33. G Chionh Hai Ming

Full name: Gilbert Chionh Hai Ming

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**BACKGROUND**

I am a law and commerce student from a culturally and linguistically diverse (CALD) household. Like most CALD households, my elderly parents are dependent on my assistance for financial transactions due to the technological barrier.

Financial abuse

A 2001 Australian study reports that:

* An average prevalence rate of elder abuse in Western Australia was estimated at 4.6%.[[1]](" \l "_ftn1" \o ")
* Financial abuse was the most prevalent type of abuse identified in the studies.[[2]](" \l "_ftn2" \o ")

Financial abuse has been identified as the fastest growing type of elder abuse and confirmed as the most common form of elder abuse amongst the CALD communities.[[3]](" \l "_ftn3" \o ") Despite its’ prevalence, this infringement on human rights is largely ignored and remains invisible to the general public. Public awareness and education will be imperative moving forward in addressing and responding to the growing concerns of elder abuse.

The current framework

The absence of a national level legal framework has resulted in the continual operation of ineffectual state level protocols and procedure.[[4]](" \l "_ftn4" \o ") The nature of variable policy frameworks which employs collaborative interagency efforts for the prevention, early intervention and response of elder abuse is ineffectual due to:

* The lack of statutory definition for financial abuse brings ambiguity and difficulty in ascertaining what constitutes financial abuse.
* The absence of a statutory mandated head agency that directs and coordinates the responses means that uncoordinated efforts from the relevant state agencies could inhibit the effectiveness of their responses.
* The lack of mandatory reporting of elder abuse and reluctance on the victim’s part in reporting the abuse results in victims falling through the cracks of the current safeguard frameworks.
* The low report rates mean a lack of comprehensive data for agencies to draw upon, along with perpetuating the public’s ignorance towards the issue.
* Civil remedies exist but are ineffective due to availability only if abuse was reported or if legal proceedings were commenced – neither are practical due to the familial and personal nature of the abuser.
* Impediments such as legal costs, standard of proof, evidential difficulties and cognitive or physical frailty may be insurmountable.

**SUBMISSIONS**

The shortcomings above highlight the failings of the current framework which is inadequate in responding to the difficulties due to the multifaceted nature of elder abuse. Any attempts in addressing the failings is firstly complicated by the invisible nature of elder abuse where the majority occurs in private and goes unreported.

Recommendations:

1. First, it is imperative that collaborative efforts extend beyond the health and community care sector, police, legal services, and the general public to include the financial service sector.
2. The Australian Government work in cooperation with the financial service sector in development of a uniform national and industry-wide level protocols for identification and reporting of suspected cases of financial abuse.

Role of banks and financial institutions

Banks and financial institutions are imperative in an effective response to financial abuse. They are uniquely positioned to do so because of:

* Familiarity with members.
* Frequent face-to-face interactions – older customers tend to be more technological illiterate.
* Access to bank accounts – able to detect unexplained large withdrawals or transfers to another person’s account.
* Trained personnel – specialised staff can be directed to prevent, detect and respond to ‘red flags’.
* Adequate to identify and address the invisible nature of financial abuse.
* Educated personnel can educate and raise awareness with their customers.

California has recognised the importance of banks and financial institutes as a tool to combat elderly abuse, having introduced and enacted mandatory reporting of suspected cases of financial abuse by banking and financial staff.[[5]](" \l "_ftn5" \o ") Reported cases are then investigated by adult protective services. SB1018 attracts a civil monetary penalty for any failures in reporting an incident. Imposition of mandatory reporting prompts concerns regarding confidentiality, privacy laws and their restrictions on reporting abuse. The Privacy Act however allows the disclosure of information when appropriate[[6]](" \l "_ftn6" \o ")– that is, with the individual’s consent of his/her personal information, or where a law authorises or requires the disclosure.

Recent efforts by the Australian Bankers Association (ABA) and Capacity Australia in developing an online assessment tool to determine whether a person is at risk of financial abuse is an advancement in the right direction. The recognition of elder abuse as being an essential issue to address by the ABA is imperative moving forward, as education and public awareness are both essential tools in the identification and prevention of financial abuse.

**CONCLUSION**

It is submitted the nature of the issue lends itself to being invisible and difficult to address with the current legal framework. It is imperative and recommended that the joint efforts of the agencies involved in service response implement the financial service sector as a means of improving the effectiveness of the current service responses.

For your considerations,

Gilbert Chionh

[[1]](" \l "_ftnref1" \o ") Mike Clare, Barbara Black Blundell and Joseph Clare, ‘Examination of The Extent of Elder Abuse in Western Australia’ (Public Policy Report, Crime Research Centre of the University of Western Australia, 2011) 3.

[[2]](" \l "_ftnref2" \o ") Ibid, 4.

[[3]](" \l "_ftnref3" \o ") House Standing Committee on Legal and Constitutional Affairs, Submission to The Parliament of the Commonwealth of Australia, Older people and the law, 2007, 15.

[[4]](" \l "_ftnref4" \o ") Wendy Lacey, ‘Neglectful to the Point of Cruelty? Elder Abuse and the Rights of Older Persons In Australia’ (2014) 36 Sydney Law Review 99, 105.

[[5]](" \l "_ftnref5" \o ") Senate Bill 1018: Financial Abuse Reporting Act of 2005, 140, Cal Code (West 2005) (‘SB 1018’).

[[6]](" \l "_ftnref6" \o ") The Privacy Act 1988 (Cth).

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Other comments?