Introduction

As a law student, I have developed an aptitude for seeking and filtering through masses of information, and during my degree, I have completed a unit specialising in restorative justice. Through in-depth research, media coverage,[[1]](#footnote-1) and weighing an entire body of readily available literature that lends itself entirely to restorative justice, my grasp on the issue of elder abuse has been strengthened.

Fortunate am I to be making a submission into the issue of elder abuse as with many older family members, I have witnessed the vulnerability that is a reality for most, if not all, elderly persons.

Elder abuse in Australia

Elder abuse is a human rights issue; one that ought to be the subject of national concern.[[2]](#footnote-2) So sadistic and appalling are reports of elder abuse in Australia,[[3]](#footnote-3) and as the population of elderly persons increases,[[4]](#footnote-4) it is in the interests of all Australians to safeguard other’s freedoms and liberties.

In reality, the issue is downsized, silenced and often left untreated.[[5]](#footnote-5) However well-intended our current system may be in preventing, mitigating, reporting, and resolving elder abuse, it has become clear that there is a gap in the law. Perhaps the starting point to protecting the elderly from misuse and neglect is giving them a voice. Restorative justice aims to do exactly that.

Restorative justice

Restorative justice intends to repair relationships, enhance offender accountability, and rectify abuse through active participation.[[6]](#footnote-6)[[7]](#footnote-7) The Centre for Justice and Reconciliation outlines 3 core principles of restoration: ‘identifying and taking steps to repair harm, involving all stakeholders, and transforming the traditional relationship between communities and their governments in responding to crime.’[[8]](#footnote-8)

An improved form restorative justice, involving referrals and cooperation on a multidisciplinary level, has revealed impressive results. A 2010 Report into Family Violence[[9]](#footnote-9) found that restoration is able to prevent further offending by emphasising offender accountability. Further protections should be made for violence cases, for which restoration may be unsuitable.[[10]](#footnote-10)

In 2016, the Royal Commission outlined that restoration must take place in protected environments, by qualified practitioners, with the needs of the victim as the forefront of the process.[[11]](#footnote-11) The same report lists a number of potential benefits: victims’ needs and concerns are heard, victims are able to maintain their relationship with the abuser, and offender accountability is heightened.[[12]](#footnote-12)

Difficulties with restorative justice

Before restoration takes place, the abuse will need to be identified and reported. With all social issues,[[13]](#footnote-13) there are difficulties at every step when being addressed:

* Victims often fear the consequences of reporting abuse[[14]](#footnote-14) (they may be harmed further, and/or wish to maintain a relationship with the perpetrator)
* Access to resources is the leading difficulty with the elderly. They are often unaware of when, how, and to whom to report the abuse. In an era of rapid technological advancement, cultural development, and social innovation, access to justice for the elderly is more difficult than ever
* Restoration is not always the most appropriate approach to elder abuse, particularly in cases involving violence, which may make safeguarding difficult and decisions unfair
* Intergenerational relationships and family dynamics are particularly complex, and as the Attorney General stated, the rights and wishes of the victim should not be unduly interfered with.[[15]](#footnote-15) The extent of intervention is possibly one of the most difficult problems underpinning restorative justice. Often, attempts to do so do not yield results.

Recommendations

* A whole of government approach to manage, detect and resolve elder abuse
* To inform the elderly on what constitutes abuse, how and to whom they can report, and available remediesto ensure early intervention
* A holistic approach to educating formal/informal carers, community members, and professionals of all capacities on when to report abuse, to whom and the measures they should personally take (if any), on a multi-media level. Multidisciplinary teams should work together to address abuse
* Legislative review for laws to specifically address elder abuse
* Reform in legislation, policy, and practice to provide safety during restoration, specifically in regard to violence and sexual assaults
* Assess the role of restoration in practice in aged care centres/homes, involving cases of various forms of abuse, through sentence circling, victim-offender mediation, and conferencing.[[16]](#footnote-16)

Conclusion

As free individuals residing in Australia, we are often reminded of our basic, innate rights and freedoms as human beings, yet we have failed to command the same liberties for our elderly, who have almost become the forgotten generation. Often unseen and if seen, often unreported, and if reported, often unfruitful, the abuse of the elderly is far more prevalent than one would like to believe.

Change begins as an idea that, only with ample support, can become a reality. No approach to resolving elder abuse is entirely without error, and restorative justice is no exception. Restoration models aim to restore the once silenced voices in a protected environment.[[17]](#footnote-17)

Key stakeholders (all tiers of government, local organisations, and community members), who share a vision of Australians to live free lives, void of any form of abuse should vest support in safeguarding the freedoms of elderly persons. I believe that this support should be in the form of advocating for restoration in cases of abuse, which must be paid appropriate attention for its ability to transform intergenerational dynamics and cultural attitudes, for the good of our elderly generation, and for the better of the generations yet to come.

1. *End of the line* (ABC, 2009). Available at: <http://www.abc.net.au/4corners/content/2009/s2584582.htm>. [↑](#footnote-ref-1)
2. # Chief Justice Robert French, ‘Address at the National Elder Abuse Conference’

   (Speech delivered at Pullman on the Park, Melbourne, 24 February 2016) <https://www.attorneygeneral.gov.au/Speeches/Pages/2016/FirstQuarter/24-February-2016-Address-at-the-National-Elder-Abuse-Conference-Pullman-on-the-Park-Melbourne.aspx>. [↑](#footnote-ref-2)
3. ## Senate Community Affairs and References Committee, Parliament of Australia, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability* (2015) 45-68.

   [↑](#footnote-ref-3)
4. Mike Clare, Barbara Black Blundell and Joseph Clare, ‘Examination or the Extent of Elder Abuse in Western Australia: A Qualitative and Quantitative Investigation of Existing Agency Policy, Service Responses and Recorded Data’ (2011) 1. [↑](#footnote-ref-4)
5. # Susan Kurrle and Gerard Naughtin ‘An overview of elder abuse and neglect in Australia’ (2008) 20(2) *Journal of Elder Abuse and Neglect* 108-25.

   [↑](#footnote-ref-5)
6. Arlene Groh and Rick Linden, ‘Addressing Elder Abuse: The Waterloo Restorative Justice Approach to Elder Abuse Project’ (2011) 23(2) *Journal of Elder Abuse and Neglect* 127-146. [↑](#footnote-ref-6)
7. Law Reform Committee, Parliament of Victoria, *Inquiry into*

   *Alternative Dispute Resolution and Restorative Justice* (2009), 9–10. [↑](#footnote-ref-7)
8. Restorativejustice.org [↑](#footnote-ref-8)
9. Australian Law Reform Commission and NSW Law Reform Commission, *Family Violence—A National Legal Response*, ALRC Report No 114, NSWLRC Report No 128 (2010) 1093, 175. [↑](#footnote-ref-9)
10. Victoria, Royal Commission into Family Violence, *Summary and Recommendations* (2016). [↑](#footnote-ref-10)
11. Ibid 31. [↑](#footnote-ref-11)
12. Ibid 30. [↑](#footnote-ref-12)
13. Bonnie Brandl et al, ‘Elder abuse detection and prevention: A collaborative approach’ (Springer Publishing Company, New York, 2007) 62. [↑](#footnote-ref-13)
14. Arlene Groh and Rick Linden, ‘Addressing Elder Abuse: The Waterloo Restorative Justice Approach to Elder Abuse Project’ (2011) 23(2) *Journal of Elder Abuse and Neglect* 127-146. [↑](#footnote-ref-14)
15. Attorney General’s Terms of Reference available at: <https://www.alrc.gov.au/publications/terms-reference-15>. [↑](#footnote-ref-15)
16. Victorian Law Reform Commission, *Review of Family Violence Laws*: Report (2006), 84. [↑](#footnote-ref-16)
17. Victoria, Royal Commission into Family Violence, *Summary and Recommendations* (2016) rec 122. [↑](#footnote-ref-17)