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Ms Sabina Wynn

The Executive Director

Australia Law Reform Commission

GPO Box 3708

SYDNEY NSW 2001

15 August 2016

Dear Ms Wynn

**Re: Submission on ALRC Issues Paper 47 - Elder Abuse**

Thank you for the opportunity to contribute to the ALRC inquiry into Elder Abuse.

This submission provides a response to Question 44 – ‘Are protection orders being used to protect people from elder abuse? What changes should be made to make them a better safeguard against elder abuse?’ This discussion will focus on elders in a broad capacity and will examine the current use of protection orders[[1]](#footnote-1) in Western Australia by them.

**Who am I?**

My name is Donna Dalton and I am currently in my penultimate year of a Bachelor of Laws Degree at Murdoch University. I have also completed two years of a Bachelor of Psychology Degree. I have been employed by Perth City Legal as a law clerk for the past 7 years. We provide legal services primarily for workers’ compensation matters but also in relation to personal injury, criminal matters and criminal injury compensation. The use of protection orders impacts on me not only from an academic and legal perspective, but also from a personal perspective due to experiences within my family and social circle that have occurred in relation to them.

**Protection Orders in Western Australia**

Obtaining a violence restraining order (VRO)[[2]](#footnote-2) is one avenue available to elders suffering from repeated acts of property damage, violence, threats, intimidating behaviour and emotional abuse.[[3]](#footnote-3) Currently, there is no specific legislation dedicated to elder abuse in Western Australia (WA) and a nationally integrated system is still to be developed.[[4]](#footnote-4) In 2011 it was estimated as many as 12,500 elderly people would suffer abuse within that year.[[5]](#footnote-5) However, a lack of uniformity in gathering statistics made it impossible to assess the gravity of the situation.[[6]](#footnote-6) As such, the use of protection orders in response to elder abuse is difficult to calculate.

**Identification of Incidents of Elder Abuse Requiring Protection Orders**

Despite being noted as a ‘significant social issue,’[[7]](#footnote-7) elder abuse still goes largely undetected and under-reported.[[8]](#footnote-8)

Of incidents that are reported, specific instances of elder abuse cannot be identified due to the fact that they are not recorded by the police using a separate classification or category.[[9]](#footnote-9) Currently these incidents would be recorded as an assault or domestic violence.[[10]](#footnote-10)

Similarly, available VRO lodgement statistics from the Magistrate’s Court of WA for the period of 2008 to 2012[[11]](#footnote-11) do not delineate what proportion of these were lodge by older persons, if any were at all. Again, it is impossible to ascertain from this data whether VRO’s are being utilised by elders as a method of protection.

The Ombudsman of Western Australia’s 2015 report examining issues associated with VRO’s and their relationship with fatalities noted that of the thirty fatalities of family and domestic violence, four of these were over the age of 55.[[12]](#footnote-12) Other than to specify that ‘research efforts should target the sub-population of older women,’[[13]](#footnote-13) protection orders regarding elders was not discussed.

Of importance, Western Australian studies identifying to what extent these protection orders are being utilised by elders, or to establish if elders are even aware they are an option available to them, are lacking in.

**International Approach**

‘The United States is generally regarded as having the most longstanding and fully developed system for reporting and treating cases of elder abuse.’[[14]](#footnote-14) In 2006 state statutes pertaining to restraining orders were amended by Wisconsin legislators.[[15]](#footnote-15) In order to better protect the elder, an individual-at-risk restraining order was enacted.[[16]](#footnote-16) This ‘specialized legal mechanism addressing the unique forms of domestic violence perpetrated against individuals at risk plays a critical role in protecting these individuals from abuse, neglect, and exploitation.’[[17]](#footnote-17)

**Recommendations**

It is noted in the 2007 report *‘*Older People and the Law’*[[18]](#footnote-18)* that elders faced significant barriers to accessing legal services.[[19]](#footnote-19) These barriers were described extensively[[20]](#footnote-20) and several recommendations to tackle these were discussed.[[21]](#footnote-21) These issues mirror similar situations experienced in the past with regards to family and domestic violence, and child protection.[[22]](#footnote-22) The use of protection orders was not specifically addressed by this report but on a broader note in order for legal services to be available with regards to this issue, it must first be acknowledged.[[23]](#footnote-23) Awareness around the use of protection orders by elders appears limited and obscured and needs addressing.

A legislative approach to protective orders as demonstrated by Wisconsin legislators would be beneficial to our own jurisdictions. This would aid in not only addressing the issue of protection orders but also fostering awareness and bringing clarity to the situation. Further, policies and procedures need to be developed to enable data to be collected regarding the nature and prevalence of elder abuse within our communities. Importantly, such data must be recorded by police as first point of contact, in an elder abuse specific category. In doing this we may be able to move forward in assessing the use of protection orders by elders, and their requirement and suitability as a method of protection against abuse.

Yours sincerely,

Donna Dalton

1. Depending on which state or territory in Australia, domestic violence protection orders under family legislation are described are described using varying terms. See, Nadia Ibrahim, Shellee Wakefield, and Katrina Finn, *Domestic and Family Violence Protection Orders in Australia: An Investigation of Information Sharing and Enforcement: State of Knowledge Paper* (Landscapes: State of Knowledge, 2015) 2. For the purpose of this submission the terms protection orders and violence restraining orders will be used. [↑](#footnote-ref-1)
2. *Restraining Orders Act* (1979) WA. [↑](#footnote-ref-2)
3. Kaspiew, R., Carson, R., & Rhoades, H., ‘Elder Abuse: Understanding Issues, Frameworks and Responses’ (Research Paper No.35, Australian Institute of Family Studies, Commonwealth of Australia, 2016) 32. [↑](#footnote-ref-3)
4. Mike Clare, Barbara Black Blundell and Joseph Clare, Examination of the Extent of Elder Abuse in Western Australia: A Qualitative and Quantitative Investigation of Existing Agency Policy, Service Responses and Recorded Data (Advocare Incorporated, April 2011) 18. [↑](#footnote-ref-4)
5. Ibid 1-5. [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
7. Ibid 11. [↑](#footnote-ref-7)
8. Ibid 63. [↑](#footnote-ref-8)
9. Western Australia, *Parliamentary Debate*, Legislative Assembly, 9 June 2015, (K, J, O’Callaghan, Commissioner for Police) 26; See also, WA Labour, *WA Labour Discussion Paper: Behind Closed Doors: Elder Abuse in Western Australia* (November 2011) <http://walabor.org.au/policy-and-platform/papers> 16. [↑](#footnote-ref-9)
10. WA Labour, *WA Labour Discussion Paper: Behind Closed Doors: Elder Abuse in Western Australia* (November 2011) <http://walabor.org.au/policy-and-platform/papers> 16. [↑](#footnote-ref-10)
11. Marty Kavanagh, ‘”Warping the Process and Causing Greater Confusion” Violence Restraining Orders: A Few Things Worth Knowing’ (Paper presented at Law on the Lounge Bali, Family Law Conference, Bali, 2 June 2013) 2. [↑](#footnote-ref-11)
12. Ombudsman, ‘Investigation into Issues Associated with Violence Restraining Orders and Their Relationship With Family and Domestic Violence Fatalities’ (Report, Ombudsman of Western Australia, 2015) 85. [↑](#footnote-ref-12)
13. Ibid 79. [↑](#footnote-ref-13)
14. Kaspiew, R., Carson, R., & Rhoades, H., ‘Elder Abuse: Understanding Issues, Frameworks and Responses’ (Research Paper No.35, Australian Institute of Family Studies, Commonwealth of Australia, 2016) 41 [4], quoting World Health Organization, *Global Status Report on Violence Prevention* (2014) Geneva; WHO <http:www.who.int/violence\_injury\_prevention/violence/status\_report/2014/en/>. [↑](#footnote-ref-14)
15. Betsy, J, Abramson., Marsha, M, Mansfield and Jane, A, Raymond, ‘Wisconsin’s Individual-At-Risk-Restraining Order: An Analysis of the First Thirty Months’ (2011) *The Elder Law Journal* 18(2), 247. [↑](#footnote-ref-15)
16. Ibid 252 [2]. [↑](#footnote-ref-16)
17. Ibid 281 [1]. [↑](#footnote-ref-17)
18. House of Representatives Standing Committee on Legal and Constitutional Affairs, Parliament of the Commonwealth of Australia, *Older People and the Law* (2007) 37-41. [↑](#footnote-ref-18)
19. Ibid [↑](#footnote-ref-19)
20. Ibid [↑](#footnote-ref-20)
21. Ibid xv. [↑](#footnote-ref-21)
22. Kaspiew, R., Carson, R., & Rhoades, H., ‘Elder Abuse: Understanding Issues, Frameworks and Responses’ (Research Paper No.35, Australian Institute of Family Studies, Commonwealth of Australia, 2016) 1. [↑](#footnote-ref-22)
23. Above n 17, 40 [12.13]. [↑](#footnote-ref-23)