then be that the OPG will commence action to be appointed as the person's substitute decision-maker (i.e. as guardian and administrator), where there is no duly appointed Attorney appointed under an Enduring Power of Attorney.

If police have been asked to attend at premises because an older person's adult children are concerned that a boarder is abusing and exploiting their aged family member, the police in doing a welfare check may find that the abuser tries to say they are a nominated carer or (as noted above) a de facto partner and that the relationship was just kept secret as a matter of privacy. It will then be difficult for the police to know how to proceed. We consider that the relevant QPS officers involved need to be willing to take the necessary time to probe such stories in these cases and should seek to link any vulnerable older persons with appropriate support services, such as SLASS.

TRESPASSERS

Trespassing can be dealt with as either a criminal matter or as a civil matter. The remedies in these different types of matters vary. Trespass under the criminal law is a matter the police can handle, and a person prosecuted and found guilty of such an offence obviously will end up with this on their criminal record. A civil claim in trespass is something that would need to be pursued by the owner by commencing

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[43] *Collett & Anor. V Knox and Anor. [2010] QSC 132*Retrieved on 12.5.20 from https://archive.sclqld.org.au/qjudgment/2010/QSC10-132.pdf

[44]*Mackie, Re the Will of [1988] QSC 439* Retrieved on 12.5.20 from https://www.sclqld.org.au/caselaw/QSC/1988/439

proceedings in the appropriate civil court. Damages in civil trespass claims can be awarded by the court, but a civil trespass action would be complex and potentially costly to run. Because of this, most trespass matters are instead brought to the attention of the police for action under the criminal law. If the trespasser has become violent towards someone or their property, they may also end up, of course, being charged with other offences, such as wilful damage to property or assault.

If police are called and the trespasser refuses to follow a police direction to leave the relevant property, they may be charged both with trespass under section 11 of the *Summary Offences Act 2005 (Qld)* and also with disobeying a police direction under section 791 of the *Police Powers and Responsibilities Act 2000 (Qld)*. We believe that the QPS does need to take a firm stance in responding to cases of trespass involving abusers when these cases are brought to its attention.

REMOVAL OF POSSESSIONS

If police do end up helping to remove a trespasser in the elder abuse scenarios that we have flagged, it would be useful if they were also able to help encourage or facilitate the simultaneous removal of the personal property belonging to an individual who is being removed from the premises. We say this because it has been our experience that a homeowner who has just escaped from living with their abuser will not want to become an involuntary bailee of that person's property. This imposition can end up being an ongoing act of abuse.

Furthermore, such a situation can be very problematic when property is left indefinitely. It becomes a particular issue when the older person needs to move into a retirement village or nursing home and they need to empty their home ready for sale. If they wrongfully dispose of the property, they will commit a trespass to chattels and can also be sued for damages in conversion. It would be far preferable if the QPS could help to oversee the removal of property when they take action to remove a trespasser in the circumstances described.

Part 3 - CONCLUSION

Sadly, elder abuse is a common and complex problem, and the extent of it seems to be growing. Some abusers are extremely forceful and manipulative in their behaviours, and it is worth noting that social isolation is one of the greatest tools used by an abuser. Indeed, some of the worst abusers systematically set out to isolate their victim from their extended families, friends and other support networks causing great harm to their older victims through this process.

In our experience, it is often the case that these particular types of abusers commonly have their sights set on having the older person change their will, sign up an enduring power of attorney (providing them with an opportunity to misuse the older person's funds/property) and typically have other venal financial motives, such as being able to enjoy indefinite free accommodation. It is not uncommon for them to steal property, which can be difficult to prove when our clients may not have documentary evidence of their ownership of certain items of personal property. We have observed that this type of multi-faceted abuse is often achieved when an abuser manages to find a way to live at the home of a vulnerable older person who actually owns their own home. Accordingly, the work of SLASS in assisting clients to remove abusers from their homes is crucial. However, the success of these actions usually will rely on police support, and this is why we are proposing the development of a referral protocol in the hope that this will enable the various Seniors Legal and Support Services to more easily liaise with the QPS when our clients need their help with trespassers. We hope that the work we do with our clients prior to this referral will bolster the willingness of the QPS to assist our particularly needy clients.

Based on the complex situations described in this briefing document, it is clear that addressing elder abuse is no easy feat. Accordingly, the Seniors Legal and Support Services are eager to work with the QPS collaboratively in fighting elder abuse. To this end, we welcome the QPS's willingness to discuss using more effective referral pathways and a draft referral protocol is attached for further discussion.

DRAFT PROTOCOL – ELDER ABUSE

The *Seniors' Legal and Support Service* (SLASS) and Older *Person's Advocacy and Legal Service* (OPALS) assist older clients who are experiencing or at risk of experiencing elder abuse. OPALS is run in partnership with the *Metro South Regional Health Service*. Both services have social workers and lawyers working together in multidisciplinary teams to support and assist clients with their legal and related problems.

Seniors over the age of 60 are eligible for such services, but this age limit may be lowered to 50 for Indigenous people when elder abuse is an issue.

There are many forms of elder abuse, and while SLASS can help clients by providing initial advice in all related areas of law, most of our clients seek help where they are victims of financial abuse and exploitation. One major form of exploitation relates to their provision of accommodation to abusive family members.

Accordingly, case-workers sometimes work with elder abuse clients for long periods of time to help a client build their resilience to a point where they feel empowered to make decisions regarding their legal needs – including taking steps to remove abusive resident relatives (or other individuals) from their homes.

The Brisbane-based SLASS and OPALS services collaborate with other elder abuse services operated by community legal services elsewhere in Queensland, specifically in Toowoomba (including via outreach to Ipswich), Townsville, Hervey Bay, and Cairns. *Relationships Australia Queensland,* runs an *Elder Abuse Prevention and Support Service* in Gold Coast, Sunshine Coast, Gladstone, Rockhampton and Mackay that provides support service referrals and helps vulnerable clients to develop safety and case plans.[45]

The *Queensland Police Service* (QPS) is the lead law enforcement agency for the State of Queensland. It recognises elder abuse as a major social problem and is collaborating with the community and with service providers, such as SLASS to play a vital role in dealing with elder abuse by helping to prevent, identify, meaningfully respond to, and reduce this problem.

Elder abuse is defined as being "a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person."[46] The most widely recognised forms of abuse relate to physical, psychological, financial, sexual, and social abuse, together with neglect. When elder abuse is perpetrated by an individual who co-resides with the elderly person, he or she may need assistance from the QPS to either leave the relevant property with their personal property, or to have the abuser removed due to their status as a trespasser.

When attending at a dispute that appears to involve elder abuse, the QPS will:

[45]Relationships Australia Queensland. (2020). *Elder Abuse Prevention and Support Service.* Retrieved on 27.5.20 from https://www.raq.org.au/services/elder-abuse-prevention-and-support-service

[46] World Health Organisation. (2002). *The Toronto Declaration on the Global Prevention of Elder Abuse.* Geneva. WHO. Retrieved on 16.5.20 from https://www.who.int/ageing/publications/toronto_declaration/en/

- Advise the victim that they may wish to contact an elder abuse service for assistance, and that such services include SLASS, OPALS, the Elder Abuse Prevention Unit[47] and Elder Abuse Prevention and Support Services.[48]
- Provide the Elder Abuse Prevention Unit Helpline number of 1300 651 192 to help affected individuals to find their closest elder abuse service.
- Offer to refer the older person directly through the online Queensland Police Referrals Service if they give their consent [49]
- Note that SLASS and OPALS services can provide information and referrals, short-term counselling, advocacy, legal advice, appropriate court support and representation in certain circumstances, and explain that intakes are generally conducted by a social worker.
- Advise that free legal assistance from SLASS can be secured by phone, a face-to-face appointment or a visit at someone's home or other safe location – subject to Covid-19 restrictions.
- Speak directly to the older person to ensure their perspective is understood.
- Access the appropriate interpreting services in accordance with Queensland Government policy if the person with whom they are speaking shows them their Queensland Interpreter Card[50] or otherwise indicates that they need an interpreter to be able to communicate.[51]
- Recognise that older people who are highly anxious may have more difficulty communicating and remembering details when they are in that state. They may take longer to explain their situation.
- Communicate with deaf and hearing-impaired individuals in accordance with established practices[52] and access appropriate interpreting services for deaf clients using *Auslan Connections.*[53]
- Take relevant action in accordance with the QPS *Operational Procedures Manual* (OPM).[54]
- Contact SLASS or other legal services to advise them of the incident if the client advises that SLASS or another legal service is acting for them in an elder abuse case.

SLASS clients will sometimes need police assistance to remove a family member from their home when the family member is a perpetrator of elder abuse. In cases where the abuser can reasonably be regarded as being a trespasser on the client's property and they refuse to leave the property, SLASS will assist to liaise with the QPS regarding the matter. Accordingly, when the QPS is notified by SLASS that an abuse victim seeks help to remove a trespasser from their property,

- The QPS will respond to appropriate requests from SLASS to synchronise attendance at the relevant accommodation dispute and, where necessary, will assist with the removal of any trespassers at the relevant premises in accordance with the QPS OPM.

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[47]EAPU. (2020). *Elder Abuse Prevention Unit.* Retrieved on 27.5.20 from https://www.eapu.com.au/
[48]TASC. (2020). *Elder Abuse Prevention and Support Service.* Retrieved on 27.5.20 from http://www.tasclaw.com.au/elder-abuse-prevention-and-support-service/
[49] https://policereferrals.org.au/
[50] Queensland Government. (2019). *Queensland Interpreter Card.* Retrieved on 27.5.20 from https://www.forgov.qld.gov.au/queensland-interpreter-card
[51] Queensland Government. (2020). *Find a Translator or Interpreter* Retrieved on 27.5.20 from https://www.forgov.qld.gov.au/find-translator-or-interpreter
[52] QPS. (2017). *Use of Interpreters in Domestic and Family Violence Incidents – Best Practice Guidelines.* Retrieved on 27.5.20 from https://www.police.qld.gov.au/sites/default/files/2018-10/DFV_InterpreterGuidelinesFinal%20Approved%20v1.0.pdf
[53] Auslan Connections. (2020). *After Hours Emergency Interpreting* Retrieved on 27.5.20 from http://auslanconnections.com.au/services/after-hours-emergency-interpreting/
[54] QPS. (2020). *OPM.* Retrieved on 28.5.20 from https://www.police.qld.gov.au/qps-corporate-documents/operational-policies/operational-procedures-manual

When contacting the QPS on behalf of a client who seeks police help to remove a trespasser from the client's residence, specifically a family member who no longer has rights (or soon will not have rights) to be on the property as a boarder, lodger or guest, SLASS will have:

- Taken all reasonable steps in the circumstances to establish the client's identity.
- Obtained a written and signed authority from the client permitting SLASS to discuss their case with the QPS and to provide relevant documents to the QPS on their behalf.
- Either, conducted a search through the Queensland Titles Office to verify that the client is indeed the registered owner of the relevant property that has become the subject of the trespass, or sighted a copy of the client's Residential Tenancy Agreement (or other written documentation) if they are renting the property.
- Have conducted a thorough intake procedure that will be carried out by both a social worker and a lawyer working collaboratively in the SLASS multi-disciplinary team to: (1) obtain relevant instructions regarding the client's needs, and (2) assess capacity to the extent reasonably possible in the circumstances.
- Have used interpreters where necessary to take client instructions.
- Have obtained a sworn/affirmed affidavit from the client detailing their version of facts as to why someone ought to be removed from their property;
- Have helped the client to issue a written request to the other relevant party to leave the subject premises, giving notice that seems reasonable in all the circumstances, providing contact numbers for homeless services and regional housing services for use by the other party, provided that this course of action has been deemed safe for the client;
- Assisted the client to make an inventory of any identified property belonging to the Trespasser that needs to be removed from the residence;
- Helped the client to take photographs of the current condition of their residence, and
- Have attempted to refer the client to other relevant support services.

SLASS will also ensure that the names and contact numbers of the relevant case workers handling a particular case are made available to the QPS and indicate that they will be attending with the client on the day that the client is seeking to have the police remove the relevant party/parties from their residence.

SLASS staff will liaise with the QPS to set a time and date for attending at a client's residence and any action to remove a trespasser will, whenever possible, be scheduled for mid-morning in order to better accommodate the needs of older people and SLASS staff. This also provides the exiting trespasser with sufficient time to seek other accommodation during normal working hours. The QPS will notify SLASS staff if there is any delay or disruption affecting their ability to attend at the relevant residence at the time scheduled. (SLASS staff will not attend at premises involving the removal of a trespasser before 8.00am in the morning or after 5.00pm in the afternoon.)

Exhibit 14
tendered 25/07/2022