STAND UP SPEAK OUT

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2026 AUSTRALIAN ELDER ABUSE CONFERENCE

The Right to Culture: From Recognition to Accountability when responding to Elder Abuse

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Case Study 1

Fact Scenario

- First Nations man, late 50s
- 3 dependent teens, 1 adult son
- Loaned son $100/week /$20, 000 unpaid debt
- Stole TVs, Xbox – hocked $$ for drugs
- Broke windows, doors
- Police obtained DVO - multiple breaches
- Expressed fear son would return

System Interactions

- Phoned local police, police link, 000
- Escalated to Vulnerable Persons Unit (VPU)
- Police Liaison Officer (PLO) – not Indigenous
- Breaches reported, not addressed
- Subsequently stabbed in the face
- PLO then linked client in with Elders

Tensions: Legal avenues vs. culture

- System gaps
- Lack of understanding
- Dismissiveness
- Misguided approaches

Strengths/ Protective Factors

- Shared economic responsibility within families
- Community Leaders intervening
- Cultural Leaders providing trusted protection
- Cultural reverence for Elders as decision-makers

Risks/Challenges

- Obligations around money being exploited
- Dependence on family for money
- Systemic racism exacerbates vulnerability

Exercising Cultural Humility

- Hearing the voices of older people
- Entrusting leadership to elders
- Recognising that older people hold essential expertise about their own culture and lives

Case Study 2

Fact Scenario

- CALD woman, 80s, limited English
- Husband (head of family) became ill
- Supportive oldest son new head of family
- Supportive son died
- Younger son pressured mother to sell home
- Lodged baseless caveat
- For years client reluctant to seek DVO
- Daughter too scared to intervene

System Interactions

- Same pattern of abuse for years
- Repeatedly returned for advice/support
- Years later, agreed to police intervention
- VPU interviewed client + son (fluent English)
- Declined to assist – "family matter"
- Lawyer obtained DVO – full conditions/ouster
- Issues re: collecting property – further abuse

Tensions: Legal avenues vs culture

- Cultural strengths misused and abused
- Belief/desire that son will change
- Systemic lack of understanding
- Unconscious bias in the legal system
- Abuse of Culture – by son + by system

Strengths/ Protective Factors

- Family-based caregiving traditions
- Collective caregiving
- Faith networks offering support

Risks/Challenges

- Dependency on family for language
- Hierarchical roles
- Expectation that older person hand over income/assets
- Male dominance in financial decision-making
- Shame, stigma and "keeping things in the family"

Exercising Cultural Humility

- Incorporating cultural strengths and protective factors in Supported Decision-making
- Multi-disciplinary Practice – supporting right to autonomy
- Recognising that older people hold essential expertise about their own culture and lives

Case Study 3

Fact Scenario

- Wife – no English. Husband - fluent
- Son, late 40s, living at home entire life
- Alcohol, drugs, mental health issues/PTSD
- Husband lived with daughter temporarily
- Told police *"I can no longer live this way"*
- Wife wishes for son to remain at home
- Husband wishes to support wife

System Interactions

- Husband called 000
- Police Protection Notice + Ouster
- "Technical" breach
- Full conditions to protect Husband
- "Good behaviour" conditions to protect wife
- Disengagement with legal process

Tensions: Legal avenues vs culture

- Adult child living with family as a cultural norm
- Husband reports feeling blamed by wife for police involvement in family matters
- *"I wish I never involved the police"*

Strengths/ Protective Factors

- Family-based caregiving traditions
- Collective caregiving

Risks/Challenges

- Dependency on family for language
- Shame, stigma and "keeping things in the family"
- Pressure not to involve authorities
- Language barriers
- Deference to family decision-making over individual rights

Exercising Cultural Humility

- Human rights framework in policing
- Multi-disciplinary Practice – supporting right to autonomy
- Recognising that older people hold essential expertise about their own culture and lives

Cultural rights under international law

International Covenant on Civil and Political Rights

Article 27:
In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Guidance on article 27 provided by General Comment 23:
9. …The protection of [article 27] rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole. Accordingly, the Committee observes that these rights must be protected as such and should not be confused with other personal rights conferred on one and all under the Covenant.

Related international protections

UN Declaration on the Rights of Indigenous Peoples - UNDRIP

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

…

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

…

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

…

International Covenant on Economic, Social and Cultural Rights

Article 15
1. The States Parties to the present Covenant recognize the right of everyone:
(a) To take part in cultural life;
(b) To enjoy the benefits of scientific progress and its applications;
(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

Separate protection for cultural diversity

Convention on the Protection and Promotion of the Diversity of Cultural Expressions

Article 1 – Objectives
The objectives of this Convention are:
(a) to protect and promote the diversity of cultural expressions;
(b) to create the conditions for cultures to flourish and to freely interact in a mutually beneficial manner;
(c) to encourage dialogue among cultures with a view to ensuring wider and balanced cultural exchanges in the world in favour of intercultural respect and a culture of peace;
(d) to foster interculturality in order to develop cultural interaction in the spirit of building bridges among peoples;
(e) to promote respect for the diversity of cultural expressions and raise awareness of its value at the local, national and international levels;
(f) to reaffirm the importance of the link between culture and development for all countries, particularly for developing countries, and to support actions undertaken nationally and internationally to secure recognition of the true value of this link;
(g) to give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning;
(h) to reaffirm the sovereign rights of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expressions on their territory;
(i) to strengthen international cooperation and solidarity in a spirit of partnership with a view, in particular, to enhancing the capacities of developing countries in order to protect and promote the diversity of cultural expressions.

Protections under Australian law

Racial Discrimination Act 1975

9 Racial discrimination to be unlawful

(1) It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.

(1A) Where:

(a) a person requires another person to comply with a term, condition or requirement which is not reasonable having regard to the circumstances of the case; and

(b) the other person does not or cannot comply with the term, condition or requirement; and

(c) the requirement to comply has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, by persons of the same race, colour, descent or national or ethnic origin as the other person, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life;

the act of requiring such compliance is to be treated, for the purposes of this Part, as an act involving a distinction based on, or an act done by reason of, the other person's race, colour, descent or national or ethnic origin.

…

Relationship between culture, and race and ethnicity under the Racial Discrimination Act 1975

It's Mabo… The first Mabo case recognised that the Miriam people's laws, customs and traditions (in that case related to land inheritance practices) are part of their ethnic identity and their race, attracting the protection of the *Racial Discrimination Act* 1975.

Mabo and Anor v. The State Of Queensland and Anor [1988] HCA 69 *(Mabo No. 1)*

Ethnicity and ethno-religious identity are broadly constructed

King-Ansell v Police [1979] 2 NZLR 531

"The real test is whether the individuals or the group regard themselves and are regarded by others in the community as having a particular historical identity in terms of their colour or their racial, national or ethnic origins. That must be based on a belief shared by members of the group.

...a group is identifiable in terms of its ethnic origins if it is a segment of the population distinguished from others by a sufficient combination of shared customs, beliefs, traditions and characteristics derived from a common or presumed common past, even if not drawn from what in biological terms is a common racial stock. It is that combination which gives them an historically determined social identity in their own eyes and in the eyes of those outside the group. They have a distinct social identity based not simply on group cohesion and solidarity but also on their belief as to their historical antecedents." (Richardson J)

Cultural rights under Queensland law

There is a protection against race discrimination under the ***Anti-Discrimination Act 1991***. The ***Human Rights Act 2019 (Qld)*** has two provisions covering cultural rights. The HRA applies to public entities when acting and making decisions about individuals.

27 Cultural rights—generally

All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy their culture, to declare and practise their religion and to use their language.

28 Cultural rights—Aboriginal peoples and Torres Strait Islander peoples

(1) Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.

(2) Aboriginal peoples and Torres Strait Islander peoples must not be denied the right, with other members of their community—

(a) to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings; and

(b) to enjoy, maintain, control, protect, develop and use their language, including traditional cultural expressions; and

(c) to enjoy, maintain, control, protect and develop their kinship ties; and

(d) to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom; and

(e) to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.

(3) Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation or destruction of their culture.

Cultural rights when a person (in Qld) needs decision making support

5 **Maintenance of adult's cultural and linguistic environment and values**

(1) The importance of maintaining an adult's cultural and linguistic environment and set of values, including religious beliefs, must be taken into account.

(2) Without limiting subsection (1), for an adult who is an Aboriginal person or a Torres Strait Islander, the importance of maintaining the adult's Aboriginal or Torres Strait Islander cultural and linguistic environment and set of values, including Aboriginal tradition or Island custom, must be taken into account.

Matching provisions in the General Principles in the:

- Guardianship and Administration Act 2000

- Powers of Attorney Act 1983

Other protections for cultural rights include:

- Cultural heritage protections
- Native title legislation
- Child placement principles under child protection legislation
- Indigenous Cultural and Intellectual Property protections
- Cultural child adoptions; *Meriba Omasker Kaziw Kazipa Act 2020*
- Provisions in the family law recognising children's cultural connections
- Biodiscovery traditional knowledge protections

There are also protections against race discrimination at work under the Fair Work Act. Other protections for cultural practices exist in policies, guidelines and by virtue of organisational or departmental commitments.

Positive duties in some jurisdictions

For example: Equal Opportunity Act 2010 (Vic)

15 Duty to eliminate discrimination, sexual harassment or victimisation

(1) This section applies to a person who has a duty under Part 4, 6 or 7 not to engage in discrimination, sexual harassment or victimisation.

(2) A person must take reasonable and proportionate measures to eliminate that discrimination, sexual harassment or victimisation as far as possible.

Defining culture – early, and still influential, anthropological framing

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"In attempting to launch such an integration from the anthropological side and to reach, thereby, a more exact image of man, I want to propose two ideas. The first of these is that culture is best seen not as complexes of concrete behaviour patterns—customs, usages, traditions, habit clusters—as has, by and large, been the case up to now, but as a set of control mechanisms—plans, recipes, rules, instructions (what computer engineers call "programs")—for the governing of behavior. The second idea is that man is precisely the animal most desperately dependent upon such extra-genetic, outside-the-skin control mechanisms, such cultural programs, for ordering his behavior."

Anthropologist Clifford Geertz (1973) "The Impact of the Concept of Culture on the Concept of Man".

Individual and relational experiences

"By focusing closely on particular individuals and their changing relationships, one would necessarily subvert the most problematic connotations of culture: homogeneity, coherence, and timelessness. Individuals are confronted with choices, struggle with others, make conflicting statements, argue about points of view on the same events, undergo ups and downs in various relationships and changes in their circumstances and desires, face new pressures, and fail to predict what will happen to them or those around them."

Anthropologist Lila Abu-Lughod (1991) "Writing against Culture"

For an interesting, accessible explanation of the evolving idea of culture within the discipline of Anthropology, see Cristoph Brumann's discussion in the Open Encyclopedia of Anthropology.

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