**Question 1 - To what extent should the following elements, or any others, be taken into account in describing or defining elder abuse:**

* **harm or distress;**
* **intention;**
* **payment for services?**

As a student of law with a strong belief that everyone should have an equal access to justice, I believe that elder abuse is an important topic that needs expanded upon. Throughout my studies the right to justice has been at the forefront of all my learning. Evident from the amount of media coverage there has been on the issue recently, Australia’s laws on elder abuse need developing and an imperative starting point for this is defining “Elder Abuse”.

 **Elder Abuse**

The definition of “elder abuse” is inconsistent.[[1]](#footnote-1) It is important to define the term with uniformity in Australia for a number of reasons; for example it could be used to define criminal offences - where meticulousness and accuracy are extremely important.

The World Health Organisation (WHO) has given elder abuse the following definition: “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”.[[2]](#footnote-2) This definition presents a number of elements, including the type of act or omission; harm and distress; intention; relationship with the abuser; and the target of the abuse.

The Center for Disease Control (CDC) defines elder abuse slightly differently: “an intentional act, or failure to act, by a caregiver or another person in a relationship involving an expectation of trust that causes or creates a risk of harm to an older adult”.[[3]](#footnote-3) The main difference being that the CDC’s definition maintains that abuse must always be intentional.

**Elder**

An important element to take into account is the word elder itself. The term is ambiguous and it is difficult to determine what factors should be taken into account when defining the term. Even determining where old age begins is challenging.[[4]](#footnote-4) Should age range, or measure of frailty play a role in the definition?[[5]](#footnote-5) Or could it be more beneficial to take into account other factors such as a person’s capacity to care for themself and their capability in decision making?[[6]](#footnote-6)

The word elder has also caused some offence amongst Aboriginal people. In their community, elder is used as a term of respect for their leaders.[[7]](#footnote-7) A possible option eliminate this would be to replace the word elder with ‘older people’.

**Abuse**

The definition of abuse is complex due to the various different types of abuse that can occur, such as financial, physical, verbal, psychological, sexual, and neglect.[[8]](#footnote-8) Abuse however, generally results in harm or mistreatment of the person exposed to it.[[9]](#footnote-9) Abuse can result in unnecessary suffering, injury, pain, and loss of human rights.[[10]](#footnote-10) Whether the actions of the perpetrator are labeled abusive, negligent or exploitive will likely depend on factors such as the duration of the mistreatment and how severe it was.[[11]](#footnote-11) It is important to define abuse in order to determine what constitutes the element and know what types of acts or omissions comprise it.

**Harm and distress**

It may be necessary to give definition to harm and distress in order to add more depth to the definition of abuse. WHO defines harm and distress as “an act that causes physical, mental or moral impairment or deterioration”.[[12]](#footnote-12) This definition is important as it gives contextual insight into the effects abuse has on older people and allows for a broader determination of abuse.

**Intention**

Abuse can be the result of intentional or unintentional neglect.[[13]](#footnote-13) In deciding whether abuse has occurred the focus should be on the effects on the person experiencing the abuse, rather than on the intention of the offender.[[14]](#footnote-14) Regardless of the intention of the perpetrator it can sometimes be difficult to argue that no wrong has been committed, for example negligence; which carries no element of intention.[[15]](#footnote-15)

The WHO definition of elder abuse includes both unintentional and intentional conduct; whereas the CDC definition only describes intentional abuse. The discrepancy means it is important to address the element of intention and create a sound understanding of whether intention is or is not a factor of elder abuse within Australia. The Tasmanian and Victorian elder abuse guidelines acknowledge that abuse can occur as a result of neglect and therefore no element of intention, the argument for this is again that the focus should be on the experience of the older person rather than the perpetrator.[[16]](#footnote-16) Intention would be an important factor in relation to instances that fall under criminal law where intention is a vital element.

**Conclusion**

“Elder Abuse” presents many ambiguities with its definition. There are elements that should be given important consideration when giving the term a consistent definition; which there is undoubtedly a need for in Australia. The term elder in itself presents complications in its definition. Further, given the negative connotations and difficulties associated with the term “elder abuse” a possible alternative could be Abuse and Mistreatment of Older People.[[17]](#footnote-17)

1. Mike Clare, Barbara Black Blundell and Joseph Clare, *Examination of the Extent of Elder Abuse in Western Australia* (April 2011) <https://moodleprod.murdoch.edu.au/pluginfile.php/642909/mod\_resource/content/3/Examination%20of%20the%20Extent%20of%20Elder%20Abuse%20in%20Western%20Australia.pdf>. [↑](#footnote-ref-1)
2. *Elder Abuse* (October 2015) World Health Organisation <http://www.who.int/mediacentre/factsheets/fs357/en/>. [↑](#footnote-ref-2)
3. *Elder Abuse: Definitions* (April 2015) Centers for Disease Control and Prevention <http://www.cdc.gov/violenceprevention/elderabuse/definitions.html>/ [↑](#footnote-ref-3)
4. *Abuse of the Elderly,* World Health Organisation <http://www.who.int/violence\_injury\_prevention/violence/global\_campaign/en/chap5.pdf>. [↑](#footnote-ref-4)
5. Above, n1. [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
7. Ibid. [↑](#footnote-ref-7)
8. Ibid. [↑](#footnote-ref-8)
9. Ibid. [↑](#footnote-ref-9)
10. Above, n4. [↑](#footnote-ref-10)
11. Ibid. [↑](#footnote-ref-11)
12. Above, n1. [↑](#footnote-ref-12)
13. Ibid. [↑](#footnote-ref-13)
14. Above, n4. [↑](#footnote-ref-14)
15. Above, n1. [↑](#footnote-ref-15)
16. Above, n4. [↑](#footnote-ref-16)
17. Above, n1. [↑](#footnote-ref-17)