

# Examining access to justice for those with an enduring power of attorney (EPA) who are suffering financial abuse

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In partnership with Aged and Disability Advocacy Australia (ADA Australia)



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## Contributors

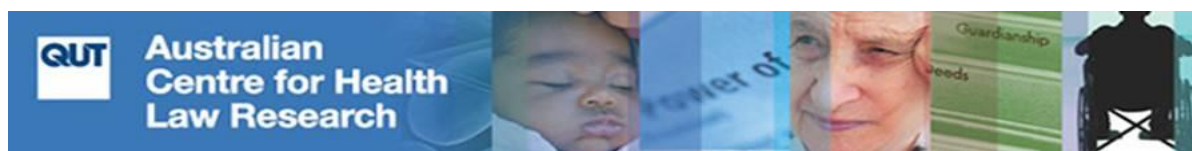
### Crime and Justice Centre

The Crime and Justice Research Centre (CLRC) is a leader in high-impact interdisciplinary criminological research. The Centre is home to distinguished international researchers. It is distinctive for applied research and a focus on the challenges confronting governments and criminal justice systems around the world.



### Australian Centre for Health Law Research

The Australian Centre for Health Law Research (ACHLR) is a specialist health law centre within the Queensland University of Technology's Faculty of Law. The Centre's goal is to improve health outcomes through improved legal policy and practice. As Australia's largest health law centre, the Centre makes a strong impact on health law nationally and globally. The Centre's research focuses on legal, ethical and policy issues on: end of life, children's health and the beginning of life, and governance and regulation of health care. The Centre engages in interdisciplinary research incorporating ethics, philosophy, medicine, nursing, psychology, public health, economics, political science, sociology and social work.



### ADA Australia

ADA Australia is a not-for-profit, independent community based advocacy and education service with more than 25 years' experience in supporting and improving the well-being of older people and people with disability. Headquartered in Brisbane, ADA Australia provides advocacy services to older people and people with disability in metropolitan, regional, rural and remote communities across Queensland. ADA's services are free and confidential. The range of services, in addition to advocacy, includes guardianship and education.



## Glossary

|                          |   |
|--------------------------|---|
| <b>ACF</b>               | Aged care facility  |
| <b>ACAT</b>              | Aged care assessment team   |
| <b>ACHLR</b>             | Australian Centre for Health Law Research.  |
| <b>ADA Australia</b>     | Aged and Disability Advocacy Australia (ADA Australia) is a not-for-profit, independent, community based advocacy and education service for people with a disability and older people. Previously known as QADA.  |
| <b>ATSI</b>              | Aboriginal and Torres Strait Islander   |
| <b>Attorney</b>          | The person appointed to act on behalf of another person under a validly executed enduring power of attorney.  |
| <b>CALD</b>              | Culturally and linguistically diverse   |
| <b>CJRC</b>              | Crime and Justice Research Centre.  |
| <b>EPA</b>               | Enduring power of attorney which is a legal document signed by an individual (the principal) to enable someone else (the attorney) to make personal and/or financial decisions on the principal's behalf and which continues to be operative in the event that the principal loses legal capacity to make his or her own financial decisions. |
| <b>Joint appointment</b> | Each attorney named in the enduring power of attorney must agree and participate in all decisions.  |
| <b>GP</b>                | General practitioner  |
| <b>MMSE</b>              | Mini-Mental State Examination   |
| <b>MOCA</b>              | Montreal Cognitive Assessment tool  |
| <b>OAG</b>               | Office of the Adult Guardian is an independent statutory body that protects the rights and interests of vulnerable Queenslanders, including adults with impaired capacity, to make their own decision.  |
| <b>QADA</b>              | Queensland Aged and Disability Advocacy (now known as ADA Australia).   |
| <b>QCAT</b>              | Queensland Civil and Administrative Tribunal.   |
| <b>Primary client</b>    | The person who has experienced the alleged abuse under an enduring power of attorney document.  |

|                            |   |
|----------------------------|---|
| <b>PT</b>                  | The Office of the Public Trustee is a self-funding statutory authority that can assist with the making of estate planning documents and the administration of deceased estates.                       |
| <b>Secondary client</b>    | A person who is reporting the alleged abuse of a primary client under an enduring power of attorney.  |
| <b>Several appointment</b> | Persons appointed as attorneys under the enduring power of attorney can make decisions separately of each other and do not all have to agree or make decisions together.                              |
| <b>SLASS</b>               | The Seniors Legal and Support Service provide free legal and social work support for seniors experiencing elder abuse, mistreatment or financial exploitation. It is part of Caxton Legal Centre Inc. |

## Executive summary

The loss of capacity and the abuse of vulnerable people as a result of a breach of a valid enduring power of attorney (EPA) are becoming more common in our ageing society as the incidents of mentally disabling conditions increase. This report demonstrates the significant impact this is having, not only on the lives of those who have allegedly been abused, but also on their family, friends and carers. The impact on professionals and service providers also cannot be ignored. This research demonstrates that there is a lack of information in the community about EPAs generally – what they are, what they mean, who can be appointed as an attorney, what those attorneys can and cannot do, as well as what the principal (or someone acting on the principal’s behalf) can do in response to an alleged breach of the EPA. What is also clearly demonstrated by the research is that along with a lack of knowledge about the EPA document there is also a lack of understanding about capacity – what it is, the standards necessary to be able to make legally recognised decisions, how to assess it and who should assess it.

Whilst these are problems that can confront any and all, from the data available, this is a significant issue in the 65 years and over cohort. Elder abuse is a very topical issue, having just been the focus of an Australian Law Reform Commission Inquiry.<sup>1</sup> EPAs were discussed in the Report, including suggested ways to address avenues for possible abuse. What is clear is that there are no easy answers. From the research conducted here it is apparent that further work is required into the barriers and enablers to accessing justice in this context. As part of this, education is key. How to implement *effective* education strategies however is the ever elusive question. Relational issues such as familial and friend support are significant, especially when the principal has lost capacity to make legally recognised decisions and be able to protect themselves. Safeguarding and protecting the vulnerable is imperative but it cannot come at the expense of individual autonomy.

The impact of the abuse perpetrated as a result of a breach of an EPA can be pervasive, and not just restricted to the financial loss which is immediately apparent. These interconnected and long-lasting effects across all facets of one’s physical and emotional wellbeing cannot be ignored again highlighting the need for real action in this area. The following report seeks to provide preliminary evidence to initiate further dialogue and action in this area.

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<sup>1</sup> Australian Law Reform Commission, *Elder Abuse – A National Legal Response*, Report No 131 (2017).  
Report: Examining access to justice for those with an EPA who are suffering financial abuse



## Introduction

This report examines the findings from a research project undertaken between the Australian Centre for Health Law Research, the Crime and Justice Centre, and ADA Australia. The small, exploratory project was undertaken to identify and explore enablers and barriers to accessing justice for those who have experienced alleged abuse as a result of a breach of the obligations under a valid EPA.

By way of background, in 2016, ADA Australia approached the Queensland University of Technology (QUT) with a proposal to undertake a collaborative research project to examine issues around access to justice faced by those experiencing alleged financial abuse where there is a valid EPA in place. Discussions were held between representatives of ADA Australia (Rowe, Leggatt-Cook, Williams, Bajwa) and QUT (Cross, Purser and Cockburn) about the various issues which arise in this context and possible ways to initiate research into the area.

It was ultimately determined to conduct a case file analysis of relevant ADA Australia de-identified files in accordance with the methodology detailed in the relevant section below. Given the reporting systems used it was difficult to locate relevant cases. Key terms were therefore identified to locate the relevant case file notes from the ADA Australia database. In total there were 121 case files identified for analysis.

The following report presents the methodology and findings of the research project which was undertaken pursuant to this collaborative project. While there are limitations to any data set (the current one is no exception) this report puts forward some key findings that are evident in the current case file analysis, as a means to enable further, more targeted research in this area.

## **Methodology**

This section will outline the methodology employed in the project.

### **Research aim and objectives**

The overall aim of the research was to understand the experiences of accessing justice, in both the civil and/or criminal jurisdictions, for individuals with an EPA in circumstances where financial abuse is alleged against the attorney. This includes identifying the challenges and barriers faced by victims as well as any factors which enabled or strengthened access to justice.

The project had the following specific objectives:

1. To understand the lived experiences of accessing justice for those in circumstances where financial abuse is alleged and there is a valid EPA in place.
2. To identify the current barriers and challenges that exist for victims in attempting to access justice in circumstances where financial abuse is alleged and there is a valid EPA in place.
3. To identify the current factors which enable and facilitate access to justice in circumstances where financial abuse is alleged and there is a valid EPA in place.

These research objectives underpin the key findings contained at the end of this report highlighting areas to pursue further in order to identify ways to enable and facilitate improved access to justice for those in circumstances of alleged financial abuse where there is a valid EPA in place.

### **Ethics**

Ethics approval (1600001010) was obtained from the QUT Human Research Ethics Committee.

### **Data collection**

The data utilised for this project originated from ADA Australia's routine intake assessment and case management records which were originally constructed for the purpose of providing advocacy and/or guardianship services across Queensland. The intention was to include a diverse group of people in the sample collected, with a variety of demographic characteristics including: age at time of case closure, gender, country of birth, location, Aboriginal / Torres Strait Islander background and CALD background.

Relevant case files were not easily identifiable, as the database utilised by ADA Australia did not include a specific category in relation to financial abuse under a valid EPA. Each case file within the ADA Australia database included the following information: date of the file note, staff (person who completed the case note); details/notes, event type (that is intake, case allocation, telephone call, QCAT hearing, case file review); hours (amount of time spent on each event); actions (anything to be actioned from each event); and number of case notes per file (though quantity of case notes was not necessarily indicative of detail).

Case files were identified within ADA Australia's intake database through the use of a three-step identification process, which was informed from an initial sub-sample of case files.

To identify the initial sub-sample of case files, potential cases were firstly identified through the use of the following two-step key word search of the database.

1. Case files which included one of the following references: power of attorney, powers of attorney, EPOA, EPA and/or POA; and
2. Case files which also included one of the following references: financial abuse, revoke, abuse, money, QCAT, revocation, justice.

Case files which included the key word reference 'EPA' were reviewed and all cases where 'EPA' only formed part of word such as 'department' were excluded from the sub-sample.

Upon each intake, ADA Australia staff allocated one service category based on the issue(s) presented. Case files from these service categories were reviewed and it was determined that case files meeting the criteria for this project were likely allocated to one of the following three service categories:

1. legal,
2. guardianship/QCAT, or
3. trusteeship/EPAs.

Case files were then narrowed down by these three service categories.

Case files for the sub-sample were also narrowed down by date and location. All case files closed between 1 January 2014 and 16 June 2016 within the Brisbane area were included in the sub-sample. This produced a total of 201 case files. Following a review of 10 of the 201 case files identified, it was determined that most cases in relation to financial abuse were allocated an additional sub-service category of 'QCAT'.

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Therefore, all case files were narrowed down by this additional criterion, which produced a total of 96 potential case files. Random case notes from 32 of the 96 case files were reviewed in no particular order to determine whether the issue(s) presented generally related to an allegation of financial abuse against a potential EPA and to identify key words among cases that could assist in identifying more relevant cases within the database.

The sub-sample of case files supported the final identification method as 56% of the case files reviewed related to a potential allegation of financial abuse made in relation to an EPA. The sub-sample also highlighted additional key words among multiple case files, which were included in the final identification method. Following the sub-sampling, a three-step identification method was developed and utilised to identify the final sample for this project.

1. Firstly, a two-step key word search was conducted to narrow down case files which related to financial abuse and EPAs. Several key words included contractions of words to account for variations in spelling and tenses. Case files identified in this step included at least one reference to ‘EPA’ and one reference to ‘financial abuse’ through the use of the following key identifiers:
  - a. Power of attorney, powers of attorney, EPOA, EPA and/or POA and
  - b. Revok, revoc, financ, abus, money, bank, QCAT, justice, police, fee, undue, influence, attorney, account, capacity and/or trust.

Case files where ‘EPA’ was only identified within another word such as ‘department’ were excluded from the sample.

2. All case files were then narrowed down by year of case closure and allocated service category. Case files closed between February 2013 and October 2016 which were allocated a primary service category in relation to legal, guardianship/QCAT or trusteeship/EPAs services and a secondary service category in relation to QCAT or out of scope were included in the sample size.
3. A manual process of reviewing case notes from each individual case file was undertaken to determine which case files related to a potential allegation of financial abuse made in relation to an EPA. Case files where an allegation of financial abuse could not be ascertained and/or case files where it was clear that the allegation of financial abuse was not in relation to an EPA were excluded from the sample.

Unlike in the sub-sample (which was restricted to the Brisbane area), to increase the sample size, all case files across Queensland which met the above criteria were included in the

sample, irrespective of location. Case files which met the criteria were then manually extracted from the database and any identifying data was removed by ADA Australia according to the protocol established for this project and in compliance with ethics approval, prior to providing the de-identified data to the research team for analysis.

The final sample which forms the basis of the current report included a total of 121 case files closed between February 2013 and October 2016 which related to people across Queensland who made contact with ADA Australia regarding an allegation of financial abuse made with regards to an EPA.

## **Data analysis**

Demographic characteristics for each case file were extracted to Excel and anonymised by ADA Australia for the purpose of analysing trends. The demographic characteristics extracted for each case file included: country of birth, home language, gender, age at time of case closure, client type (primary or secondary), ATSI/CALD status, date opened, date closed, living arrangements (community or aged care), postcode and special needs (for example, veteran, disability, dementia, mental health issues and homelessness risk).

As noted, case notes from each case file were extracted and anonymised. They were then uploaded into NVivo 11, a computerised text analytic software program designed for content categorisation. The research team generated a thematic framework based on a familiarisation of the data, previous research experience and relevant literature. Each case note was reviewed by the research assistant and coded by application of the thematic framework.<sup>2</sup> The following sections are based on the results generated through the application of this framework.

## **Limitations of the data**

As with all research projects, there are inherent limitations to the data which need to be acknowledged. The current data set is not exempt from this.

First, relevant case files were not easily identifiable, as the database utilised by ADA Australia did not include a specific category in relation to financial abuse. Therefore, a multi-step identification process was utilised which identified key words related to the research objectives. As a result, it is possible that potential case files which were recorded were not identified because they did not include the identified key words within any of the case notes

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<sup>2</sup> Please see Annexure 1 for the Coding Framework.

and/or were allocated to a service category which was not included in the identification process.

Second, the data was originally collected by ADA Australia for their own administrative purposes. Therefore, care must be taken in ascribing a different meaning to some of the data, which was never intended.

Third, given that the coding and analytical framework was applied retrospectively to the case files, the data may not be truly accurate in terms of the prevalence of certain themes. If something was not specifically mentioned in the case file, this does not mean that it was not present in the situation, rather it simply means that it was not stated or recorded at the time. In this way, it is likely that some of the issues canvassed in this report are more frequent and perhaps more severe than noted. Further, any statistics used throughout are for indicative purposes only, and represent the number of case files in the current sample where that particular theme was explicitly mentioned.

Fourth, the findings outlined in this report are not generalisable to the population as a whole. The report contains only an indication of some of the clients who contacted ADA Australia for assistance. There are likely many others in the community who are also experiencing similar issues to those presented in the current analysis of case studies, but who reported to a different agency, or have not been able to make contact with any agency to seek further assistance or help.

Lastly, a selection of quotes has been used throughout to provide evidence and examples of many of the themes in the case files. These are offered to gain further insights into some of the issues but are not intended to be absolute. Further to this, it should also be noted that these are, often, unsubstantiated allegations which can also affect the quality of data available. The data contained within the case files was taken at face value and no attempts were made (or able to be made) by the research team to verify or triangulate any of the claims or statements made in the original case files.

Despite these limitations, there is great value in the data that is presented, in that it sheds some light on what is a difficult topic to research. Through an examination of the case files, the following report is able to provide several areas of concern that work as a basis for further research to examine in a more rigorous manner.

## Results

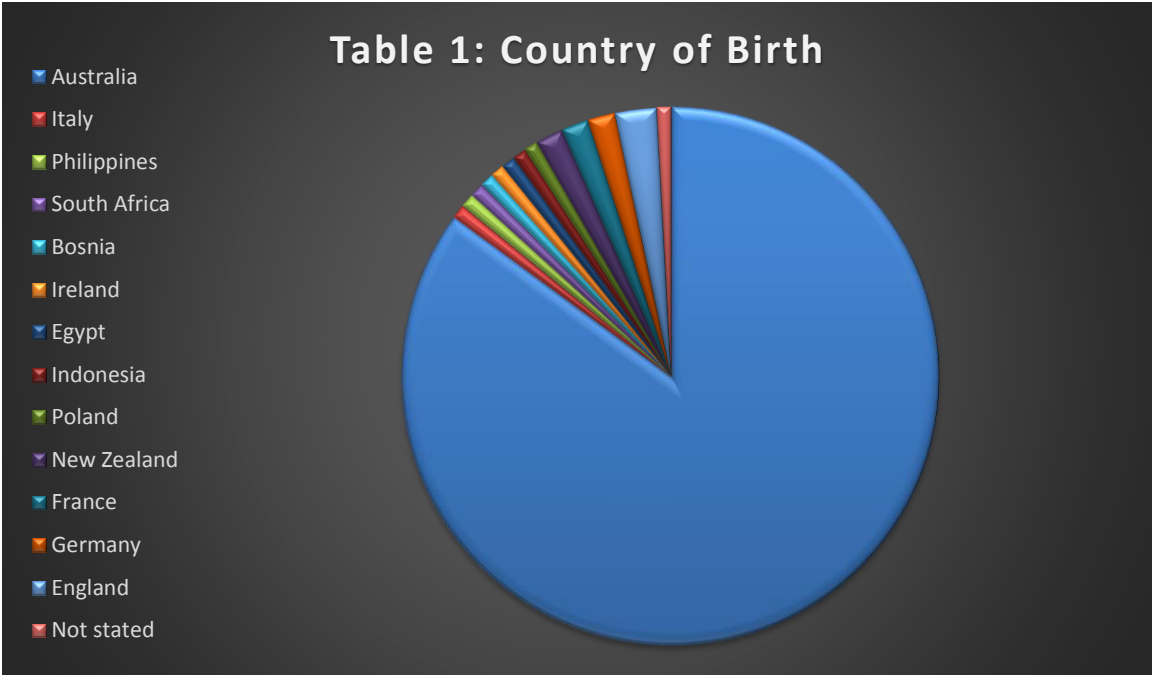
The results of this project are canvassed across a number of themes. These include the following:

1. reason for contacting ADA;
2. knowledge of EPA;
3. reasons for change to EPA;
4. attorneys;
5. impact of current EPA;
6. family dynamics;
7. other examples of support;
8. formal proceedings;
9. police involvement;
10. barriers to seeking support;
11. enablers to seeking support;
12. capacity;
13. involvement of the health profession; and
14. referral.

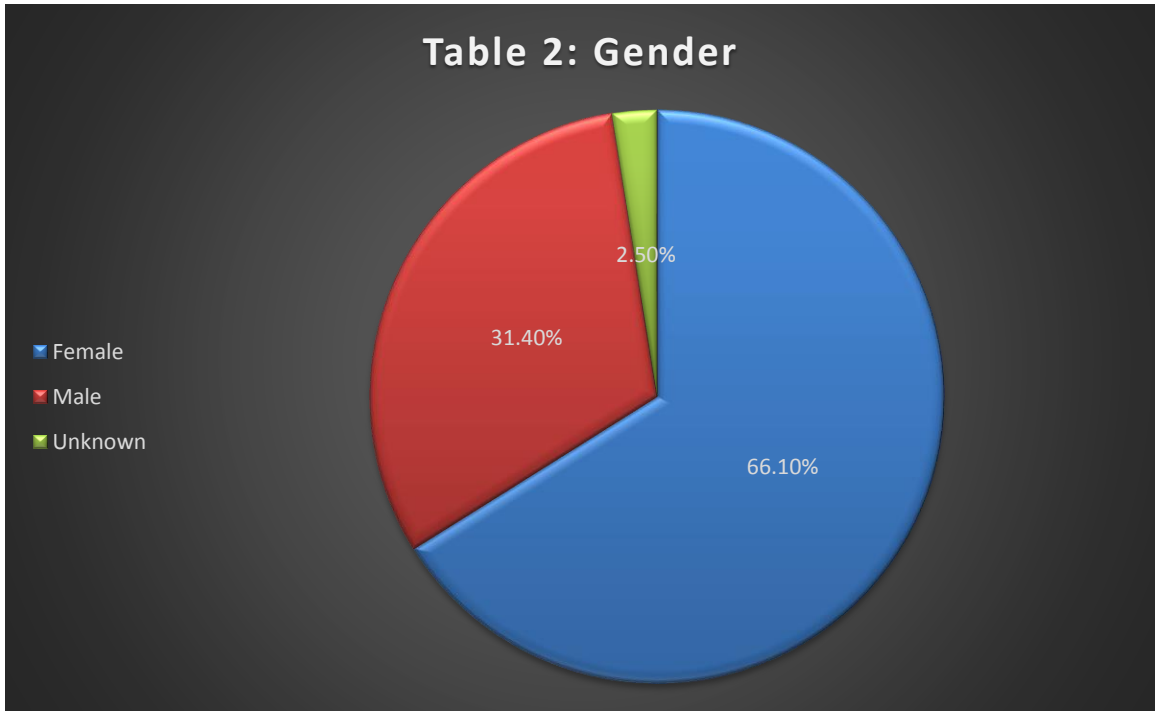
Each of these will be examined in turn, with selected quotes from the data included to illustrate each point. However, prior to the data being presented, an overview of select demographic information will firstly will presented to provide an overall context to the individuals identified in the current case files.

## Demographics

Of the 121 people for whom support and advocacy was the subject of the case file, 103 (85.12%) were born in Australia with 1 person (0.83%) being born in each of: Italy, Philippines, South Africa, Bosnia, Ireland, Egypt, Indonesia and Poland. There were 2 people (1.65%) who were born in each of New Zealand, France and Germany; and three born in England (2.48%). The country of origin of one person was unstated. Table 1 sets out the country of birth. Of the total number of people, 119 (98.35%) identified as speaking English at home, with 1 speaking Bosnian and 1 speaking Polish. Only 4 people (3.30%) identified as CALD and just 2 people (1.65%) identified as ATSI.



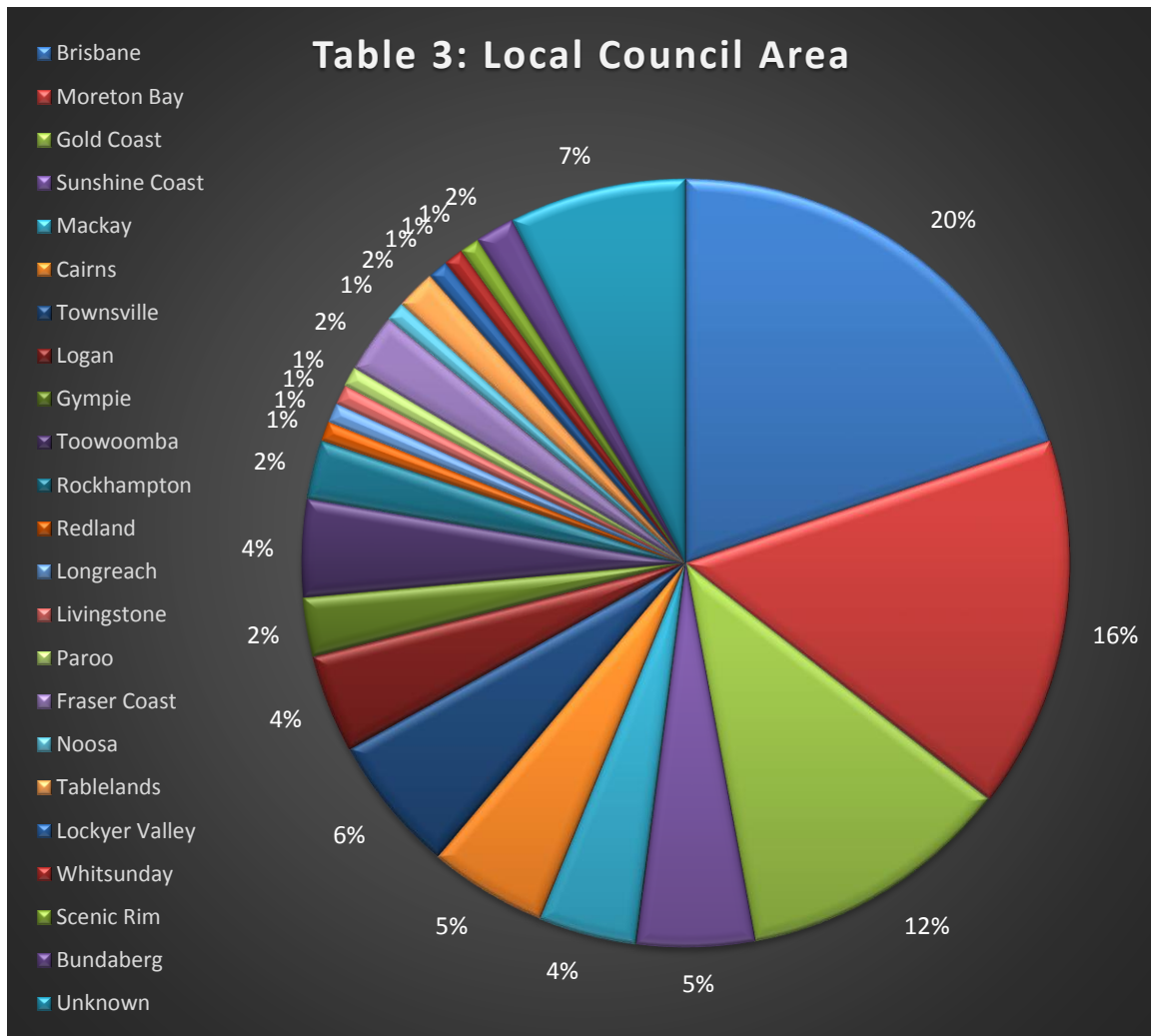
The sample included 38 men (31.40%) and 80 women (66.12%). The gender of 3 people (2.48%) was not indicated (see Table 2).



The people who sought assistance and advocacy resided in some 22 different local council areas across Queensland (9 council areas were not stated), with the majority being located in

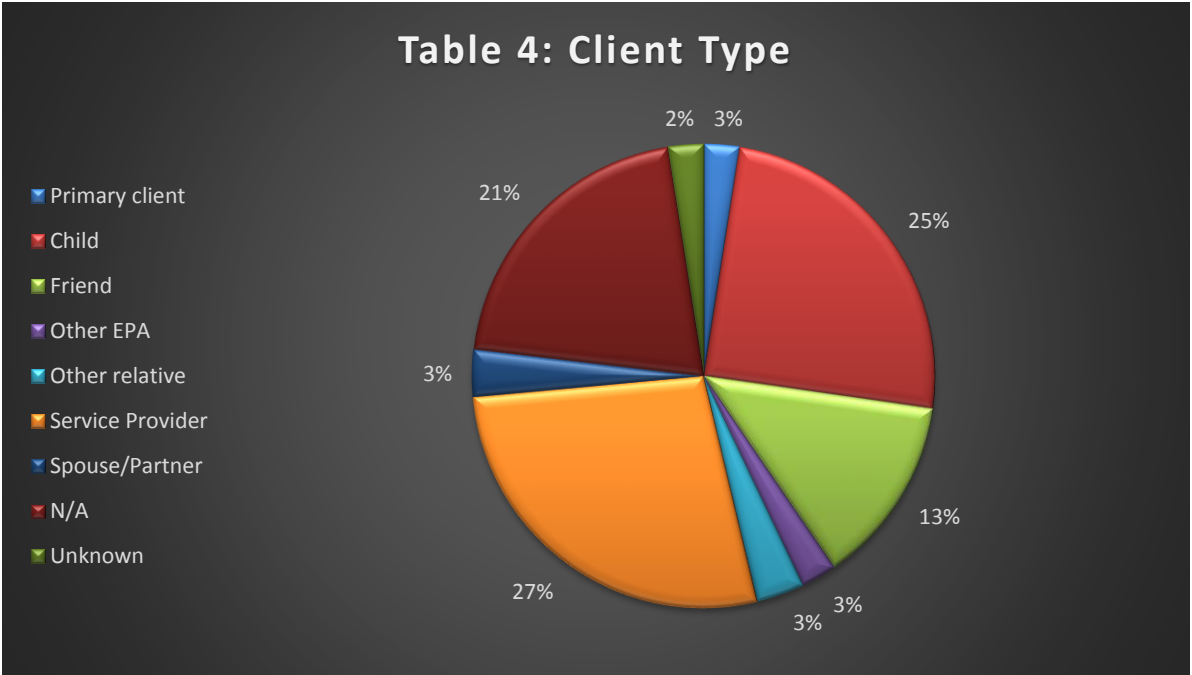


the Brisbane (18.83%), Moreton Bay (15.70%) and Gold Coast (11.57%) areas respectively (see Table 3).

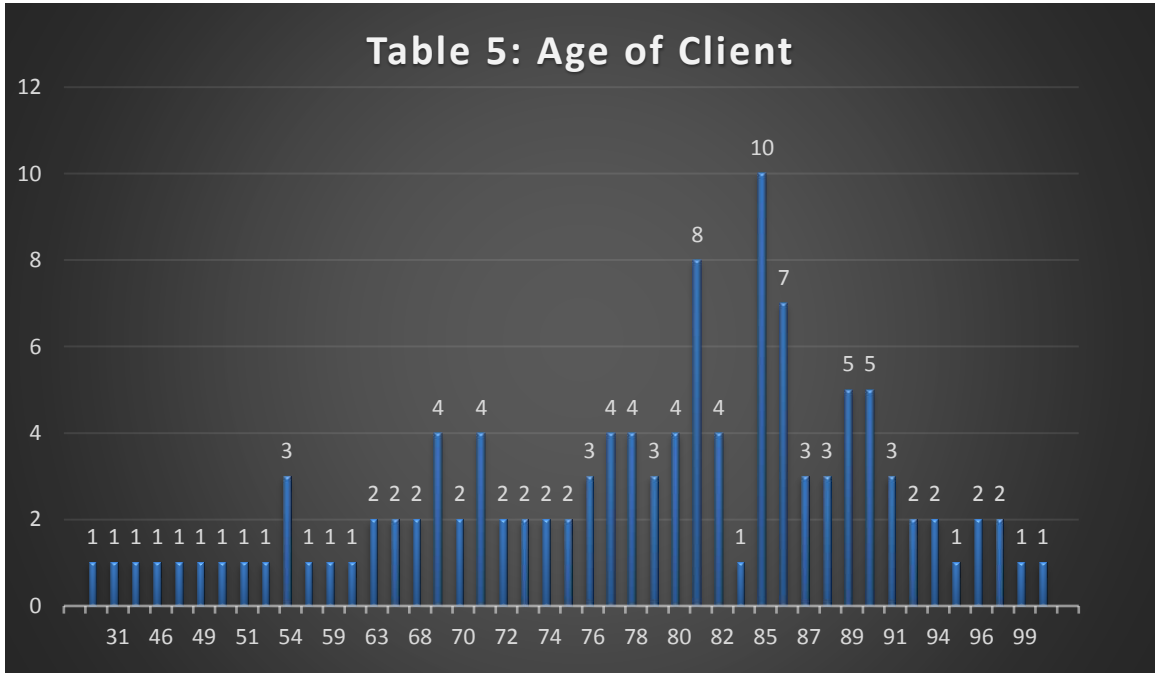


Of the case files, 81 (66.94%) relate to persons in home/community care and 40 (33.06%) relate to persons in aged care facilities. Significantly, with respect to capacity issues, 27 cases (22.31%) directly refer to dementia as an issue, and at least 17 cases (14.05%) directly refer to a disability of some sort.

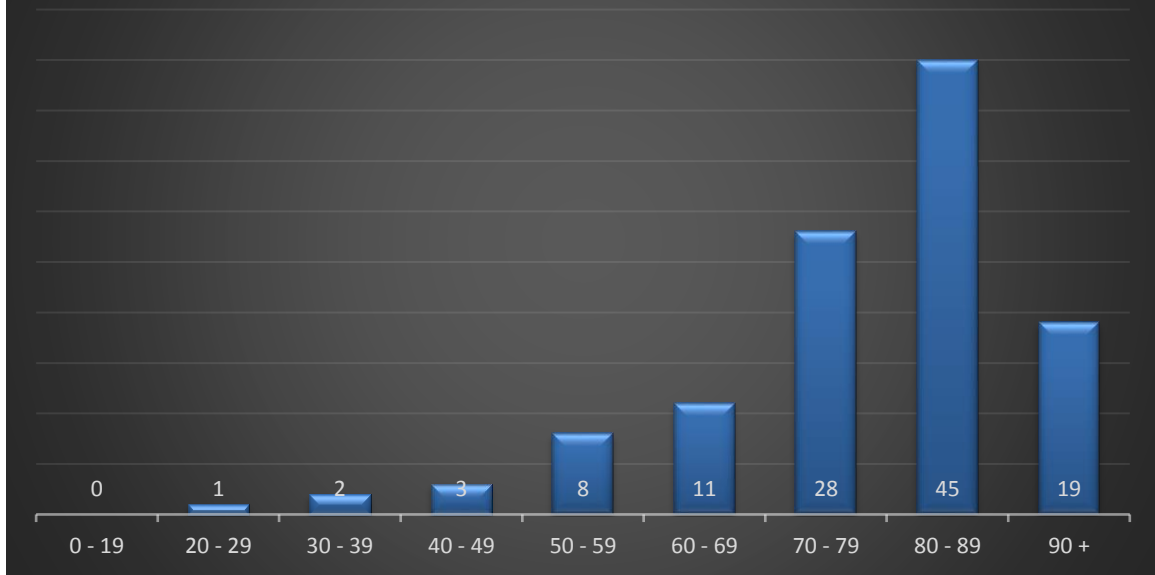
Contact with ADA Australia was made through a number of different people, including the primary client (alleged victim) and a number of secondary clients (children, spouse/partner, friends, service providers). In 96 case files (79.34%) contact with ADA was made by secondary clients. The profiles of ADA Australia clients are shown in table 4 below.



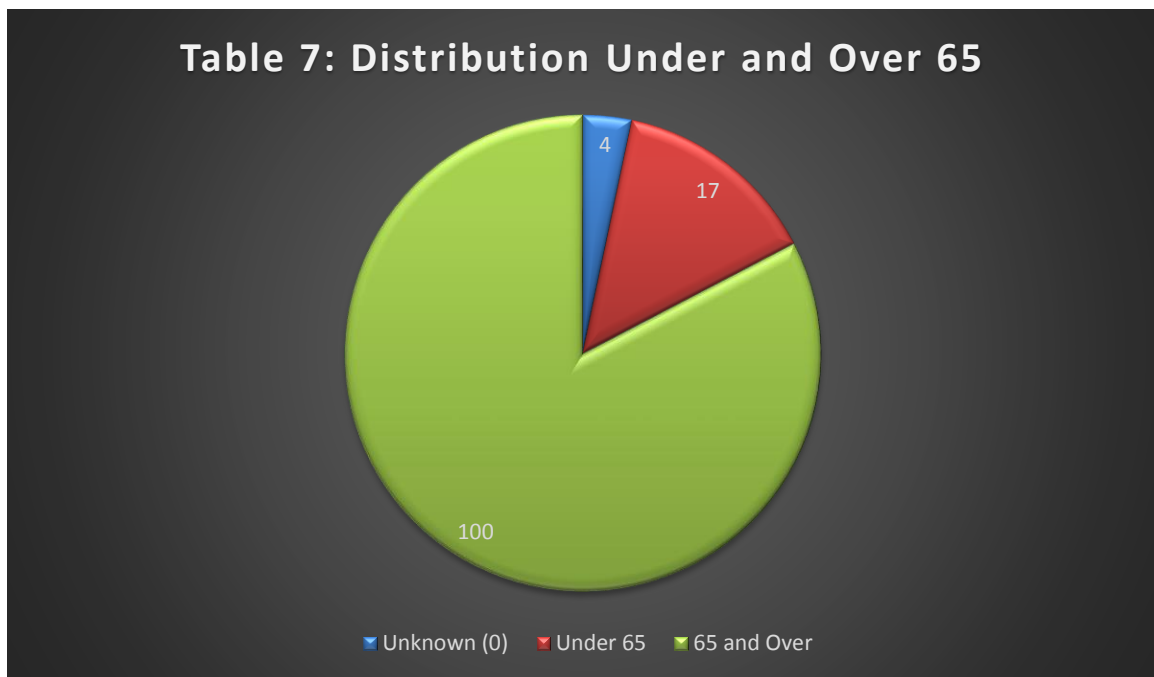
The average age at case closure of those seeking support and/or advocacy was 75 years while the most common age was 85 years. The youngest age recorded was 23 years while the oldest was over 100. Of these, only 17 (14.05%) were aged under 65, with the vast majority being aged 65 or over (83.47%) The ages of those seeking support and/or advocacy are shown in tables 5 - 8 below.



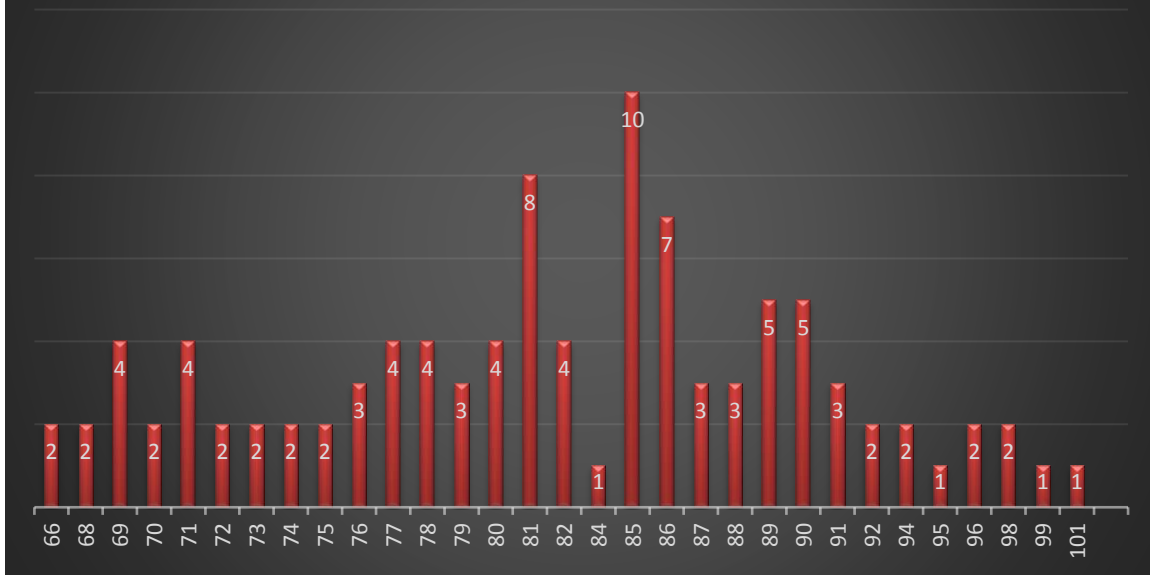
**Table 6: Age Grouping of Clients**



**Table 7: Distribution Under and Over 65**



**Table 8: People Aged Over 65 Years**



### Reason for contacting ADA Australia

There were a variety of reasons why primary and secondary clients initially contacted ADA Australia, including alleged abuse (53%), making changes to their EPA (17%), revoking their EPA (28%), locating or identifying assets (12%), finding out information (17%) and other requests such as requests for advocacy and legal advice (23%).<sup>3</sup> These issues are canvassed below.

#### Alleged abuse

There were a number of instances where the reason for contact with ADA Australia was based on allegations of abuse of the EPA – either by secondary clients concerned about the primary client, or by the primary client him or herself. The majority of these focused on financial abuse and/or exploitation (such as unauthorised use of money or dealing with property without authority) or resulted from the belief that the attorney was not acting in the “best interests” of the primary client. For example:

*Secondary Client (Service Provider) stated that he believes that Primary Clients son may have gained access to Primary Clients bank accounts and has removed all of the*

<sup>3</sup> Please note that these percentages indicative only: they have been rounded up/down to the next whole percentage and clients may have contacted ADA Australia for more than one reason.  
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*money. .... Secondary Client (Service Provider) stated that Primary Client is concerned that his son will sell the vehicle without authority (case 4).*

*Primary Client was seeking assistance because he believed he is being financially abused by his daughter (case 12).*

*Secondary Client (Daughter) believes that the other daughter is taking all of mothers pension and leaving her with very little ... (case 14).*

*Secondary Client (friend)'s brother in law is Primary Client's EPA and has sold Primary Client's house and not given her the money (case 16).*

*Secondary Client (Friend) has concerns that another neighbour is not doing the right thing by Primary Client in terms of her money, access to account information, restricting access to family and friends and contact details as well as controlling her in terms of movements, services and shopping (case 108).*

*According to Secondary Client (Service Provider) the client became aware that something was wrong with her finances when the direct debits which the client has set up to pay for on-going expenses were dis-allowed. The client had in the vicinity of \$50,000 in her back account however there is now nothing left in her account (case 115).*

## Changing an EPA

Several calls to ADA Australia were made with the intention of finding out how to change an EPA, most particularly in relation to changing the named attorney. This included swapping children in and out, and appointing the public trustee instead of named individuals. The reasons why the callers were enquiring about changing an EPA are illustrated by the quotes below:

*Primary Client stated that he wants information about changing his EPA which is his wife - he wants to do this without 'rocking the boat' as he stated that he does not want to end up in the divorce court (case 1).*

*Primary Client asked if her brother could be taken off as an EPA for her parents as her mother is in hospital and her brother is living with her father and has been financial abusing her parents, she did not want QADA involved just wanted to talk to someone who would give her direction (case 6).*

*She does not want Hairdresser as her EPA. When asked, she did not know who should be her EPA as she does not have family. She does not want to manage affairs herself (case 13).*

*Wishing to change his EPOA from his sister to the PT (case 100).*

## Revoking an EPA

There were also several instances where the contact was around the potential revocation of an existing EPA, for a range of reasons, including because they believed they no longer needed an attorney as their health had improved, dissatisfaction with the attorney and because they wanted to resume control. For example:

*Primary Client agreed and then stated that he did not want EPA 1 and EPA 2 to look after his financial affairs any longer. I asked Primary Client what this meant. Primary Client stated that he wanted them removed as his EPoA and wanted to look after his financial affairs himself (case 21).*

*Primary Client wants to stop the EPA arrangements urgently, and get some of their money back as they are left with very little to live on for the rest of their lives (case 65).*

## Locating or identifying assets

In a number of circumstances, the contact was seeking assistance to locate or identify assets of the primary client which had been (allegedly) withheld by the attorney pursuant to the EPA. In some cases this included alleged failures to properly account by the attorney. For example:

*Son activated the EPA since this time he is not allowing Primary Client to know where her finances are at and what her account balances are (case 11).*

*Primary Client wants to keep both her daughters as the EPOA however is requesting a number of items which are currently locked away at her ACF on the instruction from Daughter 1 and Daughter 2. The items are a discount taxi card, Veteran affairs card and a bank card. Primary Client is seeking the return of these items, as she feels that since she owns them she has a right to have possession of them (case 51).*

*Secondary Client (Service Provider) passed the phone to Primary Client. Primary Client told me that her EPOA does not tell her anything. Primary Client said she*

*wants to know how much money her EPOA has been spending and how much money she has left (case 81).*

Overall, the examples provided in these last few sections illustrate the diversity and complexity in the reasons why clients contacted ADA Australia for assistance. In each of these cases, there is an issue surrounding the alleged (mis)management of an EPA in place. Some examples demonstrate the gravity of the circumstances, with very serious suspicions or allegations of abuse, financial misconduct and/or exploitation taking place. This undermines the very nature of the EPA and the protection that it is meant to provide for a vulnerable person who is deemed to have lost the requisite legal capacity to manage their own financial affairs. A number of these cases also illustrate the need for better education about the roles and responsibilities arising out of EPAs, both for the principal and the attorney. This is an important issue to which the report now turns.

#### Finding out information about EPAs

Several contacts were made with ADA Australia to find out further information about the nature, scope and limitations of an EPA, and the powers and duties of attorneys. Some of these requests related to specific matters (such as alleged abuse and changing or revocation of an existing EPA), which have been discussed in previous sections. For example:

*Primary Client wants to know her rights and how come the lawyers can make her sign things when it is her EPA's that are doing the work. She doesn't understand how they (the EPA's) now have control of everything and no one will talk with her (case 3).*

*Secondary Client (Service Provider) said there is a client at XXXX who's daughter is EPA. The Dr says client has no impaired capacity but daughter is withdrawing money from mothers account and client wants to know what her rights are (case 7).*

*Secondary Client (Friend) would like further information regarding QCAT, EPOA, ACAT assessments and home care services (case 37).*

Again, these file notes demonstrate the lack of knowledge that exists for some individuals who have appointed another person to act as their attorney under a valid EPA. Some of these demonstrate a lack of genuine understanding from all parties as to what constitutes an EPA, as well as the scope and nature of the powers afforded under a valid EPA, such as the power to sell or dispose of property.

## Other requests

On a number of occasions, contact was made for other reasons, predominantly around requests for advocacy, to initiate an investigation into finances or to provide legal advice.

For example:

*Request for advocacy support at QCAT hearing in future (case 12).*

*Secondary Client (service provider)'s motive in calling QADA was in the hope that an advocate may be able to speak with Primary Client and remind him of his rights in particular his right to make his own decisions whether or not it meets with the approval of the EPoA (case 63).*

*Secondary Client (friend) said that he was hoping for an advocate to come and explain to Primary Client what his rights were in regard to his EPA (case 66).*

*Primary Client needs an advocate to fight a QCAT decision on EPOA (case 71).*

*Primary Client seeks legal support with financial abuse (case 74).*

These requests indicate that in addition to requests for information demonstrated in the previous sections, clients are also contacting ADA Australia for particular action, whether on the part of ADA Australia itself, or referral to another relevant agency. This is further detailed in later sections.<sup>4</sup>

## Summary of reasons for contacting ADA Australia

Overall, it can be seen that there are a number of reasons as to why individuals (both primary and secondary clients) contacted ADA Australia. While the current project is focused explicitly on cases where alleged financial abuse was occurring with a valid EPA in place, the above highlights that there are a range of factors which motivate people to call and that they are seeking a range of outcomes, although contact is primarily centred on information or action of some sort.

The following section shifts in focus, to the demonstrated knowledge of EPAs that was evident in the case files. This issue emerged in the first section.

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<sup>4</sup> See page 52 Referral.



## Knowledge of EPAs

There are a few instances where it is clear that the primary client did not have current, clear knowledge about the nature and consequences of granting an EPA and the extent of the attorney's authority (15%). For example:

*Primary Client told me the solicitor that did her EPA has enacted the document and that she has lost all powers. Primary Client said she does not know how to get it back and does not know what is going on (case 3).*

*Secondary Client (Service Provider) informed QADA that Primary Client previously had an EPA but this was relinquished. Primary Client informed Secondary Client (Service Provider) that he thinks he may have signed an EPA form for his son. Secondary Client (Service Provider) stated that Primary Client was very vague and did not know which forms he had signed (case 4).*

*Good thing is that she did see what is happening as this is the first time she heard from Neighbour's mouth about selling her home and being the only party on all power of attorney paperwork. She called mum (Secondary Client (Other Relative) yesterday afternoon saying he cannot sell my house can he? (case 29).*

*My friend gave me a TV thing and Sister (EPOA) took it off me so that I can't watch TV. Then she did it again, for punishment. Is she allowed to do that?... She keeps telling me that she's going to put me in the nursing home. Is she allowed to do that? (case 39).*

*I returned Primary Client's phone call. Primary Client was very distressed as her son has been upsetting her with misinformation re the QCAT hearing. Son was threatening Primary Client with him being appointed as POA and putting her in a home, or getting Doctor 1 to have her sectioned. I informed Primary Client that was not how the system worked, and that based on the submission of the appn QCAT would not appoint the son as he was the perceived threat. Primary Client feels that if any party were to be appointed it should be PTQ as they would have less impact on her mental health (case 64).*

There were few examples in the case files where the primary client indicated some knowledge of the EPA as indicated by the following file note:

*I asked Primary Client about her understanding around an EPA. She was able to tell me it was for the appointment of someone to look after your affairs when you were no longer capable. She also mentioned in response to further prompting that a person can change their appointment, but did not refer to the fact they could only do so if they had capacity. She did understand that if you wanted the appointment could take effect immediately, if you chose that option and that the appointee could do all the things like handling your finances and that consequently you would need to be able to trust them (case 35).*

Conversely, there were several instances where it was clear that the primary client was not made aware of or did not have a full understanding about the nature and effect of an EPA. For example:

*Contacted Primary Client via telephone. He stated that he has a letter with his results from the memory test. He said he was happy with the results. He stated that he wants 'to drop the financial situation' and 'stop the EPA'. He 'wants to go back to the way it was'. He clearly stated that both he and his wife made a will and then took out an EPA. He said he wishes that he had only made the will because he now understands what the EPA means. Primary Client also stated that he wants his money to go into his bank (case 1).*

*Primary Client does not remember what document Nephew (EPOA) had her signed, she remembers being taken to the solicitor's office and being asked to sign a document but no other details (case 93).*

These examples point further to the need to improve overall knowledge of EPAs across both principals and those appointed as attorneys. Although not novel, this is a key finding of this research, which is discussed at the conclusion to this report. What this does demonstrate is that the education strategies in place are not working effectively and thus further work in this area is necessary to ensure that both principals and attorneys understand the significance and potential impact of a valid EPA.

## **Reasons for change to EPA**

Of the 121 case files identified, 79 (65%) mentioned reasons for changing an EPA. These reasons can be grouped more broadly into categories relating to concern about financial management, control, and information.

Regarding financial management, primary and secondary clients were concerned that: attorneys were not or would not act in the best financial interests of the principal; money was disappearing; the attorney was going to 'rob' the principal; money was taken from the principal's account; appropriate care was not being provided for principals whilst in care; and concerns about financial abuse of the principal more generally. For example:

*I have had a lady call in this morning on behalf of her 84 year old mother who is in a Residential Care Facility. She has problems regarding her Power of Attorney and due to the instructions her Power of Attorney is giving the Residential Care Facility, she is not being very well at all. For example, she trips over in the shoes she wears as they are old and not appropriate for her. She is pigeon-toed so she trips over when she walks. She needs shoes specially fitted to her feet. She also needs glasses but they wont take her to see an optometrist. She also needs work done her teeth. She isnt allowed any of her money etc. (case 2).*

*Primary Client was seeking assistance because he believed he is being financially abused by his daughter. Secondary Client (Service Provider) said that Primary Clients daughter had asked Primary Client to remove his name off the title to his house and said he could still live there for his life. Primary Client lives in the house and now pays the bills and rent to his daughter. Primary Client fears that the house will be sold and he will be at risk of becoming homeless (case 12).*

*According to Secondary Client (child) his brother has been Primary Client's carer for the last 13 years and has been collecting the Carer's Allowance. Secondary Client (child) & his wife had been living away from Brisbane for a period of time and recently returned to find that his brother had moved Primary Client into a unit and is living in Primary Client's house. Secondary Client (child) reports that his brother and one of his sisters who are both EPoA's for their mother have disposed of Primary Client's jewelry and household furniture and left her with nothing. Secondary Client (child)'s brother and sister both have access to Primary Client's bank account and Secondary Client (child) alleges that both are accessing money from her account for their own use. Secondary Client (child) is making application to QCAT to become Primary Client's EPoA on the basis that the current EPoA's are abusing their powers and not acting in their mother's best interest. Secondary Client (child) is finding the application form a challenge to complete and requested QADA's support with this task (case 20).*

Concerns about ‘control’ were also raised which centred around someone else being in charge of the principal’s finances (i.e. financial control) but also control of the principal through those finances (i.e. pressuring the principal into arrangements). Feelings of being trapped or isolated were reported (both by primary and secondary clients). There were fears that the attorney would benefit by falsely claiming the principal lacked capacity, thus gaining control over the principal’s finances which also indicated concerns about a lack of honesty. For example:

*Secondary Client (friend) has been concerned about Primary Client for several years as she feels that Primary Client's son in Townsville is isolating her and abusing her financially. Primary Client was originally living in a place she was happy with but the son took her phone and computer away and stopped her from having contact with her friends by taking her address book away. They also took her car off her saying she couldn't drive (case 11).*

*The issue regarding EPOA was raised and it appears Primary Client was forced to sign a letter revoking her cousin Other EPOA as EPOA by her neighbour Neighbour. Primary Client said she did not know anything about this letter. Primary Client said she did not wish to have Neighbour, the neighbour have anything to do with her house and her money (case 29).*

Both primary and secondary clients wanted more information. Principals wanted more information about their finances and what was happening from the attorneys. Information was also sought about the EPA document itself, specifically how to go about changing it. For example:

*Primary Client stated that his wife has EPA and is not giving him information about his finances when he asks. Primary Client stated that he put everything into joint names two years ago when he thought he may die but he is still here and has not been able to get any information from his wife about the money and statements. Primary Client stated that he wants information about EPA as he thinks his wife maybe going to try and cut him out by saying he has no capacity to make decisions (case 1).*

Several of these file notes further reinforce some of the challenges identified in earlier sections: as to why clients were contacting ADA Australia in the first place; and the ever present need for better and more effective education and awareness initiatives to empower

both principals and attorneys to understand the nature of an EPA and carry out their responsibilities accordingly.

## **Attorneys**

Of the 121 case files, 27 (22%) included a reference to the number of attorneys. Of those 27, 21 indicated that two attorneys had been appointed. There was one reporting of one attorney and one of four attorneys being appointed. There were four instances of three attorneys having been appointed. It should be noted that this variable was not mandated and unless the case file specifically stated the number of attorneys this remains unknown.

Regardless of whether the number of attorneys was identified, when attorneys were identified in the case file, they were generally family members (85% of all the case files referred to discussions around who had been appointed as an attorney). The people appointed as attorneys ranged from family members, to friends, to professionals. Family members recorded as being appointed include: children, child, daughter-in-law, nephew, niece, wife, son and daughter, daughter, son, brother-in-law, partner, sister, husband, and ex-wife. Neighbours and friends were also listed. Those in professional occupations include: financial administrator, real estate agent, solicitor, and justice of the peace. In one case, there was a record of a hairdresser being appointed as the attorney.

Unfortunately, this data this was not recorded in such a way as to be able to accurately determine statistical information about the number of attorneys or who is being appointed as attorney(s). There was also a lack of information on the nature of the appointment, that is, joint, several or joint and several appointment. This is an important area for further research as the number of appointed attorneys and the dynamics of the relationship between them and the principal may have significant influence on some of the issues associated with alleged financial abuse canvassed within the current project.

## **Impact of current EPA**

Many of the primary clients contacting ADA Australia for assistance detailed a variety of negative impacts that arose as a result of their current EPA situation. These covered physical (10%) and emotional (32%) health, their relationships with others (22%), their finances (55%) and other aspects of their lives. Each of these is detailed below. It was also the impact of the current EPA that was the driving force behind their desire (both primary and secondary clients) to have the EPA changed.

## Physical impact

There were some primary clients who reported a range of physical impacts on their lives as a result of the current EPA in place (12 cases explicitly mention some type of physical impact). The physical impacts present in a variety of ways. Some are through a perceived neglect to their physical health and wellbeing. For example:

*I have had a lady call in this morning on behalf of her 84 year old mother who is in a Residential Care Facility. She has problems regarding her Power of Attorney and due to the instructions her Power of Attorney is giving the Residential Care Facility, she is not being very well at all. For example, she trips over in the shoes she wears as they are old and not appropriate for her. She is pigeon-toed so she trips over when she walks. She needs shoes specially fitted to her feet. She also needs glasses but they won't take her to see an optometrist. She also needs work done her teeth. She isn't allowed any of her money etc. (case 2).*

*Secondary Client (Child) stated that she has concerns that Primary Client is being left for long periods of time alone (case 8).*

Concerns were raised about the inability of the primary client to move about as they would like, and relate to issues of freedom and thus feelings of being trapped and loneliness, which were two themes running throughout the data. For example:

*EPOA and EPOA 2 will not allow him to leave the ACF unless one of them attend with him (case 32).*

*He [EPA] won't get the lift fixed so that Mum can go downstairs stating she doesn't need to go anywhere (case 96).*

Other concerns related to physical threats to the primary client's safety from their family members. For example:

*Primary Client is very scared of her sister and brother in law physically assaulting her (case 39).*

*Secondary Client (service provider) said that Primary client's son would spend his pension money on drugs and alcohol and this is when the violence would occur (case 53).*

## Emotional impact

Many of the primary clients reported a variety of emotional impacts arising from their current EPA (39 cases explicitly mention this type of impact). This presented itself in a variety of different ways.

For some it was around levels of stress and anxiety. For example:

*Secondary Client (friend) said that she feels Primary Client is stressed and anxious but capable of making her own decisions if she were well informed (case 3).*

*On 21 May 2014 I was told by an employee, that xxxx had been to QCAT and obtained an Order appointing her as my guardian for financial and health matters. This greatly distressed me and continues to do so (case 47).*

*She is afraid of not seeing the grandchildren anymore if she doesn't leave him as EPOA (case 57).*

For others it was around feelings of isolation. For example:

*Primary Client was placed in a dementia unit last DEC [December] and the son activated the EPA since this time he is not allowing Primary Client to know where her finances are at and what her account balances are. He is also restricting her contact with the world and will not give her the TV which was taken from her home. The son also visits very irregularly (case 11).*

*Secondary Client (Service Provider) said that it appears that the EPA has taken all of the client's belongings and has restricted her access to the outside world by not providing phone access in her ACF room (case 75).*

*She said that her daughter will not let her take phone calls, let her access her mail and she has restricted access to the home... Primary Client said that she is living in hell and is desperate and this happens to many older people and there is no one to help them (case 82).*

*Secondary Client (Service Provider) detailed that Primary client's husband will not let Primary client have access to her money or see her family. Primary client became so sad about this that she has accessed counselling through Aged Care Organisation Counsellor (which her husband knows about) (case 99).*

*Secondary Client (Friend) has concerns that another neighbour is not doing the right thing by Primary Client in terms of her money, access to account information, restricting access to family and friends and contact details as well as controlling her in terms of movements, services and shopping (case 108).*

Others expressed feelings that arose from their perceived powerlessness at the current situation. For example:

*Secondary Client (Child) said that her mum is upset as she has no idea how much money she has in the bank. Secondary Client (Child) said her mother told her that she feels trapped and her rights have been taken away (case 15).*

*Primary Client explained to Secondary Client (Service Provider) that she is upset that her daughter would apply to QCAT without discussing with her first as she feels as though she is capable in making some of her own decisions (case 62).*

*Church Member 1 said that at their last meeting with Primary Client they asked him some careful questions about how he felt about the EPA arrangements and that Primary Client expressed concerns about loss of control, not having a say, and that he was told if he didn't comply he would be sent to a nursing home (case 63).*

*Primary Client cried and said that she felt helpless, with her husband dead, and nobody to help her with this (case 74).*

*Mental Health Service Staff 2 said that Primary Client tells her she is very unhappy and when Primary Client tells her niece that she wants to leave the ACF and move to somewhere more suitable or back to Melbourne, her niece tells her that she will just 'get used of it eventually. Primary Client said that she felt like a prisoner (case 102).*

For some there were allegations of emotional and verbal abuse. For example:

*Secondary Client (Child) is concerned because she believes that her mothers is being verbally and emotionally abused and that her sisters husband demanded her mother buy them a \$27,000 new car. Secondary Client (Child) believes all of her mothers money from the bank is now gone as her sister is now the EPA (case 17).*

*Secondary Client (Friend) alleges that Primary Client has been abused by Daughter 1 both verbally and financially over a number of years (case 47).*

*She said that her sister yells and screams at her mother and is very verbally abusive (case 49).*



*This woman and her son is abusive, corrupt and advantageous... She argues with him on visits. Our father gets anxious, starts coughing then gets upset. Its bullying, makes no effort to withhold her actions (case 89).*

In two cases, the primary client expressed suicidal thoughts.

*Daughter is currently living in Primary Client's house. Primary Client said that Daughter was constantly screaming abuse at her and she could no longer live with Daughter. Primary Client then moved back in with Ex-husband. Primary Client said that at times Daughter left her feeling suicidal (case 70).*

*Primary Client said she had been suicidal... Primary Client's issues re having mum as decision maker: 'feel judged and controlled, put down. Understand mum wants the best but won't give me a chance to prove myself, just be a normal person. Just because I have autism' (case 110).*

## Relational impact

There are several instances where the impact of the current EPA is caught up in the complex relationship dynamics that exist in many relationships between the primary client and their attorney(s) (85 cases explicitly state that the attorney is a family member). This can exacerbate prior tensions or create new ones. Much of this is focused on communication and access (or lack thereof in both cases). For example:

*I asked Primary Client if he still had contact with EPA 1 and EPA 2. Primary Client stated that they won't answer his calls (case 21).*

*Secondary Client (Child) said her family in Brisbane are very distressed at what is happening and have stopped going to see their father due to how Partner (EPA) has treated their father and the conditions she has placed on them if they were to visit him (case 27).*

*Secondary Client (friend) said that it is difficult for Primary Client to have a private conversation because her sister monitors everything she does (case 39).*

*Secondary Client (friend) said that another friend of Primary Client received a letter from a solicitor on behalf of Primary Client and the EPA, stating that he was no longer allowed to visit (case 66).*

*Secondary Client (niece) explained that her aunt and her have always been very close and that in many ways the aunt fulfilled the role of grandmother in Secondary Client*

*(niece)'s life. Recently Secondary Client (niece) went to visit her Aunt who is in Hospital and hospital staff advised Secondary Client (niece) that she had been denied access to her aunt by the person who is now the aunt's EPoA. Secondary Client (niece) says she was escorted from the hospital by 4 security staff (case 80).*

## Financial impact

The most overwhelming impact for over half of the primary clients in the current sample related to financial impact (66 cases explicitly mention financial impact in the notes). Given the focus of this study on alleged financial abuse, this is not surprising. Examples of how a lack of access, knowledge, communication and control over finances impacts on overall health and wellbeing are set out below. It is important to note that many of these file notes cross over several of the themes identified and do not necessarily fit within one discrete category.

For some, it was a lack of control on how to spend their finances which was the source of tension.

*Primary client said that he has no money to his name; his children have placed it all in bank accounts in their own names for safe keeping (case 22).*

*His son has taken control of all of Primary Client's finances and tells Primary Client that he will only give him a bit of money at a time, and doesn't provide bank statements to him (case 76).*

*Secondary Client (Service Provider) said that Primary Client wants to go shopping and wants to get her own phone but her EPOA will not give her any money (case 81).*

For others, it was a lack of knowledge in being able to ascertain where their money was or how much they had.

*Son activated the EPA since this time he is not allowing Primary Client to know where her finances are at and what her account balances are (case 11).*

*Secondary Client (Child) said her sister & brother took all her mother's bank cards. Gold card and bank statements... Primary Client has spoken to the bank and they have refused to give Primary Client a bank balance... Secondary Client (Child) reported that her mother's new EPOAs (Secondary Client (Child)'s brother and sister-Daughter 2) won't give Primary Client her cards (case 15).*

*Children have rented his house, believes they have sold his car and are keeping statements for his shares from him (case 34).*

*Secondary Client (Daughter) said that Primary Client keeps on asking her sister for his bank books, but does not get to look at them (case 77).*

*He has changed her banks and accounts so now her Mum can't go to the bank and ask for a statement (case 96).*

For a large number of primary clients, it was the misuse of their funds which was the cause for concern.

*Secondary Client (friend) is concerned because the EPA has said that he wants to invest the money and doesn't have to tell Primary Client what he is doing as he has control of the money as her EPA. The EPA had also drafted a letter that he made Primary Client sign several months ago (which she couldn't read at the time) saying he could do what he liked with the money. Then he witnessed it himself as a JP and used this to make transactions (case 16).*

*Secondary Client (Child) is concerned because she believes that her mothers is being verbally and emotionally abused and that her sisters husband demanded her mother buy them a \$27,000 new car. Secondary Client (Child) believes all of her mothers money from the bank is now gone as her sister is now the EPA (case 17).*

*Primary Client said that her father had been taken some of her Centrelink payments without permission (case 31).*

*Secondary Client (Friend) said that Primary Client's EPA, the neighbour, is holding all of Primary Client's cards, including Medicare and her bank cards, and has withdrawn money without permission (case 37).*

*\$720,000 disappeared since sister has been EPOA (5 years ago?) (case 42).*

There were also concerns about the unauthorised sale of possessions, including the primary client's house, furniture, jewellery or other personal items.

*Primary Client mentioned that she is said that she has nothing left that her EPA has sold everything (case 3).*

*Secondary Client (child) reports that his brother and one of his sisters who are both EPoA's for their mother have disposed of Primary Client's jewellery and household*

*furniture and left her with nothing. Secondary Client (child)'s brother and sister both have access to Primary Client's bank account and Secondary Client (child) alleges that both are accessing money from her account for their own use (case 20).*

*She said while in hospital her son sold all her furniture without her permission, and took her to Aged Care facility 1 in the Gold Coast (case 26).*

*Children have rented his house, believes they have sold his car and are keeping statements for his shares from him (case 34).*

*Primary Client stated she has since found out her son has cleared out her account which was about \$90 000. Primary Client stated this same son has also sold all of her personal belongings which included antiques and sentimental things (case 117)*

For some, there was concern about bills and whether or not these were being paid.

*Secondary Client (child) said that her sister and brother are her mother's EPA's and she thinks they are not paying her bills and there are other concerns about money (case 10).*

*Primary Client also advised that her sister, Sister (EPOA), had been appointed as her administrator, but that she had not been paying Primary Client's bills (case 30).*

*Secondary Client (Child) said this has resulted in 2 cars being repossessed as they have not been paid for (case 55).*

*Secondary Client (Friend) advised that Primary Clients son says he is paying the bills but it is clear that he is not as Primary Client is having to pay out of his disability pension (case 105).*

Lastly, for some it was the inability to access funds for what they needed.

*He only has 25 a week. He is constantly borrowing money to make ends to go on outings etc. He asked to be able to have more money. She increased from 20 to 25. He has not asked for it to be increased further (case 1).*

*Primary Client said she wants to go out and buy some winter clothing as all of her clothing was given away when the house was sold. Primary Client said she has nothing warm (case 3).*

*Secondary Client (Child) also stated that Primary Client has no access to money and needs to ask permission from Wife before he does anything (case 8).*

*I am currently left with approximately \$600 in cash with no way of withdrawing further funds to meet my daily living expenses (case 47).*

*Primary Client is worried that her bank account is frozen, and she cannot access funds for toiletries and that the nurses are buying basic goods for her. She is worried that her housing department house is not being paid (case 71).*

*ACF 1 Staff Member 1 also mentioned that Primary Client is only receiving \$20 a week and Nephew (EPOA) is very strict about this allowance (case 93).*

### Summary of impact

It is clear from the sections above that EPAs can have significant detrimental effects on both the principal as well as on others around them (such as family members and friends). Importantly, it highlights the fact that many of the effects extend beyond financial to other parts of the person's life such as their physical and emotional status as well as their living conditions and social supports. This demonstrates the need to better understand and manage these situations, so as to improve the overall health and well-being of those who have operative EPAs.

### Family dynamics

Many of the case notes made references to the dynamics between the primary client and their family. These were focused on conflict (31%), support (3%) and living arrangements (43%). These were sources of intense stress, distress and anxiety, providing many instances of dysfunctional relationships between individuals.

For some, these tensions were historical and the EPA exacerbated them further. Illustrations of this are set out below.

*Secondary Client (Child) informed me that she has a brother and sister - both significantly older than her. Neither siblings have assisted with caring for Primary Client until recently. Secondary Client (Child) informed me that when their father died there was some family dispute about the Will and this was part of the reason why Primary Client had only elected to have Secondary Client (Child) as EPA... Secondary Client (Child) informed me that her siblings have recently arranged for Primary Client's solicitor to visit her home and had the EPA changed to include the siblings - decisions now being made by a majority. Secondary Client (Child) informed me that she has refused to sign this document as her siblings will have the majority therefore her input is irrelevant (case 15).*

*In 2009 my brother bullied my mother into selling her home and promising to purchase another home in Qld. that never happened as my brother reneged on his promise. I was mum's carer for over 9 years and once we moved to Qld. At the time we lived in Tasmania, we were promised a house, in Qld. Once we arrived in Qld, I queried Son (EPOA) about the house and for that I was kicked out of his home and denied my right to care for my mother (case 44).*

*Primary Client advised that her situation is complicated as she has siblings she is not close to and does not want to impose on her sons. She expressed a long term conflicted relationship with her daughter (case 71).*

There are many situations where the relationships between the primary client and their family are tension filled, either as a result of the EPA or in addition to the circumstances surrounding the EPA. In some cases there were indications that the attorney had sought to isolate the principal from support by other friends and family by taking away their means of making contact.

*Primary Client stated that he wants information about changing his EPA which is his wife - he wants to do this without 'rocking the boat' as he stated that he does not want to end up in the divorce court.... His wife, Wife, is 13 years younger than him. "As soon as I ask to see the bank statement she goes off the bend 'I'm handling it, you keep your nose out of it'"... She used to come on Mondays to visit. When he asked about money ""she becomes unreasonable and very angry, which makes me feel that she's hiding something"". There are 4 bank accounts. She has set up a reverse mortgage which is costing a small fortune (case 1).*

*Secondary Client (friend) has been concerned about Primary Client for several years as she feels that Primary Client's son in Townsville is isolating her and abusing her financially. Primary Client was originally living in a place she was happy with but the son took her phone and computer away and stopped her from having contact with her friends by taking her address book away. They also took her car off her saying she couldn't drive (case 11).*

*Primary Client was very distressed as her son has been upsetting her with misinformation re the QCAT hearing. Son was threatening Primary Client with him being appointed as POA and putting her in a home, or getting Doctor 1 to have her sectioned (case 64).*

There is a strong level of fear from some primary clients that their EPA (usually family member) will sell their property or possessions without approval or knowledge. In some cases there were also concerns that this would leave them homeless.

*Secondary Client (Service Provider) stated that Primary Client owns a mobile home that has recently been repaired. Secondary Client (Service Provider) stated that Primary Client paid approx 90 thousand dollars for the mobile home. Secondary Client (Service Provider) stated that Primary Client is concerned that his son will sell the vehicle without authority (case 4).*

*Secondary Client (Service Provider) said that Primary Clients daughter had asked Primary Client to remove his name off the title to his house and said he could still live there for his life. Primary Client lives in the house and now pays the bills and rent to his daughter. Primary Client fears that the house will be sold and he will be at risk of becoming homeless (case 12).*

*Secondary Client (Child) said this that Partner (EPA) has stopped her family from coming to the hospital now and has told them if they interfere she will tell anyone who listens it is there father who has a gambling addiction and that is why she is in control of his affairs. Secondary Client (Child) states this is a lie and she hopes one of her family members will act as his guardian and call QADA for assistance (case 27).*

There are also numerous examples where the control over the money of the primary client is the source of tension between the primary client and the EPA.

*Secondary Client (Service Provider) stated that the daughter demanded that Primary Client's savings be transferred to her. Aged Care Facility refused to do this but had the money sent to the daughter by cheque made out in Primary Client's name. The daughter could not deposit this into an account in her name and at this time the cheque remains unrepresented (case 5).*

*Primary Client said since that time his children have controlled his finances and have his bank cards. Primary Client said he gave EPA to all of his children. Primary Client said he is trying to get control of his finances back but his son tells him the finances are safe with them (meaning himself and siblings) (case 9).*

*Secondary Client (Child) said her sister is being very cunning and conniving with all this. She said that when her dad passed away, the sister got the Public Trustee to address all of her mum's mail to the sister instead of the mum. She stated the sister*

*also put herself on her mum's bank account and has control over her finances (case 49).*

*Primary Client said she would "rather be dead". When I asked her whether she was going to harm herself Primary Client said no, and that she was just frustrated that her daughter keeps trying to access Primary Client's money. Primary Client said her daughter's boyfriend is experienced with being an EPOA as he was for his father, and that her daughter's boyfriend is coaching her daughter in what to do to access Primary Client's money (case 70).*

This section has illustrated the additional stress and tensions that familial relationships can add to many situations where an EPA is in place. For those where there is a history of family conflict or tension, the existence of an EPA can clearly act as an exacerbating factor. For others, the EPA itself is sufficient to cause tensions. What this continues to demonstrate is the need for better support, education and perhaps even intervention in appropriate situations where the family dynamics are negative. They not only have a detrimental effect on the health and well-being of the principal, but also the attorney/s and other family members. The current situation is far from ideal for several of those within the current sample.

### **Other examples of support**

Despite the negativity described earlier in terms of family dynamics, there were examples of both informal (9%) and formal (16%) support offered to primary clients. Each of these are detailed in turn.

#### **Informal support**

Several primary clients had the support of family and friends which is evident in the fact that many of the contacts received by ADA Australia are from these persons, as illustrated below.

*I am writing on behalf of a friend, Primary Client. His relatives in Sweden are worried about him and asked me for help (case 32).*

*Primary Client called with the help of her friend Secondary Client (Friend). She asked that Secondary Client (Friend) speak for her as she was not feeling well (case 37).*

*Primary Client has asked that we call his friend 'Secondary Client' who lives down the road and explain to her the next step in case he forgets (case 100).*



*Secondary Client (Service Provider) also indicated that Primary Client has a cousin, Cousin 1, who she trusts and lives at Petrie, who will also be in attendance at the hearing (case 62).*

### Formal support

There were also some examples where the service providers of the primary client were a source of support for the primary client.

*Primary Client was with Secondary Client (Service Provider) when the initial phone call to QADA was made and has given permission for Secondary Client (Service Provider) to talk to QADA on his behalf (case 4).*

*She said she has been getting some help filling in the application from Age Care Provider (case 30).*

*Secondary Client (Service Provider) said that Primary Client asked to her to organise for the EPAs to be revoked and that he did not anticipate any controversy from the family about this decision (case 78).*

*Primary Client is being supported by Staff Member 1 at Advocacy Agency 2 in Hervey Bay (case 110).*

The existence of positive support to the primary client, through their relationships with family and friends is an important factor. This section has also highlighted the important role played by service providers in being able to positively support individuals subject to a valid EPA. Given the important role that service providers and other professional staff have in the lives of those in care and under an operative EPA, there may be value in further exploring how to better harness this support to perhaps seek to overcome some of the challenges illustrated in the previous section, which focused on the impact of family conflict and existing dysfunctional familial relationships.

### Formal proceedings

A number of cases outlined a variety of interactions with QCAT (17 cases explicitly made mention of this). For those cases where QCAT was mentioned there was a mixture of applications where the primary client was seeking any combination from a number of different outcomes including to have: changes made to their EPA; an attorney removed; a decision that they were capable. In some of these cases there were notes relating to medical evidence and advice from other professionals but this only provided a snapshot of the Report: Examining access to justice for those with an EPA who are suffering financial abuse

circumstances relating to a small number of primary clients and so it is difficult to draw any conclusions. It would be worthwhile in future to explore these cases in greater detail, in light of this current project, to ascertain if there are other important factors which could be used to improve the overall awareness and education about the operation of an EPA.

Only two cases specifically mentioned alternative dispute resolution services, such as mediation (case 1 and case 101). In both of these case files, the mention was of advice made by an ADA Australia staff member to the primary or secondary client contacting them. The lack of these alternatives being mentioned or promoted as a possible option for resolution is another area that would be beneficial in exploring further.

### **Police involvement**

Only a few clients reported or mentioned contacting the police as a result of alleged fraud (2%), theft (4%) or domestic violence (4%).

*I suggested that the matter of fraud and selling the vehicle without authority would be a matter that the police could address. Secondary Client (Service Provider) agreed but stated that his experience in the past was that the police do not make this type of matter a priority (case 4).*

*I suggested that the matter of fraudulently obtaining Primary Client's money would be a matter that the police could address. Secondary Client (Service Provider) agreed but stated that his experience in the past was that the police do not make this type of matter a priority (case 5).*

*Primary Client is going to call the police as he has an inventory of his tools that he can use as evidence (case 50).*

*She did not give a definite answer, instead she talked about wanting to get the money back that was stolen from her. She cannot tell me how the money was stolen as she does not know. She has contacted the bank and the police about the matter but she said they could do nothing about it. I told her that we can only refer her to the police based on the circumstances and would be difficult to do anything more (case 84).*

*The local police have identified that it is theft and would investigate but can't regain items; Primary Client doesn't want her niece in legal trouble, she just wants her things back (case 112).*

In a small number of cases, there was also evidence of domestic violence. This highlights the negative family dynamics that exist across many of the primary clients in contact with ADA, and also the intersection between financial and physical abuse.

*Primary Client is very scared of her sister and brother in law physically assaulting her. We discussed involving the police in an AVO prior to lodging the QCAT paperwork as she fears that they may retaliate once they learn of the application (case 39).*

*Neighbours have called police twice to attend house when physical assault. She is considering assisting client to apply for AVO... Primary client has been taken to police station, next Tues is hearing for restraining order (case 53).*

*Secondary Client (Friend) said that her auntie used to be looked after by her daughter and son-in-law in her home but the relationship became abusive and the police had to be called to have them removed (case 69).*

These file notes illustrate some examples of situations where the abuse of the primary client has required police intervention. In some cases, this related to the physical safety of the person and the presence of violence, whereas other cases involved alleged fraud and/or theft. Given the earlier findings in this report about the effects of financial abuse and the existence of negative family dynamics, it may be that that more cases could have warranted police intervention. However, police intervention may not always be the most appropriate response to these situations either, therefore it is critical to better understand the dynamics of these cases in order to implement measures to improve outcomes. In addition, there may be some matters which fall exclusively within the civil jurisdiction rather than criminal, and these are therefore not within the realm of police action. Overall, regardless of whether the appropriate action is criminal or civil, prevention will inevitably be a more desirable outcome than a reactive approach.

### **Barriers to seeking support**

A key focus of this project was to examine evidence around what barriers emerge from the data which affect the ability of the principal to access justice, or more broadly, be able to access support where there has been an alleged breach of the EPA. The following barriers emerged from the data, each of which will be considered below:

- Capacity (5%);

- Financial constraints (3%);
- Geographical constraints (6%);
- Legal issues (3%);
- Relational (6%); and
- Other (9%).

## Capacity

The lack of capacity means that the individual themselves cannot access justice, thus having to rely on others. Given that the focus of this research was on the alleged abuse of a principal as a result of a breach of a valid EPA it is surprising that capacity was not featured more prominently as a barrier to accessing justice (5%). That is, if the EPA has come into effect (subject to its terms) generally the principal will have lost capacity which will prevent them from accessing justice as they do not have the legal capacity to be able to make legally recognised decisions. Furthermore, an alleged lack of capacity raises issues in relation to giving instructions to act, which is evident from the following file note:

*Daughter called to say that SLASS have said they cannot work with Primary Client as they feel she doesn't have capacity (case 29).*

Capacity is dealt with further below.<sup>5</sup>

## Financial

There were a very small number of examples where the barriers to accessing justice in relation to an alleged abuse of an EPA were as a result of financial considerations. These focused on the inability of primary clients to access money to pay for legal assistance. This is illustrated in the following file note:

*Primary Client advised that he was unable to access a solicitor as he had no access to his finances (case 32).*

*On a date unknown she changed the authorities on my bank accounts such that I am no longer able to operate them and I cannot currently afford to pay for my legal representation due to that fact. She did so without any consultation with me (case 47).*

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<sup>5</sup> See also p50 for a further discussion on capacity.

## Geographical

Barriers relating to geographical location and the ability to access justice in relation to an alleged abuse of an EPA fall into two distinct categories. The first relates to the inability of primary clients to access required services based on their regional status. This is illustrated by the following file notes:

*She said that she had a QCAT hearing coming up to have her EPA removed. I told her that our GAS team could not support her in Bundaberg (case 65).*

*I explained that I could post out paperwork to start a review process with QCAT, however given they are based in Mackay our GAS team could not assist face to face (case 85).*

*PC [phone call] from Primary Client - cranky that she hasn't had a guardianship advocate visit her yet from Hervey Bay. I explained that all Gship advocates are in Brisbane and we would help her over the phone (case 110).*

The second geographical aspect is the location of the primary client and their isolation from other family and friends. This is evident in the following file note:

*Secondary Client (friend) is a Friend of 25 years of Primary Client. Primary Client's husband died three years ago and her son who lives in Townsville convinced her to move up there to be near his family. Primary Client also has one daughter who is estranged and another son who lives in Brisbane and cannot travel. Secondary Client (friend) has been concerned about Primary Client for several years as she feels that Primary Client's son in Townsville is isolating her and abusing her financially. Primary Client was originally living in a place she was happy with but the son took her phone and computer away and stopped her from having contact with her friends by taking her address book away. They also took her car off her saying she couldn't drive (case 11).*

*Her sister took over care for their mother moving her down to Gympie to live with her and her husband. Secondary Client (Child) is concerned because she believes that her mother is being verbally and emotionally abused and that her sister's husband demanded her mother buy them a \$27,000 new car. Secondary Client (Child) believes all of her mother's money from the bank is now gone as her sister is now the EPA (case 17).*

*His relatives in Sweden are worried about him and asked me for help (case 32).*

## Relational

There were a few instances where the barriers to accessing justice in relation to an alleged abuse of an EPA revolve around relationship issues experienced by the primary client and family/friends. These are illustrated below.

*Primary Client said that his wife has now become possessive of his finances. He recently asked to see his bank statement. His wife would not provide the document and said ""if you keep going on like this, I won't come to visit you anymore" (case 1).*

*Other brother and sister do not want to help mother (case 14).*

*Daughter 1 has made a decision as a guardian that QADA not engage with Primary Client. We ask the Tribunal to consider whether or not this has been an appropriate decision and whether this reflects on Daughter 1's appropriateness as a decision maker (case 47).*

*Primary Client advised that her situation is complicated as she has siblings she is not close to and does not want to impose on her sons. She expressed a long term conflicted relationship with her daughter (case 71).*

*Other family: estranged from Dad - history of DV against mum and Primary Client. Siblings are not in contact - 'not connected, not understood by them' Feel that mum favours them - 'she gives them more praise and appreciation, not as controlling' (case 110).*

## Other

In addition to the barriers experienced above, there were several instances where primary clients have faced other issues accessing justice in relation to an alleged abuse of an EPA. Most of these revolve around an inability to gain access to their requested service/agency, either through the unwillingness of the service/agency to work with the primary client, or through restrictions placed upon the primary client as a result of their circumstances. This is illustrated by the following.

*When I spoke to him about seeing his local doctor to get a medical capacity report done, he said that his doctor is not co-operative at all and won't help him with it.*

*When I asked about other doctor in the area he said that there are 5 or so doctors in*

*Dalby and that they all work in together so he didn't think they would help him either (case 32).*

*She has a lawyer - Lawyer (Law Firm) and her local GP, Doctor 1 XXXX, at XXXX (she is denied access to him) (case 71).*

*Asked if this was reported to the police and Secondary Client (Service Provider) said that this is difficult for the client because she did not have access to a phone (case 75).*

*I called Primary Client to see if Doctor 2 has seen her and filled out the medical report. Primary Client said that the doctor still has not seen her. As it has been 12 weeks since we have been waiting for the medical report, I asked that Primary Client call our office once Doctor 2 has seen her and we can assist her with her matter further (case 93).*

*That some have Primary Client's difficulties with her GP and others in the recent past is that an interpreter hasn't been made available to Primary Client to ensure that she understood what was being said to her (case 102).*

*Primary Client had talked about seeing a solicitor and how the Care Manager had now allowed this stating Son 1 was the decision maker and Son 1 had to give permission for Primary Client to leave the facility to go out (case 109).*

Overall, it can be seen that the barriers that have been identified in the data closely mirror many of the issues raised earlier throughout this report. This is particularly evident with the issue of family relationships, particularly in circumstances where these are not supportive but are, instead, a source of conflict. Further to this, the issue of geography was central in a small number of cases (seven mentioned this explicitly). This highlights the need to take into account the broader issues facing those in regional, rural and remote areas, and their ability to access support and services.

### **Enablers to seeking support**

Few enablers to accessing justice were identified from the data. However, this may be as a result of the current data set, in that those contacting ADA Australia are more likely making contact to resolve an identified issue or problem rather than highlight the positive factors as a result of an operative EPA. It must also be taken into consideration that they, or someone on their behalf, have contacted ADA Australia and this contact, in and of itself, means that they have at least been able to seek assistance to this extent. Therefore, only two main categories

of enablers to seeking support were identified: relational support (13%) and legal support (9%). Some 'other' (8%) enablers were also evident. There was no mention of either finances or location facilitating access to justice, but again, this may simply be an artefact of the current data set.

## Legal

There were a few primary clients who were able to access justice in relation to an alleged abuse of an EPA by engaging legal assistance. This was evident in the following case notes:

*X said a neighbour who is a legal person is taking care of the issue around the missing funds (case 19).*

*I telephoned Primary Client and she explained that at this time she is no longer requiring our support. She said she would be arranging legal representation once all her affairs are in order (case 26).*

*We took her to the Solicitor and spoke with him independently of her wants and requests, then solicitor completed revoke & new power of attorney on her behalf (case 29).*

*ATSI Legal Aid staff member 1 said that Housing Co-op staff member 1 contacted ATSI Legal Aid for assistance with filling out the documents to apply for an interim order to QCAT on behalf of Primary client (case 53).*

*Primary Client said that SLASS Staff Member 1 at SLASS was looking after the legal side of things for her, and trying to get her money back (case 65).*

*I asked Primary Client why she was seeing the solicitor and she said because she wanted to see what her rights were about removing Son 1 as EPA (case 109).*

The importance of being able to access legal advice is an essential element to all parties being able to understand the effect of enacting an EPA, including the roles and responsibilities ascribed to attorneys. As illustrated in previous sections, not all primary clients had a clear awareness of what the EPA meant in practice and what roles and responsibilities either they or their attorney/s had. It is positive to see that a small number of primary clients were able to access legal assistance in order to attempt to rectify their situation. However, again, the more desirable outcome is to be proactive and ensure that all parties are made aware *prior* to signing. This is a point returned to in the key findings.



## Relational

There are instances where the primary clients have the support of family, friends and service providers who are able to assist them to access justice in relation to an alleged abuse of an EPA with their situation as required. This was evident in the following.

*Secondary Client (Service Provider) agreed that he would submit the appropriate forms to QCAT and also have a support person go to the bank with Primary Client to assist him to find out if his accounts have been depleted (case 4).*

*Secondary Client (child) is making application to QCAT to become Primary Client's EPoA on the basis that the current EPoA's are abusing their powers and not acting in their mother's best interest (case 20).*

*Secondary Client (friend) is trying to support Primary Client in having her sister revoked as her EPOA (case 39).*

*Secondary Client (service provider) said that late last week Primary client's HACC brought Primary client to the Hostel as they believe he is being financially and physically abused by his son at home and needs to stay at the hostel where he will be safe until this is sorted out (case 53).*

*Secondary Client (Service Provider) also indicated that Primary Client has a cousin, Cousin 1, who she trusts and lives at Petrie, who will also be in attendance at the hearing (case 62).*

*Secondary Client (Service Provider) said that Primary Client asked to her to organise for the EPAs to be revoked and that he did not anticipate any controversy from the family about this decision (case 78).*

There are cases where there are both barriers and enablers present at various times. For example the following indicates a barrier to getting assistance for the primary client of case 3.

*I told Primary Client about The Guardianship and Administration Tribunal and her right to make an application to have her case heard. Primary Client said she wouldn't know how to do that and can't go out of the facility as she isn't allowed (case 3).*

However, this same case also demonstrated some support for the primary client at other points as demonstrated below.

*Call to Secondary Client (friend) who clarified that she was a friend of Primary Clients. She also works as an advocate but not for Primary Client. She confirmed that she would be able to assist with arranging medical appointments etc. (case 3).*

This illustrates the complexity and changing nature of some situations of primary clients and also highlights the important role that family and friends have in relation to EPAs.

## Capacity

Capacity was raised as an issue by the person themselves (16%), a family member or friend (36%), or in a professional context (32%). Some primary and secondary clients were intuitive to the changeable nature of capacity, for example:

*Secondary Client (Daughter) expressed the view that although her mother didn't have capacity to make decisions during the acute phases of her mental illness, when the illness is being managed it is most likely that Primary Client does have capacity and therefore is actively choosing not to stand up to the abusive daughter (case 14).*

An example of the confusion existing in this difficult area:

*Her ACAT assessment in January 2014 does not state Dementia as a listed illness/disorder, her long term cognitive was marked good, short term problems yes. Then as of February 21.2.14 her GP states that she has Dementia for 6 months and on list of illness/disorders, so we find this a little confusing as she was marked Low Level Care as well yet Neighbour is stating that she requires 24hr care as well (case 35).*

Interestingly, there was a perceived conflict between some health professionals and their assessments where they had an interest in the ACF:

*Secondary Client (Son) stated that there is dispute around his Primary Clients capacity, however feels the GP whom has diagnosed her as severely demented is also a owner in the ACF where she resides and feels it is a conflict of interest (case 85).*

From the data collected with respect to comments made by or in relation to an assessment, there seemed to be a (misplaced) reliance on the MMSE:

*Letter from Doctor 1 to Lawyer (Director 1)*

*Was shown Psychologist's neuropsychological assessment of Primary Client concluding- "he suffered fairly significant cognitive impairment, communication difficulty and lacked capacity in regards his financial affairs."*

*Doctor 1 reviewed Primary Client completing MMSE and MOCA. Scored in the normal range for MMSE and his MOCA results were indicative of cognitive impairment.*

- MOCA result could be a result of fatigue as the session was about one hour*
- Communication also deteriorated during the session*

*Believes psychologist may have assessed cognitive functioning at the end of session when Primary Client was at his most vulnerable.*

*"Cognitive impairment, per se, does not necessarily signify lack of capacity. A person can, especially if they retain insight, as [Primary Client] does, engage in compensatory activities that allow them to make and communicate sound decisions. These would include ensuring that decisions were made in a relaxed and rested state, discussing decisions with knowledgeable colleagues and family, using aides-memoire and allowing plenty of time. I am of the opinion that [Primary Client], if allowed to deal with financial decisions in such a way, would be able to make reasonable choices" (case 47).*

*I spoke to ACF 1 Staff Member 2 (nurse) - a nurse at Aged Care Facility 1 asking about the capacity form. She said that Doctor 1 refuses to decide on capacity until the patient has had a Mini Mental Exam (case 93).*

The issue of capacity was also raised by family members. The following case note demonstrates the misunderstanding that exists around the interplay between capacity and EPAs:

*Secondary Client (Child) said she herself could go to another solicitor and get the EPA's the mum put in place revoked and put another nominating her in place but said she doesn't believe her mother has sound mind so wants to do things properly as opposed to what she believed was the wrong way by the other siblings as she believed what they did was wrong (case 15).*

From the data analysed there was confusion about the nature of 'capacity', how it is assessed, and the impact of this from clients and service providers. Comments are made in absolutes –

‘she had capacity’ or ‘she did not have capacity’ - yet capacity is decision and time specific. It can fluctuate. Surprisingly, there was no reference to the legal requirements for establishing capacity, although unsurprisingly the default seemed to be the idea that the ‘doctor’ decided capacity rather than acknowledging that it is ultimately a legal decision.

## **Involvement of the health profession**

As mentioned in the preceding section, there was a relatively strong involvement of health professionals in the assessment of capacity with respect to an EPA (22%). Interestingly, it seems that the health professionals are the ‘default’ profession to seek out where there are questions of capacity in relation to an EPA with little mention of the legal profession or legal requirements. By itself this is problematic, serves to highlight the need for an interdisciplinary approach between the legal and health professions to reduce misunderstanding and miscommunication.

## **Referral**

While many people may potentially seek assistance from ADA, there were also many cases where the needs of the primary or secondary client extend beyond the expertise or jurisdiction of ADA. In these circumstances, ADA Australia staff provided advice or referrals to other agencies or professionals (64%). Referrals were also made to ADA Australia by other organisations (13%). The variety of these organisations is illustrated below. This further demonstrates the complexity of many situations where the assistance of more than one agency, and profession, is required to work out a possible resolution to the issues faced by both primary and secondary clients. Referrals were made to the Alternative Resolution Centre, social workers at community health centres, the police, QCAT, Office of Adult Guardian, Carers Queensland, Elder Abuse Information Line, Seniors Legal Advisory Support, and the Public Trustee. Some of these scenarios are highlighted below.

*Call to Staff Member at the GC office, she suggested possibly the Alternative Resolution Centre 1800 017 288 or a social worker from Qld Health based at the Southport Community Health Centre (case 1).*

*I suggested that the matter of fraud and selling the vehicle without authority would be a matter that the police could address (case 4).*

*I advised Secondary Client (friend) that she should contact the Office of the Adult Guardian to get an interim order put in place to protect the rest of Primary Client's*

*money and provided the number and website for her reference. I also provided QCAT information and the Elder abuse information line (case 16).*

*I informed x of QADA service and have referred her to; - PWDA - Sunshine Coast Citizen advocacy. I have also provided x with number to office of adult guardian who can investigate claims of abuse and exploitation (case 19).*

*I suggested to Secondary client (friend) she can call the Seniors Legal Advocacy Support Service for advice on the financial affairs and also the Adult Guardian for advice on them acting as Guardian for her friend (case 23).*

*I gave Primary Client TASC's card with their contact information on it and told him to call them if he needs further assistance with his EPA concerns. I also gave Primary Client the Public Trustee phone numbers and explained to him how they might be able to help and I gave him the Elder Abuse Prevention Unit's helpline and explained that he may like to talk to them about his issues with his EPA's (case 32).*

*Referred Secondary Client (friend) to SLASS, if Primary Client was deemed to have capacity, or OAG if there were capacity concerns to investigate his fears of abuse (case 66).*

*I provided Primary Client with the following referrals for counselling and support. - Carers QLD (printed Primary Client a brochure) -Elder Abuse Helpline –SLSS – Lifeline (case 79).*

In addition to ADA Australia staff providing additional points of contact to both primary and secondary clients who contacted them, ADA Australia received a number of calls from those who had been referred to ADA Australia from other agencies, including the Elder Abuse Prevention Unit. Examples of these are below.

*Secondary Client (friend) has spoken with the Elders abuse prevention unit who advised her to call us (case 11).*

*I contacted Primary client after he was referred by Staff Member at the Seniors Legal and Advocacy Service (case 22).*

*Referred to QADA by Disability services (case 24).*

*Clinical Nurse had spoken to Staff Member (Gold Coast Advocate) who advised her to contact QADA through the intake process on Primary Clients Behalf (case 26).*

*SLASS provided him with the referral to QADA (case 45).*

*Secondary Client (Child) has spoken to her solicitor who referred her to QADA for support (case 56).*

*Primary Client's doctor instructed Secondary Client (Service Provider) to find an advocate or a third unbiased person to investigate these claims (case 59).*

*He said that he spoke to the Public Trustee about the behaviour of the EPA, Primary Client's nephew, and they suggested that it bordered on elder abuse and he should contact QADA (case 90).*

*Primary Client explained that he was referred to QADA by the OPG (case 103).*

Overall, this very clearly indicates the need for a whole of sector approach to many of the challenges faced by those under an EPA. As has been demonstrated in this report so far, many primary clients find themselves in complex and challenging situations with a variety of needs that cannot be met by one single agency. It also indicates how the responsibility for ensuring the health and well-being of the primary client requires a collaborative effort, on the part of both formal and informal networks and supports, and therefore stresses the need for improved communication and awareness across each of the relevant parties.

## Key findings

This report has presented the findings from an exploratory project that analysed the case files of 121 individuals where there were allegations of financial abuse as a result of a breach of a valid EPA made to ADA Australia. Despite the limitations detailed in the report, this data has been beneficial in providing some valuable insights that give an indication of where future research efforts need to be targeted.

First, this report highlights the need for an improvement in the effectiveness of the education and awareness efforts made to inform people about EPAs. It is clear that in several cases EPAs have been signed by principals who do not fully understand the implications of the EPA being put in place, as well as attorneys who do not fully understand their role and responsibilities.

Second, the report highlights the negative impacts that an EPA can have on an individual. While the current project initially sought to examine those who alleged financial abuse on the part of the attorney/s, it is clear that the impact extends beyond pure financial abuse. Rather, the impact can manifest itself across the physical, emotional and relational aspects of a person's life. This includes those who are both living at home as well as those who are living in care or aged facilities.

Third, the report highlights the pivotal role that families and friends have in the lives of those under an operative EPA. The data has shown that familial conflict and dynamics can be seen as a source of tension and anxiety. Conversely, there were a few instances where the positive impact was evident. In many cases, it appears that an EPA can exacerbate pre-existing familial issues. In light of this, it would be worthwhile to investigate how perhaps a case management approach, with the involvement of all relevant multidisciplinary stakeholders, could perhaps improve overall situations.

Fourth, this leads to the recognition of the collaborative response needed to address many of the issues highlighted in this report. It is clear that many clients experience a range of complex and challenging circumstances, which incorporates their physical and emotional health as well as their social surroundings. These interact in ways that can be positive and work as a supportive influence, but conversely, this report has illustrated many instances where this has worked to the detriment of the primary client.

Fifth, this report points to a need to better understand the concept of capacity, including how it is understood from within both a legal and health perspective and how this influences actions taken by attorneys, service providers and professionals. Better understanding of satisfactory assessment processes is needed. The evidence presented in the current report points to an exclusive focus of capacity in a health sense, and it is important to see this within the overarching legal context in which legal capacity assessments are made.

Lastly, the evidence presented in this report demonstrates a number of pressing issues that exist in terms of resolution of allegations of financial abuse as a result of a breach of a valid EPA. The loss of capacity for a person is a life changing event and, as illustrated in this data, can further exacerbate a sense of powerlessness, loss of control and loss of individual autonomy by the primary client. The overall purpose of an EPA includes protecting and safeguarding a person, enabling them to appoint a trustworthy substitute decision-maker to make decisions on the principal's behalf when the principal is no longer able to do so. However, it is abundantly clear, even from the current small sample, that this mechanism for protection and safeguarding is instead being used as a tool to perpetrate abuse against the vulnerable in many cases.

The data presented in this report has sought to highlight some of the issues that are faced by those who have an operative EPA and who allege financial abuse. Whilst initially the project sought to focus specifically on issues surrounding access to justice, the case files have revealed a multitude of issues which are relevant to this notion of "justice". In order for further work to be undertaken in this area, there is a need for quality data to capture that which is needed.

This leads to another important point about the quality and accessibility of data. There is a clear need for further research to be done in this area to shed further light in ways to improve some of the many barriers and challenges highlighted in this report. On this basis, if agencies wish to pursue this research agenda there is a need to review current data collection practices. Therefore, it is worth acknowledging that agencies such as ADA Australia (and others) may need to review their data intake procedures with a view to capturing any data deemed relevant for future research, as well as considering capacity and consent issues, including who has the requisite authority to give instructions, at the intake stage to facilitate some of the further work needed in this area.



Overall, it is our hope that this document will serve as an important catalyst to initiate an agenda of research which ultimately is focused on achieving real change and physical improvements in the lives of those who are most vulnerable.

## **Conclusion**

We wish to thank ADA Australia for the opportunity to be able to work collaboratively with them on this project exploring both barriers and enablers for people reporting alleged abuse as a result of a breach of an EPA. The findings demonstrate that there is a lack of understanding in the community about EPAs generally, specifically about revoking, executing and changing them. This leads to feelings of stress, distress and anxiousness, as well as possible deterioration of one's physical and mental health and relationship breakdown. It also creates even further opportunities for abuse of vulnerable people often with questionable capacity. If a breach of an EPA has occurred, there are many barriers to accessing justice including the capacity to be able to seek help, as well as geographical, financial and relational (or familial) constraints. Conversely, enablers to accessing justice also need to be acknowledged. These predominantly include access to legal advice and relational support.

As stated, this was only ever intended to be a small exploratory project. Further research is desperately needed in this area as suggested in the key findings above. Such research should include a qualitative study of the lived experiences of primary clients who have experienced abuse or alleged abuse as a result of a breach of an EPA. A qualitative study of stakeholders who assist those who have experienced abuse such as service providers, advocacy organisations, Public Trustee, Office of Adult Guardian and health care professionals should also be undertaken. Further, it would be beneficial to look outside ADA Australia and include an analysis of cases experienced by other agencies in this area, in order to build a more complete picture of the issues and challenges that are faced. This will assist in determining appropriate responses and systemic support mechanisms to those who are experiencing or allegedly experiencing financial abuse as a result of an abuse of an EPA.

## Annexure 1 Coding Framework

### Enduring Power of Attorney and Financial Abuse

#### Reason for contacting ADA

Finding out information about EPA (whether in existence/operative and legal effect)

Revoking EPA

Changing EPA (attorney or provisions e.g. effective date/limitations on power?)

(Alleged) abuse of EPA by attorney

Locating/identifying assets

Other

#### Reason for change to EPA (has something specific happened?)

#### Attorney

Who is the attorney (e.g. son, daughter, Public Trustee)

Number of attorneys e.g. child(ren), spouse and child(ren)

#### Family dynamics

Examples of family conflict

Examples of family support

Living arrangements (e.g. with attorney or independent or aged care provider)

#### Other examples of support

Formal (doctor, lawyer, social worker, nursing home, etc.)

Informal (friends etc.)

#### Knowledge of EPA

Examples of previous knowledge (prior to signing)

Examples of current knowledge (after signing - both correct and incorrect)

#### Expectations of having an EPA in place

#### Impact of current EPA

Physical (incl having to move)

Emotional (e.g. feelings of isolation)

Relational

Financial (include not being given enough money)

Other

#### Referral

ADA Australia to other agencies

Other agencies to ADA

#### Examples where police are involved

Domestic violence

Theft

Fraud

Other

#### Barriers to seeking support and/or change to EPA

Legal

Geographical

Social

Financial

Relational

Other

#### Enablers to seeking support and/or change to EPA

Legal

Geographical

Social

Financial

Relational

Other

#### Comments on capacity of individual

Self

Family

Professional (lawyer/doctor/social worker)

Formal proceedings

Mediation

Tribunal

Court proceedings

Outcomes of the above

Medical (examples of relevant medical care or referrals)