**Elder Abuse Inquiry Submission**

**by**

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**Introduction**

I am a law student interested in criminal law, a baker at Coles and more importantly, a granddaughter to two elderly grandparents.

Early one weekday afternoon, as the children from the local primary school and their parents descended into the shopping complex, I witnessed three men target an elderly gentleman. They physically assaulted and robbed him whilst he withdrew money from an ATM situated at the front of my place of employment. An ATM which my grandparents frequently use.

For the above reasons, I have chosen to discuss a way in which criminal law can be improved in response to elder abuse. Applying *circumstances of aggravation[[1]](#footnote-1)* to unlawful assault causing death s 281 of the *Criminal Code Act Compilation Act 1913.[[2]](#footnote-2)* This would create uniform life imprisonment sentencing to specifically protect persons 60 years or older as reflected in both murder s 279 and manslaughter s 280 of *The Criminal Code*.[[3]](#footnote-3)

**Persons 60 years or over and circumstances of aggravation under *The Criminal Code*[[4]](#footnote-4)**

s 221(1)(d) of *The Criminal Code* defines the term circumstances of aggravation in assault and violence to the person offences to apply if the victim is of or over the age of 60 years.[[5]](#footnote-5) The term is applicable to murder s 279 and manslaughter s 280 of *The Criminal Code*, which allows life imprisonment if the person is found guilty.[[6]](#footnote-6)

s 281 of *The Criminal Code* states if a person unlawfully assaults another who dies as a direct or indirect result of the assault, that person is liable for 10 years imprisonment.[[7]](#footnote-7) This section does not contain a circumstances of aggravation element which could be applied when a person 60 years or over has died as a result of an assault.

**Why should circumstances of aggravation be applied to s 281 of *The Criminal Code*?[[8]](#footnote-8)**

Persons 60 years or over are more susceptible to becoming victims of assaults as they have a limited ability to protect, remove or defend themselves from danger due to physical disabilities, lack of strength or mental impairment.

With this, there is a greater chance of death after being assaulted compared to that of other age groups.[[9]](#footnote-9) The ‘egg-shell skull rule’ from case *R v Blaue* (1975) 61 Cr App R 271 is applied throughout criminal law which translates to ‘you take the victim as you find them’ regardless of any physical or mental impairments that made the victim more likely to die as a result of the assault.[[10]](#footnote-10) This further supports my position for adding circumstances of aggravation to s 281 of *The Criminal Code,* as persons 60 years or over are more likely to have physical or mental impairments than persons from other age groups.[[11]](#footnote-11)

The elements of s 281 of *The Criminal Code* require that an unlawful assault causes the death of a person which therefore enables harsher fatality crimes to be prosecuted under s 281 rather than under murder s 279 or manslaughter s 280 resulting in lower a prison sentence.[[12]](#footnote-12)

s 25A of the *Crimes Act* 1900 (NSW)[[13]](#footnote-13) ‘assault causing death’ is a reflection of Western Australia’s s 281 of *The Criminal Code* but with one major difference.[[14]](#footnote-14) s 25A of the *Crimes Act* has a maximum prison sentence of 20 years (or 25 if the offender is found to be intoxicated at the time the crime took place).[[15]](#footnote-15) s 25A of the *Crimes Act* does not specifically consider or apply to persons 60 years or over and/or circumstances of aggravation, but I do believe this is closer to a life sentence and a more fitting penalty in the homicide hierarchy. The application of circumstances of aggravation to s 281 of *The Criminal Code* would demonstrate the seriousness of the crime as already applied in other jurisdictions.[[16]](#footnote-16)

**Case example**

*R v. PDJ* [2002] VSCA 211 is a case example of an assault which caused the death ofan elderly female victim. The offender and two others planned to assault a random victim in order to steal their car. On the night of the offence, they entered the woman’s home and assaulted her. She died as a result of her wounds and the offenders were sentenced to 16 years’ imprisonment.[[17]](#footnote-17)

Although *R v PDJ[[18]](#footnote-18)* is a murder case from a different jurisdiction, it does reflect the elements of s 281 of *The Criminal Code* as there was an assault on an elderly victim, which caused her death. As persons 60 years or over are more likely to sustain serious injuries during an assault, applying circumstances of aggravation to s 281 of *The Criminal Code* would enable future cases of unlawful assaults causing death the ability to impose life imprisonment on the offender.[[19]](#footnote-19) This would allow murder s 279, manslaughter s 280 and unlawful assault causing death s 281 uniform life imprisonment sentencing.[[20]](#footnote-20) The potential to apply such a harsh sanction would work to both prevent assaults on persons 60 years or older, and allow them to be specifically protected.[[21]](#footnote-21)

**The reason behind the insertion of s 281 into *The Criminal Code* and its difficulty for further amendments[[22]](#footnote-22)**

s 281 was inserted into *The Criminal Code* in 2008 due to an increase in ‘one-punch’ deaths not specifically related to persons 60 years or older.[[23]](#footnote-23) The difficulty in amending s 281 would be that no Australian Law Reform Commission has ever recommended the ‘one-punch’ law. There has been no further clarity as to how s 281 of *The Criminal Code* sits amongst other homicide offences.[[24]](#footnote-24)

**Conclusion**

Although s 281 was inserted into *The Criminal Code* as a result of ‘one-punch’ deaths, records show that persons 60 years or older are more likely to die as a result of an assault than any other age group. With this, s 281 should be amended to apply circumstances of aggravation to specifically protect and prevent further assaults on older people, and to reflect the seriousness of the crime.[[25]](#footnote-25)

1. *Criminal Code Act Compilation Act 1913* (WA)s 221 (‘*The Criminal Code’*). [↑](#footnote-ref-1)
2. Ibids 281. [↑](#footnote-ref-2)
3. Ibid s 279-80. [↑](#footnote-ref-3)
4. *Criminal Code Act Compilation Act 1913* (WA). [↑](#footnote-ref-4)
5. Ibid s 221(1)(d). [↑](#footnote-ref-5)
6. Ibid s 279-80. [↑](#footnote-ref-6)
7. Ibid s 281. [↑](#footnote-ref-7)
8. Ibid s 281. [↑](#footnote-ref-8)
9. Joseph Clare, ‘*Examination of the Extent of Elder Abuse in Western Australia*: A Qualitative and Quantitative Investigation of Existing Agency Policy, Service Responses and Recorded Data’ (2011) The University of Western Australia*.* [↑](#footnote-ref-9)
10. *R v Blaue* (1975) 61 Cr App R 271. [↑](#footnote-ref-10)
11. *Criminal Code Act Compilation Act 1913* (WA)s 281. [↑](#footnote-ref-11)
12. Ibid s 279-81. [↑](#footnote-ref-12)
13. The *Crimes Act* 1900 (NSW) s 25A. [↑](#footnote-ref-13)
14. *Criminal Code Act Compilation Act 1913* (WA)s 281. [↑](#footnote-ref-14)
15. The *Crimes Act* 1900 (NSW) s 25A. [↑](#footnote-ref-15)
16. *Criminal Code Act Compilation Act 1913* (WA)s 281. [↑](#footnote-ref-16)
17. *R v. PDJ* [2002] VSCA 211. [↑](#footnote-ref-17)
18. [2002] VSCA 211. [↑](#footnote-ref-18)
19. *Criminal Code Act Compilation Act 1913* (WA)s 281. [↑](#footnote-ref-19)
20. Ibids 279-81. [↑](#footnote-ref-20)
21. Joseph Clare, ‘*Examination of the Extent of Elder Abuse in Western Australia*: A Qualitative and Quantitative Investigation of Existing Agency Policy, Service Responses and Recorded Data’ (2011) The University of Western Australia*.* [↑](#footnote-ref-21)
22. *Criminal Code Act Compilation Act 1913* (WA)s 281. [↑](#footnote-ref-22)
23. Ibids 221. [↑](#footnote-ref-23)
24. Law Reform Commission of Western Australia (2007) *Review of the Law of Homicide*, Final Report, Project No 97. Perth: Government of Western Australia. [↑](#footnote-ref-24)
25. *Criminal Code Act Compilation Act 1913* (WA)s 281. [↑](#footnote-ref-25)