**Protecting the rights of Older Australians from Abuse**

**Submission by Ashleigh Freeman**

This submission addresses the ways criminal laws can be improved to respond to elder abuse, focusing on the need for specific criminal offences concerning elder abuse. With the World Health Organization (‘WHO’) estimating older people in high or middle-income countries experience abuse at a rate of 2.2% to 14%,[[1]](#footnote-1) it is vitally important Australia has an effective criminal law response in place. As a law student at Murdoch University, my research in the areas of criminal, and social and welfare law, along with my experience as a Practice Manager of a general practice medical centre, have made me aware of the vulnerability of older Australians to abuse and the importance of effective response.

**Criminal law and elder abuse in Australia**

The Senate Committee on Community Affairs report on violence, abuse and neglect against people with a disability (encompassing older Australians) found  ‘people with disability who are victims of crime, face significant barriers to having those crimes appropriately reported, investigated and prosecuted’, placing Australia in contravention of its international human rights obligations to provide access to justice.[[2]](#footnote-2) I believe the absence of laws dealing specifically with elder abuse directly contribute to this problem. Offences against older Australians are currently prosecuted under the relevant state and federal criminal law statutes,[[3]](#footnote-3) differing from state to state,[[4]](#footnote-4) and resulting in inconsistencies in the prosecution elder abuse. The current legislative regime can result in an inability to prosecute where the incident of elder abuse does not fit an existing category of offence. A recent case in Queensland that gathered significant media attention illustrates this point: Despite medical evidence that an 88 year old woman suffered a ‘severe degree of neglect’ to ‘the point of cruelty’, while being cared for by her daughter, there was insufficient evidence to pursue prosecution under current legislation.[[5]](#footnote-5) The Queensland Deputy State Coroner asked the Attorney General to consider referring a review of legislation to the Queensland Law Reform Commission.[[6]](#footnote-6)

**Criminal law and elder abuse in the United States**

In it’s 2002 *World Report on Violence and Health*, the WHO pointed to the limited number of countries that have enacted legislation on elder abuse and called for the extension of existing laws on domestic or intra-family violence to include older people; amendments to existing criminal and civil laws to cover elder abuse, neglect and exploitation; and the introduction of new laws specifically for the protection of older people.[[7]](#footnote-7)

The State based jurisdiction of criminal law in Australia creates difficulty in consistently implementing the WHO’s recommendations. The United States (‘US’) is viewed as a leader in addressing elder abuse and provides an example of a national-level response with a States based approach to criminal offences.[[8]](#footnote-8) National prevention-focused committees maintain the national focus of elder abuse and the States legislate for the criminal prosecution of elder abuse offences. For example, Chapter 13 of the *California Penal Code* contains a number of elder abuse offences, including the willful causing or permitting of an elder or dependent adult ‘to suffer unjustifiable physical pain or mental suffering’ and willfully causing or permitting an elder or dependent adult ‘to be placed in a situation in which his or her person or health is endangered.’[[9]](#footnote-9) The California *Welfare and Institutions Code* (‘the Code’) also contains a similar provision in relation to willfully causing or permitting any elder or dependent adult to suffer; inflicting unjustifiable physical pain or mental suffering upon him or her; or willfully causing or permitting the person or health of the elder or dependent to be injured.[[10]](#footnote-10) The Code also legislates for the violation by a caretaker of any provision of law prescribing theft or embezzlement, with respect to the property of an elder or dependent adult.

**Conclusion**

The current approach to criminal prosecution of elder abuse in Australia is not effective due to a lack of national consistency and oversight. To meet its international obligations to provide access to justice, Australia needs to reform its criminal laws to include specific offences in relation to elder abuse. The US system of national oversight and State based criminal prosecution is a system that can be successfully adapted and implemented in Australia.

**Recommendations**

1. A national body be set up with education, review and recommendation functions to maintain a consistent, national-based approach to elder abuse.
2. State criminal codes to be amended to include specific offences relating to elder abuse, in line with the WHO recommendations and the current US practice.
1. World Health Organization, *World report on ageing and health* (2015) <<http://apps.who.int/iris/bitstream/10665/186463/1/9789240694811_eng.pdf?ua=1>>. [↑](#footnote-ref-1)
2. ##  Senate Standing Committee on Community Affairs, Parliament of Australia, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability* (2015) 6.114- 6.115.

 [↑](#footnote-ref-2)
3. House Standing Committee Legal and Constitutional Affairs, Parliament of Australia, *Older People and the Law* (2007) 4. [↑](#footnote-ref-3)
4. Clare, M. Blundell, B. Clare, J. (2011) Examination of the Extent of Elder Abuse in Western Australia: A Qualitative and Quantitative Investigation of Existing Agency Policy, Services Responses and Recorded Data, Report by Crime Research Centre UWA and Advocare Inc, 9. [↑](#footnote-ref-4)
5. *Inquest into the Death of Cynthia Thoresen* (Coroner’s Court, Brisbane, 2009/3, 22 May 2013) <http://www.courts.qld.gov.au/\_\_data/assets/pdf\_file/0004/184117/cif-thoresen-c-20130522.pdf>. [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
7. World Health Organization, *World report on violence and health* (2002) < http://apps.who.int/iris/bitstream/10665/42495/1/9241545615\_eng.pdf>. [↑](#footnote-ref-7)
8. Ibid. [↑](#footnote-ref-8)
9. CAL Penal CODE § 368(b)(1) (2009). [↑](#footnote-ref-9)
10. CAL Welfare and Institutions CODE § 15656(a) (2009). [↑](#footnote-ref-10)