15 August 2016

Australian Law Reform Commission

GPO Box 3708
Sydney NSW 2001

***Elder Abuse Inquiry – Question 39 – Should civil and administrative tribunals have greater jurisdiction to hear and determine matters related to elder abuse?***

Dear Sirs

I am a student at Murdoch University, Perth, undertaking a Bachelor of Law degree. I have completed numerous research projects throughout the past four years of my degree, and have also had the opportunity to become familiar with various law reform issues. I currently work part time as a paralegal. My experience is mainly within workers’ compensation, which has provided me with an understanding of the operation of a quasi-judicial body and how matters can often be resolved quickly, cost efficiently, and informally by agreement between the parties at or before conciliation, without need for arbitration or court proceedings.

**The issue**

Currently, the Western Australian State Administrative Tribunal (‘SAT’) has the power to hear matters in relation to people with a decision-making disability.[[1]](#footnote-1) Obviously, this is not applicable to all adults who are at risk of being the victim of elder abuse.[[2]](#footnote-2)

A definition of elder abuse provided by the World Health Organization is ‘a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person’.[[3]](#footnote-3)

Many of the acts which constitute ‘elder abuse’, for example, fraud and assault, are already criminal acts and as such, covered by the Criminal Code.[[4]](#footnote-4) However, elderly people are often abused by family members or caregivers and reluctant to take steps which will result in court proceedings and criminal convictions, given that the relationship may need to continue.[[5]](#footnote-5)

There have been suggestions that it is time to legislate against elder abuse.[[6]](#footnote-6) It is also acknowledged that this needs to be done in a non-paternalistic way and without removing any rights of the type of person who it is aimed at assisting. Giving state tribunals such as SAT (or other appropriate administrative bodies or departments) the power to hear and determine disputes involving elder abuse where there is no defined decision-making disability could be an effective way of providing assistance without removing rights of vulnerable people.

**Recommendations**

State tribunals such as the SAT (or other appropriate bodies) should be given the power to hear matters which involve elder abuse. In addition, there may need to be development of a set of criteria which defines cases of ‘elder abuse’. Whilst age will be one of the important factors it will not, however, be determinative as many elderly people retain the ability to take proper care of their own affairs. Accordingly, a set of criteria for at-risk adults should be developed, based on the Australian Law Reform Commission’s (‘ALRC’) findings. Other factors which may be taken into account are specific disabilities, cultural and linguistic issues, living and financial situations and any other vulnerabilities flagged by the ALRC as problematic.

The power should include the ability to order that the parties attend mediation prior to any determination being made, to allow the parties ample opportunity to come to a mutual agreement, as that may, in some cases, have the effect of salvaging the relationship between them. A system which is driven towards facilitating informal agreements will be more approachable and effective in finding a solution, rather than simply aiming punishing the offender through criminal sanctions.

**Difficulty faced**

One difficulty which may be faced by the government in implementing this plan is that the reluctance to instigate court proceedings may be applicable also to quasi-judicial proceedings. A campaign of community awareness may alleviate this issue, providing information to Australians as to what the problem is, where and what type of help can be sought, and the outcomes which are possible.

Importantly, I believe that it needs to remain voluntary for the party involved to seek assistance. Whilst mandatory reporting requirements and/or an investigatory body may assist in identifying instances of elder abuse, this may place further stress on victims. I believe that community awareness of the issue and avenues through which to seek assistance will be more helpful to the individuals concerned.

Yours faithfully

1. *Guardianship and Administration Act 1990* (WA) ss13, 43. [↑](#footnote-ref-1)
2. Professor Mike Clare et al, 'Examination of the Extent of Elder Abuse in Western Australia' (April 2011) 34. [↑](#footnote-ref-2)
3. World Health Organization, Media Centre, Elder Abuse, <http://www.who.int/mediacentre/factsheets/fs357/en/> (accessed 12 August 2016). [↑](#footnote-ref-3)
4. *Criminal Code Act Compilation Act 1913* (WA). [↑](#footnote-ref-4)
5. In 2014-2015, 63% of elder abuse was perpetrated by sons and daughters, with other perpetrators including friends and neighbours, siblings, carers, parents, spouses, grandchildren, nieces and nephews: Advocare Incorporated, ‘National Elder Abuse: Annual Report 2014-2015’ (2015) <http://www.advocare.org.au/uploaded/files/client_added/NEA%20Annual%20Report%202014-2015.pdf> (accessed 12 August 2016). [↑](#footnote-ref-5)
6. See, for example <http://theconversation.com/the-mistreatment-of-older-people-is-it-time-to-legislate-against-abuse-14922> (accessed 10 August 2016). [↑](#footnote-ref-6)