**ELDER ABUSE INQUIRY:**

**A SUBMISSION FROM A CALD PERSPECTIVE**

TANYA LE

I BACKGROUND

I am a Bachelor of Laws student with an interest in human rights. Presently I am a student paralegal in the Human Rights Law Clinic at Murdoch University and I volunteer at a community legal centre that assists migrants and refugees, with many of our clients coming from culturally and linguistically diverse (CALD) backgrounds. My personal interest lies in the fact that I have a CALD background (Vietnamese) and my parents are progressing towards the age of pension – they are getting closer to being recognised as ‘elders’ or ‘older people’.[[1]](#footnote-1) I see the challenges that my parents and older relatives face with limited English skills, and I am concerned that they may experience additional disadvantages as they get older. Therefore I have chosen to write this submission with a focus on the rights of older people with CALD backgrounds.

II PROPOSAL

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

It is proposed that adult protection legislation *should* be introduced in regards to elder abuse and this submission will highlight the importance of such legislation in CALD communities. The Attorney-General’s Terms of Reference will be used as a primary source of research, however in order to maintain a CALD focus, this submission will also examine some CALD-specific studies from Western Australia.

III DISCUSSION

The Attorney-General is correct in saying that elder abuse is a human rights issue.[[2]](#footnote-2) It is something that we should *all* consider, and unfortunately, there is a greater risk of abuse against an older person where there may be a language or literacy barrier.[[3]](#footnote-3) Therefore as a vulnerable group in society, CALD elders need the protection of legislation so that abuse can be reported and investigated.[[4]](#footnote-4)

A *Cultural Expectations*

In a 2012 study, Blundell and Clare found that there are 200 ethnic groups in Western Australia alone.[[5]](#footnote-5) Due to the sheer amount of CALD communities, there may be differing expectations on the way that elder abuse is understood.[[6]](#footnote-6) In a study by the Office of the Public Advocate in 2006, CALD seniors “were not aware of what constituted elder abuse…and were reluctant to speak out for fear of shame”.[[7]](#footnote-7)

There is an understanding in many cultures that adult children will look after their elderly parents, and as such they take on the unofficial role of a carer. From my personal experience, it is extremely rare for children to send their elderly parents to an aged care facility, with most elderly family members being looked after at home. Due to the strong dependence on family, there is reluctance from CALD elders to report abuse as they do not want to be isolated from the family unit. Consequently, the reliance on family members may *increase* the risk of exploitation and abuse,[[8]](#footnote-8) particularly as many cases of elder abuse are committed by a family member or a person they trust.[[9]](#footnote-9)

B *Challenges*

Due to the large number of ethnic communities in Australia, there are significant challenges in introducing adult protection legislation – it will be an immense task to ensure that older people from all backgrounds and cultures are made aware of the legislation in the first instance. Secondly, it seems that many CALD elders are reluctant to speak out against abuse due to the reliance on family members for their care[[10]](#footnote-10) and many cultures are suspicious of public officials[[11]](#footnote-11) – hindering the reporting of abuse. Thirdly, if abuse is reported, it may be harmful and damaging for the individuals who are experiencing violence.[[12]](#footnote-12)

The language and literacy barrier also creates problems. Assuming that legislation is introduced in English, it will be difficult for some CALD elders to read and understand the legislation. Lastly, if there is a mandatory reporting requirement in the legislation, it is arguable whether it goes against the autonomy of older people to look after themselves.[[13]](#footnote-13)

IV CONCLUSION AND RECOMMENDATIONS

There are limited options for a CALD elder who may be suffering from abuse. The challenges and cultural expectations stated above can make it difficult for any action to be taken by an individual, however CALD elders are a subgroup who need the protection of legislation.

As such, the legislation needs to be framed in a way that mitigates elder abuse and needs to be clear in the types of elder abuse that can be perpetrated against an older person – the general community can refer to the legislation if they suspect any actions that could be identified as mistreatment or exploitation. The legislation should also provide mechanisms for reporting elder abuse, but this should not be mandatory as it arguably interferes with the rights of older Australians to be independent.

I think that adult protection legislation would be a useful tool in identifying elder abuse, however it should not be used as a mechanism for punishing the ‘abuser’ – this should be left for other legislative Acts, such as the various criminal Acts in each State. Positively, the initiation of this report against elder abuse is the right step in creating awareness in the community.

1. There doesn’t appear to be a standardised age criteria in Australia for a person to be considered as an ‘older person’ or ‘elder.’ Varying studies have defined ‘older persons’ anywhere from 45 years of age to 65 years of age, however it is widely accepted in Australia that an ‘older person’ is to be at least 65 years old. See, eg, Australian Law Reform Commission, *Elder Abuse,* Issues Paper No 47 (2016) 15; Australian Law Reform Commission, *Access All Ages – Older Workers and Commonwealth Laws,* Final Report No 120 (2013) 19; Professor Mike Clare, Dr Barbara Black Blundell and Dr Joseph Clare, ‘Examination of the Extent of Elder Abuse in Western Australia’ (Research Paper, Crime Research Centre at the University of Western Australia and Advocare Incorporated, April 2011) 31; Department of Human Services, Australian Government, *Age Pension* (12 August 2016) <https://www.humanservices.gov.au/customer/services/centrelink/age-pension>. [↑](#footnote-ref-1)
2. Senator the Hon George Brandis QC, Attorney-General of Australia, ‘Address at the National Elder Abuse Conference’ (Speech delivered at the National Elder Abuse Conference, Pullman on the Park, Melbourne, 24 February 2016) <https://www.attorneygeneral.gov.au/Speeches/Pages/2016/FirstQuarter/24-February-2016-Address-at-the-National-Elder-Abuse-Conference-Pullman-on-the-Park-Melbourne.aspx>. [↑](#footnote-ref-2)
3. Commonwealth House of Representatives, Parliament of Australia, *Older People and the Law* (2007) 18. [↑](#footnote-ref-3)
4. Australian Law Reform Commission, *Elder Abuse,* Issues Paper No 47 (2016) 17. [↑](#footnote-ref-4)
5. Dr Barbara Black Blundell and Professor Mike Clare, ‘Elder Abuse in Culturally and Linguistically Diverse Communities: Developing Best Practice’ (Research Paper, Centre for Vulnerable Children and Families at the University of Western Australia and Advocare Incorporated, September 2012) 2. [↑](#footnote-ref-5)
6. Australian Law Reform Commission, above n 4. [↑](#footnote-ref-6)
7. Office of the Public Advocate Western Australia, ‘Elder Abuse in Culturally and Linguistically Diverse Communities’ (Research Paper, Office of the Public Advocate, July 2006) 33. [↑](#footnote-ref-7)
8. Australian Law Reform Commission, above n 4. [↑](#footnote-ref-8)
9. Australian Law Reform Commission, above n 4. 14; Office of the Public Advocate Western Australia, above n 7, 13. [↑](#footnote-ref-9)
10. Office of the Public Advocate Western Australia, above n 7. [↑](#footnote-ref-10)
11. Ibid. [↑](#footnote-ref-11)
12. Blundell and Clare, above n 5, 33. [↑](#footnote-ref-12)
13. Australian Law Reform Commission, above n 4, 12. [↑](#footnote-ref-13)