**Question 44: Are protection orders being used to protect people from elder abuse? What changes should be made to make them a better safeguard against elder abuse?**

I was a Western Australian police officer between 2008-2015. During that time, I worked in both general duties and investigation-focussed stations. As a general duties officer, I was the ‘first-responder’ to calls for assistance regarding elder abuse. As an inquiry officer in investigation offices, I investigated incidents of elder abuse that amounted to criminal offences. I worked in the South West region of Western Australia and in the affluent Western suburbs of Perth, which showed me that elder abuse is occurring throughout the state and across the socioeconomic spectrum. As one of the officers who issued police orders to perpetrators and recommended restraining orders to abused parents and carers, I know that these orders are being used to protect people. However, my experience suggests that restraining orders are not the panacea for elder abuse and reform in this area could result in better outcomes for affected families. As my experience has been in Western Australia, with Western Australian legislation, I will focus my attention there.

My experiences with elder abuse, although varied, had a common theme: children from stable and supportive homes started associating with a ‘bad crowd’ and often became problematic drug users. The children came home sporadically, usually after domestic or other personal violence or when they had no money left and their parents would provide them with money, food and temporary accommodation. Police became involved when the children assaulted or threatened their parents or damaged property.

In terms of answering the question, “family and domestic relationship”[[1]](#footnote-1) is defined in the *Restraining Orders Act 1997* (WA) (“Restraining Orders Act”). The relevant section is couched in broad terms and captures most family relationships. There is no clear legislative delineation between domestic violence and elder abuse[[2]](#footnote-2) but the relationships and circumstances involved in elder abuse events often enliven section 62 of the Restraining Orders Act.

Section 62 of the Restraining Orders Act imposes a duty on a police officer who investigates a suspected act of family and domestic violence that involves a criminal offence or that puts the safety of a person at risk to either:

1. Make an application for a restraining order
2. Issue a police order (a temporary restraining order for 72 hours or less[[3]](#footnote-3))
3. Make a written record of why they did not do either 1 or 2.[[4]](#footnote-4)

In practice, police orders were almost always issued except for the rare circumstances where there was no evidence or allegations of anything beyond a verbal argument. The positive of this policy was that the parties were separated for a ‘cooling-off’ period. Presumably, the ‘cooling-off’ period was sufficient for some relationships to mend and then continue. Alternatively, this created an opportunity for the victim to attend a court and obtain a Violence Restraining Order and end or restrict the relationship.

However, some victims obtained Violence Restraining Orders and used them as behaviour modification tools so they could gain better behaviour from the abuser and have a strong recourse, in the form of arrest and criminal charges, whenever the behaviour was inappropriate or undesirable. Whatever might be said about the appropriateness of using restraining orders in this way, or whether a restraining order was even necessary in those circumstances, it was clear that these orders were being used to protect from elder abuse.

The most common complaint of protected parties, and therefore the biggest challenge for any government that reforms this area of law, is the leniency of the Courts when sentencing offenders for breaching restraining orders. This leniency is not only a perception but also supported by research findings reported in the Australian Law Reform Commission report ‘Family Violence – A National Legal Response.’ A review of family violence legislation in Western Australia highlighted an increase in charges by Police but inadequate sentences that had no real deterrent or punitive effect.[[5]](#footnote-5) A ‘firming up’ of the sentences imposed by the courts for breach of restraining order offences would improve this area of law in at least three ways: raising the utility of restraining orders, having a more deterrent effect and improving the public perception of the courts.

1. *Restraining Orders Act* *1997* (WA) s 4. [↑](#footnote-ref-1)
2. Professor Mike Clare, Dr Barbara Black Blundell and Dr Joseph Clare, ‘Examination of the Extent of Elder Abuse in Western Australia: A Qualitative and Quantitative Investigation of Existing Agency Data’ (Crime Research Centre, University of Western Australia, April 2011) 2. [↑](#footnote-ref-2)
3. *Restraining Orders Act* *1997* (WA) s 30F. [↑](#footnote-ref-3)
4. *Restraining Orders Act* *1997* (WA) s 62C. [↑](#footnote-ref-4)
5. Australian Law Reform Commission, *Family Violence – A National Legal Response*, Final Report (2010) [12.130]. [↑](#footnote-ref-5)