**Issue Paper 47-Elder Abuse- Public Submission**

**Topic/Question 34:** Should adult protection legislation be introduced to assist in identifying and responding to elder abuse?

**Background/Interest:**

“Older persons should be able to live in dignity and security and be free of exploitation and physical and mental abuse.” United Nations Principles of Older Persons 1991.[[1]](#footnote-1) As a resident of both Hong Kong (“HK”) and Australia, and a student of law, “Elder Abuse” first caught my attention when an abuse case in an elderly home was reported by the media in HK.[[2]](#footnote-2) Ageing population is a common social phenomenon worldwide, these elder people dedicated their entire lives to society and deserve a dignified lifestyle free of abuse and distress. The current law specifies children, women and people with disabilities but often neglect elderlies. In a report prepared by the Crime Research Center of the University of Western Australia “Examination of the extent of the elder abuse in Western Australia” Elder abuse has been a social issue for Western Australia that surfaced in the 1980s.[[3]](#footnote-3)

In the following paragraphs, I compare the Australian legal reform progress for Elder Abuse with other places like HK and the United Kingdom and conclude that there is a need for the Australian government to upgrade the existing framework, and impose legislation for protecting this particular group of people.

**Existing framework in Australia**

Advocare Inc, the Office of the Public Advocate, Older Person’s Rights Service and the WA Police,[[4]](#footnote-4) form part of the existing Western Australia framework, providing prevention, monitoring and legal services to persons in need. However, among the abovementioned services, only the Office of the Public Advocate and WA Police are government bodies.

The Public Advocate is appointed under legislation,[[5]](#footnote-5) and this Act mainly protects people with impaired decision making abilities but does not provide comprehensive coverage of all elderly.[[6]](#footnote-6) As such, general protection of elderly persons fall into the hand of Advocare, with suspected abuse cases being investigated by the WA police,[[7]](#footnote-7) as guided by the Elder Abuse Protocol 2006.[[8]](#footnote-8)

The WA police provides protection and assistance to victims in ways such as attendance at emergencies and investigations or arrests. Although the protocol was introduced in 2006, as the Crime Research Centre report revealed in 2011[[9]](#footnote-9), Elder Abuse is still alive and well and with little done to combat it, the issue still subsists.

**The need for new framework**

Ten years since the protocol was first introduced, and the issue has not been resolved or lessened, therefore there is a need for a more robust system to protect this particular group of people. The current law does not specify Elder Abuse, and even in the criminal law, provisions exist to only include persons unable to provide the ‘necessaries of life’ for themselves by way of age, sickness or mental impairment.[[10]](#footnote-10) While it provides for age, it fails to specify the term ‘elder’.

Importantly however, the protection afforded in criminal law means that the abuse has already taken place which, in some cases, may be too late. Additionally, victims need to file reports and where criminal cases are concerned, evidence is key. Evidence then, in such cases, is often not easy to collect. In considering access to justice for such victims then, it would be infinitely more efficient and effective to prevent and protect rather than to punish.

Challenges that the government and the Attorney General may face when making reforms to the existing framework include, how to collect accurate and comprehensive data, and a lack of communication or response from victims to name a few. Consequently, social workers and carers make suitable bridges between authorities and victims. However, they need more guidance and powers to fulfill their functions. Therefore, it is important to have legislation specifically dealing with Elder Abuse and/ or adult protection. Additionally, the public should have easy access to such information which may be achieved through community legal education.

Internationally, the battle against Elder Abuse continues to rage. In Hong Kong, the Social Welfare department tackles the same issue on a daily basis. There, legislation and information addressing the handling and reporting of Elder Abuse are made readily available.[[11]](#footnote-11) There are also annual reports carried out on such issues which include specific information such as each type of abuse, the numbers in different districts and types or relationships of abusers. Such specific information will allow for more informed approaches for systemic change.

Scotland has legislation to protect and support adults. For instance, the Adult Support and Protection (Scotland) Act 2007, provides assessment orders, removal orders and banning orders amongst other which aim at efficiently reducing and preventing such occurrences.[[12]](#footnote-12) Protective & preventive legislation have far greater effects than criminal punitive measures.

From the data collected, that a review is needed into adult protection is not in question. But further, the need for an issue paper such as in this instance despite past efforts, represents a systemic failure of previous measures and as such, reveals a necessity for reform.

1. John Brayley, “Closing the gaps: Enhancing South Australia’s Response to the Abuse of Vulnerable Older People” (Report for the Office of Ageing and Disability Services, University of South Australia, 2011) page 6. [↑](#footnote-ref-1)
2. Jennifer Ngo and Lai Ying-kit, *Hong Kong Elderly Home faces loss of licence after naked abuse scandal,* (30th May 2015) South China Morning Post <http://www.scmp.com/news/hong-kong/education-community/article/1812045/hong-kong-nursing-home-regrets-leaving-elderly>. [↑](#footnote-ref-2)
3. 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 Policy, Service Responses and Recorded Data, Crime Research Centre, The University of Western Australia, 2011) page 18. [↑](#footnote-ref-3)
4. Ibid, page 23-24. [↑](#footnote-ref-4)
5. Ibid, page 23. [↑](#footnote-ref-5)
6. *Guardianship and Administration Act 1990* (WA), s. 4(3). [↑](#footnote-ref-6)
7. Professor Clare, Dr Blundell and Dr Clare above n 3, page 25. [↑](#footnote-ref-7)
8. Ibid, page 24 [↑](#footnote-ref-8)
9. Ibid, page 30. [↑](#footnote-ref-9)
10. *Criminal Code Compilation Act 1913* (WA), s. 262. [↑](#footnote-ref-10)
11. *Domestic and Cohabitation Relationships Violence Ordinance* (Hong Kong) cap 189. [↑](#footnote-ref-11)
12. *Adult Support and Protection Act 2007* (Scotland), 57 Eliz 2, ss. 1 – 53. [↑](#footnote-ref-12)