**SUBMISSION TO THE AUSTRALIAN LAW REFORM COMMISSION REGARDING THE INQUIRY INTO ELDER ABUSE**

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I Introduction

I am Bachelor of Laws student at Murdoch University with a particular interest in criminal law. Through my studies I have developed strong research skills which I have utilised in writing this submission. Additionally, I am currently working in the banking industry and it is important to me that I know that we are doing everything we can to protect our customers against financial abuse. Based on the above reasons, my submission is in consideration of question 42. I will consider the terms of reference for this inquiry as well as other supporting evidence to discuss how criminal law should be improved to respond to elder abuse. In particular, I will focus on whether there should be offences specifically concerning elder abuse. As elder abuse is such a large and complex issue, this submission will be confined to physical and financial elder abuse in Western Australia but is translatable to criminal law in other jurisdictions.

II Current Law

Currently, there is no specific legislation in relation to elder abuse.[[1]](#footnote-1) However, there is criminal law that covers physical and financial abuse which applies to the population generally. Harsher penalties also apply to these types of offences when the victim is of or over the age of 60 years.[[2]](#footnote-2) Additionally, the *Restraining Orders Act 1997* (WA) offers further protection to an older person who is a victim of family and domestic or personal violence.[[3]](#footnote-3) *The Criminal Code* also offers further protection to elderly people who rely on another person to provide them with ‘necessities of life’.[[4]](#footnote-4) In line with the terms of reference of this inquiry, I believe that the current law provides adequate protection for older people, allowing them to live lives free from exploitation, violence and abuse. Whilst the current law appears to be satisfactory, I shall consider whether creating specific offences for this area of law would improve criminal law and offer better protection of older people from abuse.

III Should There Be Specific Offences For Elder Abuse?

Contemporary literature contains many arguments for creating offences specifically concerning elder abuse. I disagree with these arguments and believe that creating specific offences would be contradictory to the terms of reference of this inquiry, the rule of law and the objectives of the Australian Law Reform Commission (ALRC). I do not believe that creating specific offences would resolve the issues we are currently facing in relation to elder abuse or that it would help to improve criminal law in this area.

In a recent report, mandatory reporting of suspected financial abuse against elderly people was not supported as it was believed to impinge on their rights.[[5]](#footnote-5) The terms of reference of this inquiry requires that there is minimal interference with rights and preferences of older people so creating laws which have been previously decided against because they interfere with individual rights would contradict this.

One of the objectives of the ALRC and of the rule of law is to simplify the law. As discussed above, there is existing legislation in place which criminalises physical and financial abuse against older people. Creating additional laws specific to a class of people who are already adequately protected under current law would undermine these objectives.

Finally, a major issue we are currently facing with elder abuse is reluctance in reporting. Whilst criminalisation of elder abuse in the USA has helped to publicise the problem, they are still posed with issues around reporting.[[6]](#footnote-6) US researchers have found that even with specific elder abuse laws, five out of six cases of abuse are still not reported.[[7]](#footnote-7)

IV Recommendation/Conclusion

Based on the reasons outlined above, I do not think that creating specific offences will help to improve criminal law in relation to elder abuse. Our current laws offer adequate protection to older people. The main issue that we are faced with at a criminal level is around reporting and there is supporting evidence to show that creating specific offences will not resolve this issue. Older people are often hesitant about reporting abuse because they are reliant on the abuser or because they do not want to damage the relationship further by involving police.[[8]](#footnote-8) We need to focus on providing education and raising public awareness around current laws and processes so that people are not afraid to report elder abuse and so they become aware that the police are there to help get the best result for the family.[[9]](#footnote-9) Providing education and raising public awareness around elder abuse may pose a challenge to the government as elder abuse is significantly lacking in research in comparison with child abuse and domestic violence.[[10]](#footnote-10) However, I believe that providing funding for research in this area in order to increase education and public awareness will be highly beneficial for resolving our current issues around reporting and we should focus our resources on this rather than creating specific offences in order to improve criminal law in this area.

1. Mike Clare, Barbara Black Blundell and Joseph Clare, *Examination of the Extent of Elder Abuse in Western Australia* (Crime Research Centre, The University of Western Australia and Advocare Inc, April 2011) 18 <http://www.advocare.org.au/uploaded/files/client\_added/Examination%20of%20the%20Extent%20of%20Elder%20Abuse%20in%20Western%20Australia.pdf>. [↑](#footnote-ref-1)
2. *Criminal Code Act Compilation Act 1913* (WA) ss 221(1)(d), 409(1)(g). [↑](#footnote-ref-2)
3. *Restraining Orders Act 1997* (WA) s 4(1)(c). [↑](#footnote-ref-3)
4. *Criminal Code Act Compilation Act 1913* (WA) s 262. [↑](#footnote-ref-4)
5. House of Representatives Standing Committee on Legal and Constitutional Affairs, The Parliament of the Commonwealth of Australia, *Older people and the law* (2007) 36. [↑](#footnote-ref-5)
6. Ibid 29. [↑](#footnote-ref-6)
7. Barbara Hamilton, ‘Be Nice to your Parents: or Else!’ [2006] *ElderLawRw* 8. [↑](#footnote-ref-7)
8. House of Representatives Standing Committee on Legal and Constitutional Affairs, above n 5, 24-25; Rosslyn Monro, ‘Elder abuse and legal remedies: practical realities?’ [2002] *ALRCRefJl* 22. [↑](#footnote-ref-8)
9. Australian Broadcasting Corporation, ‘Elder Abuse Talkback Forum’, *774 ABC Melbourne*, 15 June 2016 (Brett Shalders) <http://www.abc.net.au/local/audio/2016/06/15/4482369.htm>. [↑](#footnote-ref-9)
10. Wendy Lacey, ‘Neglectful to the point of cruelty? Elder abuse and the rights of older persons in Australia’ (2014) 36 *Sydney Law Review* 99, 107. [↑](#footnote-ref-10)