**Elder Abuse**

**ALRC Community Submission**

**Tahlia J Beeson**

Q42. In what ways should criminal laws be improved to respond to elder abuse?

**I Introduction**

My name is Tahlia Beeson and I am a post-graduate law student at Murdoch University. I have over six years’ experience working in WA’s health industry as a medical receptionist. During that time, I have witnessed the consequences of elder abuse on patients, family members and medical staff. This submission will address how state and territory criminal laws can be improved to better respond to elder abuse. Amendments must recognise older persons as a vulnerable group and maintain their fundamental human rights.

**II Definition of elder abuse**

In their report on ‘Violence, abuse and neglect against people with a disability’, the Senate Community Affairs Committee highlighted the problems associated with ‘a sharp distinction between people who have capacity and those who do not’.[[1]](#footnote-1) The Report highlights that a narrow definition of legal capacity ‘deprives people with a disability of basic human rights, including the right to access and justice’.[[2]](#footnote-2) Although the Report identifies the need for a more encompassing legal definition of capacity, it fails to identify the unique issues associated with an unclear definition of elder abuse.

There is no common definition of elder abuse across Australia. Definitions in most states are ‘too narrowly framed to operate as comprehensive strategies for safeguarding older persons against all types of abuse’.[[3]](#footnote-3)

A common definition of elder abuse is ‘essential to ensure consistency, to properly identify behavior which constitutes elder abuse, provide improved protection at law and to develop appropriate multi-disciplinary responses’.[[4]](#footnote-4) Therefore, a consistent definition of elder abuse should be established across all states and territories.

State and territory governments will face some difficulty in reaching a definition that encompasses every facet of elder abuse as elder abuse ‘is a complex issue that presents inherent difficulties’.[[5]](#footnote-5)

**III Protection of human rights**

Human rights must be at the forefront of legislative amendments regarding elder abuse. The Senate Community Affairs Committee Report recommends ‘reforming state and territory law to be consistent with national decision-making principles that recognise people with disabilities as persons before the law and their right to make choices for themselves’.[[6]](#footnote-6) In addition to this, legislation must recognise that older persons ‘are entitled to the respect and recognition of their fundamental human rights and an older person, unlike a child, is not inherently vulnerable and in need of protection’.[[7]](#footnote-7) In Scotland, ‘human rights principles are embedded into legislative and policy processes’.[[8]](#footnote-8) These principles require that those involved in decision making for the vulnerable adult ‘have regard to the wishes of the adult, ensure the adult is participating as fully as possible and that the adult is not treated less favorably’.[[9]](#footnote-9) This model should provide the basis for legislation in all states and territories to avoid a ‘paternalistic approach to elder abuse policies’[[10]](#footnote-10) and protect older persons fundamental human rights. Governments must recognise the challenge protecting older persons’ human rights when ‘majority of Australia’s jurisdictions lack human rights based charters and a normative human rights framework is presently absent in binding international instruments’.[[11]](#footnote-11) The fact that ‘human rights are effectively marginalised under international human rights law’[[12]](#footnote-12) means that states and territories face a greater challenge to protect older persons at state level.

**III Statutory mandate to investigate abuse**

Beyond serious criminal cases and mental incapacity, states and territories fail to establish clear statutory mandates for investigating elder abuse. ‘In no jurisdiction is there a dedicated agency with the mandate to investigate reported cases of abuse, compel another agency to provide information or cooperate in an investigation, convene multi-agency meetings or to seek specific orders to safeguard a vulnerable older person’.[[13]](#footnote-13) The Senate Community Affairs Committee Report highlighted allegations that ‘serious or critical incidents are inconsistently reported or not adequately investigated’.[[14]](#footnote-14) This is further evidence that criminal laws must be amended to ‘include statutory conferral of authority on a new agency to exercise interventionist and protective powers for the benefit of vulnerable adults’.[[15]](#footnote-15)

The fact that ‘only the police have the legal authority to enter a premise and investigate a case of abuse’[[16]](#footnote-16) is another significant flaw in the elder abuse state-based framework. ‘Other agencies would be more suited to conducting the initial investigation in a case of elder abuse given the familial and personal relationships frequently involved’.[[17]](#footnote-17)

Therefore, the response to elder abuse will be significantly improved by statutory mandate for an independent agency to investigate reported elder abuse.

**III Conclusion**

The abuse, neglect and exploitation of Australia’s older population is a growing concern. Adult protection legislation in all states and territories must be established to define elder abuse, protect fundamental human rights and create a clear mandate for agencies to investigate elder abuse. These changes will significantly improve criminal law responses to elder abuse. Recognising that elders are a vulnerable group that require specific criminal protections will facilitate a ‘change in attitudes, increase awareness and encourage prosecutions’.[[18]](#footnote-18)

**Words 802**

1. Senate Report [↑](#footnote-ref-1)
2. Senate Report [↑](#footnote-ref-2)
3. Wendy Lacey, ‘Neglectful to the Point of Cruelty? Elder Abuse and the Rights of Older Persons in Australia’ (2014) 36 *Sydney Law Review* 1. [↑](#footnote-ref-3)
4. Ibid [↑](#footnote-ref-4)
5. Office of Public Advocate, *Elder Abuse: How well does the law in Queensland cope?* (June 2010) Queensland Law Society <https://www.qls.com.au/About\_QLS/News\_Media/News/Headlines/Elder\_abuse\_How\_well\_does\_the\_law\_in\_Queensland\_cope>. [↑](#footnote-ref-5)
6. Community Affairs References Committee, Senate, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions* (2015), 75. [↑](#footnote-ref-6)
7. Wendy Lacey, ‘Neglectful to the Point of Cruelty? Elder Abuse and the Rights of Older Persons in Australia’ (2014) 36 *Sydney Law Review* 1. [↑](#footnote-ref-7)
8. John Brayleye, *Closing the Gaps: Enhanging South Australia’s Response to the Abuse of Vulnerable Older People* (October 2011) Australian Guardianship and Administration Council < http://www.agac.org.au/images/stories/closing-gaps-final-rep-prop-policy.pdf>. [↑](#footnote-ref-8)
9. Ibid. [↑](#footnote-ref-9)
10. Wendy Lacey, ‘Neglectful to the Point of Cruelty? Elder Abuse and the Rights of Older Persons in Australia’ (2014) 36 *Sydney Law Review* 1. [↑](#footnote-ref-10)
11. Wendy Lacey, ‘Neglectful to the Point of Cruelty? Elder Abuse and the Rights of Older Persons in Australia’ (2014) 36 *Sydney Law Review* 1. [↑](#footnote-ref-11)
12. Ibid. [↑](#footnote-ref-12)
13. Ibid. [↑](#footnote-ref-13)
14. Community Affairs References Committee, Senate, *Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions* (2015), 149. [↑](#footnote-ref-14)
15. John Brayleye, *Closing the Gaps: Enhancing South Australia’s Response to the Abuse of Vulnerable Older People* (October 2011) Australian Guardianship and Administration Council < http://www.agac.org.au/images/stories/closing-gaps-final-rep-prop-policy.pdf>. [↑](#footnote-ref-15)
16. Wendy Lacey, ‘Neglectful to the Point of Cruelty? Elder Abuse and the Rights of Older Persons in Australia’ (2014) 36 *Sydney Law Review* 1. [↑](#footnote-ref-16)
17. Ibid. [↑](#footnote-ref-17)
18. Ibid. [↑](#footnote-ref-18)