**SUBMISSION TO THE AUSTRALIAN LAW REFORM COMMISSION**

**ELDER ABUSE AND COMMONWEALTH LAWS**

**Question 48: How should sentencing laws and practices relating to elder abuse be improved?**

Introduction

My name is Jenee Peters and I thank you for the opportunity to make a submission to the commission regarding elder abuse. I am currently studying Law at Murdoch University and have recently completed a Criminal Law unit. I found this area of law incredibly interesting and essential to beginning to understand how Criminal Law operates in Australia. I achieved sounds results in this unit, with my marks being in the top 3% of those enrolled in the unit. As I am passionate about Criminal Law, I believe Question 48 in the Issues paper on elder abuse is of significant importance, not only for the legal community, but for everybody. Elder abuse is a serious issue and it is likely that it will affect all of us either directly or indirectly. We all have relations or know elders who could potentially be subjected to elder abuse, or even be the victim of elder abuse one day ourselves.

Elder Australians are Vulnerable

All jurisdictions in Australia have specific provisions relating to offences against groups deemed vulnerable within the community, such as children and those with mental illness, which attract higher sentences. The *Criminal Code Act 1913* (WA) has provisions for higher sentences for offences against individuals over the age of 60 but the legislation stops there. Research has suggested that the percentage of Australians aged 65 and over will double by 2031, going from 12% to 25%.[[1]](#footnote-1) Furthermore, it has been reported that the number of elder abuse cases are increasing.[[2]](#footnote-2) It is clear that elders within our community are vulnerable, not only because of the issues that arise from aging, but also because many elders also suffer from mental and physical impairments, such as dementia. It has been reported that more than 50% of people living in aged care have dementia.[[3]](#footnote-3) It has also been reported that the risk of exploitation for elder Australians can be exacerbated by factors including reduced mobility, vision and hearing.[[4]](#footnote-4) These issues put elders in a particularly vulnerable position.

Proposed Changes

As the elderly are a vulnerable group within our society, I believe they should be treated consistently with other vulnerable groups acknowledged within our society. I believe that the following changes should be implemented –

* Sentencing laws should be amended so that there are higher sentences for crimes against the elderly, mirroring what has been implemented for other groups deemed vulnerable.
* A graduation of sentences could be implemented, with offences against the most vulnerable elders attracting the highest sentence. The group deemed ‘most vulnerable’ could be determined depending on age as well as physical or mental impairments, for example, a 70 year old with dementia could be deemed more vulnerable that a 80 year old with no impairments.
* A distinction must also be drawn between offenders that are unknown to the victim, and those who hold a position of trust to the victim - anyone in a position of trust should be subjected to further higher sentences.
* There should be mandatory sentencing for any person who repeatedly victimises the elderly.

Increasing the sentences for offences against the elderly would act as a deterrence to potential offenders. It would acknowledge the fact that exploiting elder’s vulnerabilities is not acceptable and a serious offence. Furthermore, it would raise awareness within the community that elder abuse will not be tolerated in Australia.

Difficulties regarding the changes

One of the greatest difficulties in changing the sentencing will be implementing it in such a manner which does not offend or disrespect the elderly population, or diminish their rights. It is essential to maintain a high level of respect and regard for the elderly and not make them feel like they are disadvantaged group in our community, but still a valued and integral part of our society. I believe that if the changes are implemented in the appropriate manner it can be done so in a way which values the elderly population and acknowledges their importance whilst protecting them.

Conclusion

As the Hon George Brandis QC, Attorney-General of Australia stated, ‘Elder abuse is a human rights issue and it is also an underappreciated and serious problem’.[[5]](#footnote-5) This issue is serious and is being acknowledged globally. In America, 20 States enacted legislation protecting the elderly in 2013.[[6]](#footnote-6) It is clear that Australia also needs to enact changes to reflect modern attitudes that elder abuse needs to be addressed by the Law. Implementing higher sentences for offences against the elderly is consistent with the rule of law that the laws ‘protect fundamental rights’.[[7]](#footnote-7) Changing the sentencing will ensure that the law adequately protects elders in Australia in the same manner it protects other vulnerable groups. It will also send a message that elder abuse is a serious offence and harsh penalties apply. These changes will address the issue before it becomes more prevalent within our society.

I thank you again for the opportunity to make a submission regarding this issue,

Yours sincerely,

Jenee Peters

1. Mike Clare, Barbara Black Blundell and Joseph Clare, ‘Examination of the Extent of Elder Abuse in Western Australia’ (Report, Crime Research Centre, The University of Western Australia, April 2011) 29. [↑](#footnote-ref-1)
2. Ibid 11. [↑](#footnote-ref-2)
3. Attorney-General The Hon George Brandis QC, ‘Address at the National Elder Abuse Conference’ (Speech delivered at the Pullman on the Park, Melbourne, 24 February 2016). [↑](#footnote-ref-3)
4. House of Representatives Committees, Parliament of Australia, *Older People and the Law* (2007) 18. [↑](#footnote-ref-4)
5. Hon George Brandis QC, Attorney General, above n 3. [↑](#footnote-ref-5)
6. National Conference of State Legislatures, *Financial Crimes Against the Elderly – 2013 Legislation* (2013) http://www.ncsl.org/research/financial-services-and-commerce/financial-crimes-against-the-elderly-2013-legis.aspx. [↑](#footnote-ref-6)
7. World Justice Project, *What is the Rule of Law?* http://worldjusticeproject.org/what-rule-law. [↑](#footnote-ref-7)