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**Submission re: Question 4 - The ALRC is interested in identifying evidence about elder abuse in Australia. What further research is needed and where are the gaps in the evidence?**

Introduction

I am a law student in Western Australia and prior to studying law, I was employed by the Australian Competition and Consumer Commission. Part of my role was to take reports from those affected by scams. Victims who lost the most money were often those over the age of 65. Their distress and embarrassment was palpable and yet, in most cases, there was nothing the ACCC or law enforcement could do. I believe that a discussion on elder abuse should include reference to scam victims as they are often specifically targeted for their vulnerability and the financial losses and emotional harm can have a significant impact, not just on the individual, but also on their family.[[1]](#footnote-1)

Background

Lord Justice Skinner said that ‘to protect people from being forced, tricked or misled in any way by others into parting with their property is one of the most legitimate objects of all laws’.[[2]](#footnote-2) Referring to the doctrine of undue influence he explains that its importance lies in dealing with ‘insidious forms of spiritual tyranny and with the infinite varieties of fraud’.[[3]](#footnote-3) Although scammers are normally strangers to their victims, they seek to establish a relationship of trust, similar to those in the recognised categories of undue influence. Once that trust is established, the scammer then uses that vulnerability to defraud the person. However, most victims do not have access to recourse through the law as most perpetrators of the crime are outside Australia’s jurisdiction. So how can we protect people when the fraud is more insidious than Skinner LJ could possibly have anticipated?

Definitional Issues

Most definitions of elder abuse confine it to acts committed within a relationship of trust.[[4]](#footnote-4) In the report, ‘Examination of the Extent of Elder Abuse in Western Australia’ the authors note that ‘fraud and theft by people not in a relationship of trust to the older person are not usually considered to be financial elder abuse, and are rather considered as criminal activity’.[[5]](#footnote-5) But what if, as noted above, the fraud is committed by someone who seeks to establish a false sense of trust, as is the case in romance scams, and there is no criminal recourse available to the victim? The authors of the report go on to state that limiting definitions of abuse make solving the issues difficult if we can’t capture the extent of the problem.[[6]](#footnote-6)

The Issues Paper supports this in noting that a definition of what constitutes elder abuse can only be understood through the collection of prevalence data. Data from the ACCC shows that so far in 2016 people over the age of 65 have made 10,110 reports and the amount of money lost totals over $6 million.[[7]](#footnote-7) It should be noted that, as with most abuse, this figure is likely to be lower than the reality of the loss as people are often reluctant to report what has happened to them.[[8]](#footnote-8) This kind of detriment, though experienced across all age groups, is particularly significant for older people as they are specifically targeted by scammers as they:

1. tend to have more money to lose;[[9]](#footnote-9)
2. are more vulnerable to fraud through new technology such as the internet;[[10]](#footnote-10)
3. may be in a period of transition in their personal life and therefore more likely to fall victim to romance scams;[[11]](#footnote-11) and
4. are a growing demographic.[[12]](#footnote-12)

Conclusion

The ALRC should consider data obtained from the ACCC in their report on elder abuse. If definition requires a consideration of prevalence, then I think victims of scams, and therefore people likely to be suffering significant financial and emotional detriment, should be captured, particularly as there is little chance of matters being pursued by law enforcement.[[13]](#footnote-13) If we are concerned about the most vulnerable in our community then we should be most concerned where, at present, once the damage is done, there is no recourse for victims.

1. AIC, Submission No. 40 to House of Representatives Committees, *Inquiry Into Older People and the Law*, 20 September 2007, 1. [↑](#footnote-ref-1)
2. *Allcard v Skinner* (1887) 36 Ch D 145 at 182-3; [1886-90] All ER Rep 90 at 99 per Lindsay LJ. [↑](#footnote-ref-2)
3. Ibid. [↑](#footnote-ref-3)
4. Mike Clare, Barbara Black Blundell and Joseph Clare, ‘Examination of the Extent of Elder Abuse In Australia: A A Qualitative and Quantitative Investigation of Existing Agency Policy, Service Responses and Recorded Data’ (Crime Research Centre, April 2011), p 48. [↑](#footnote-ref-4)
5. Ibid. [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
7. Scamwatch, *Scam Statistics* (June 2016) <https://www.scamwatch.gov.au/about-scamwatch/scam-statistics>. [↑](#footnote-ref-7)
8. ASIC, Submission No. 127 to House of Representatives Committees *Inquiry Into Older People and the Law*, 20 September 2007, 10. [↑](#footnote-ref-8)
9. AIC, Submission No.40, House of Representatives Committees *Inquiry Into Older People and the Law*, 20 September 2007, 3. [↑](#footnote-ref-9)
10. ACCC, Submission No. 39, No.40, House of Representatives Committees *Inquiry Into Older People and the Law*, 20 September 2007, 11. [↑](#footnote-ref-10)
11. ‘Targeting scams: Report of the ACCC on scams activity 2015’, (Report, ACCC, May 2016), 10. [↑](#footnote-ref-11)
12. ‘Intergenerational Report 2015’, The Treasury, 5 March 2015. [↑](#footnote-ref-12)
13. ACCC, Submission No. 39 to House of Representatives Committees, *Inquiry Into Older People and the Law*, p. 12 and 15. [↑](#footnote-ref-13)