**Introduction**

I am a fourth year mature aged law student at Murdoch University. It is through the research I have done as a student, specifically in units such as Sentencing and Penology and Restorative Justice, that I am able to fully appreciate the intricacies of elder abuse particularly the reporting of it. In addition to my experience and studies, my parents are now at retirement age and live a considerable distance from immediate family, too far for any children to assist or report any abuse. This is why I have chosen question 45 of the Elder Abuse Issues Paper[[1]](#footnote-1): who should be required to report suspected elder abuse, in what circumstances, and to whom?

**Who should be required to report?**

There are two main types of abuse this submission will consider when answering the above question – namely physical abuse and financial abuse. Physical abuse already has somewhat limited requirements in place concerning the mandatory reporting of abuse. Section 63-1AA of the *Aged Care Act,[[2]](#footnote-2)* provides for mandatory reporting of abuse in residential care facilities.[[3]](#footnote-3)While this is an important piece of legislation, it only protects elders from one type of abuse and in limited circumstances – when they are in residential care.[[4]](#footnote-4) This limitation does not cover a vast number of elder people. In order to protect the elder population more fairly, other health care professionals, and aged carers should, in an ideal world, be required to report instances in any situation of suspected physical abuse, much like under s63-1AA.[[5]](#footnote-5)

The question of who should be required to report financial abuse is far more complicated. Financial abuse, for example, is a type of abuse that is both difficult to recognise and define.[[6]](#footnote-6) The broad definition of financial abuse, the illegal use or exploitation of funds of an older person,[[7]](#footnote-7) could be applied to any number of situations and knowing who should report this abuse is difficult to assess.[[8]](#footnote-8) It has been suggested that that “health care professionals and those who work with vulnerable older people”[[9]](#footnote-9) should report financial abuse,[[10]](#footnote-10) but should that be extended to professionals who may be exposed to financial information, such as lawyers, accountants and financial planners? Given the challenges with reporting financial abuse, set out below, it is difficult to justify mandatory reporting.

**Appropriate circumstances – mandatory or voluntary**

The main challenge the government will face concerning the reporting of abuse is the impact reporting will have on the victims, as well as the issues of correctly identifying abuse. There are a myriad of reasons as to why physical or financial abuse is not reported by victims, reasons which include fear of having to move into a residential care home,[[11]](#footnote-11) or the neglect/abuse is from a family member.[[12]](#footnote-12) In a perfect world, all abuse should be reported, but if reporting is mandatory, particularly with physical abuse, the victims may be reluctant to seek help due to the fear of reprisal to/from the perpetrator.[[13]](#footnote-13) With regard to financial abuse, mandatory reporting may lead to the assumption that older people “are incompetent to manage their own affairs purely on the basis of their age…”[[14]](#footnote-14) This is further complicated by the fact that family relationships, particularly concerning large amounts of money, are extremely complex, which makes it difficult to determine if financial abuse is occurring.[[15]](#footnote-15) An act perceived as financial abuse, by one person, may not be as “financial norms of families are diverse.”[[16]](#footnote-16)

There is no simple way to resolve this issue, particularly when family members are involved,[[17]](#footnote-17) Given this complication, the wishes of the victim should be taken into account. Until these issues are resolved, reporting of abuse should not mandatory and if reporting abuse is voluntary, it should be assessed discreetly.

**Who should the abuse be reported to?**

When it comes to physical and sexual assault and similar abuse, the most logical answer is that the police are the best equip to deal these types of reports. However, when it comes to financial abuse, the police may not have the resources to appropriately respond.[[18]](#footnote-18) A possible solution to this situation could be creating a government department, much like the Department of Child Protection,[[19]](#footnote-19) who could handle the response in the first instance, discreetly, and refer it to the police if and when necessary.

**Conclusion**

Until all of the challenges are resolved in a way that is best for all parties involved, there should not be a requirement for reporting abuse. While it is important that older people are protected, their rights should not be taken away unless they do not have capacity to make that decision for themselves.

1. Australian Government, Australian Law Reform Commission, *Elder Abuse* *Issues Paper 47*, June 2016. [↑](#footnote-ref-1)
2. *Aged Care Act 1997* (Cth). [↑](#footnote-ref-2)
3. Ibid ss 63-1AA (2) and (3). [↑](#footnote-ref-3)
4. Ibid. [↑](#footnote-ref-4)
5. Ibid. [↑](#footnote-ref-5)
6. Commonwealth House of Representatives Report, *Older People and the Law* (2007) (“*Older People and the Law*”), [2.10]. [↑](#footnote-ref-6)
7. Ibid [2.7]. [↑](#footnote-ref-7)
8. Ibid [2.8]. [↑](#footnote-ref-8)
9. Ibid [2.80]. [↑](#footnote-ref-9)
10. Ibid. [↑](#footnote-ref-10)
11. Professor Mike Clare, Dr Barbara Black Blundell, and Dr Joseph Clare

    Crime Research Centre, The University of Western Australia, *Examination of the Extent of Elder Abuse in WA* (2011), 44. [↑](#footnote-ref-11)
12. Ibid. [↑](#footnote-ref-12)
13. Ibid 56. [↑](#footnote-ref-13)
14. *Older People and the Law*, above n 6, [2.85]. [↑](#footnote-ref-14)
15. Ibid [2.11]. [↑](#footnote-ref-15)
16. Ibid. [↑](#footnote-ref-16)
17. Ibid [2.9]. [↑](#footnote-ref-17)
18. Ibid [2.14]. [↑](#footnote-ref-18)
19. See: http://www.dcp.wa.gov.au. [↑](#footnote-ref-19)