**Introduction**

This submission is made by Thomas Ashby, a final year law student with a particular interest in the area of elder abuse. The reason this question has been selected is because of the author’s strong interest in protecting the most vulnerable members of our society. With experience in youth work and a strong desire to see all citizens being treated equally and fairly under the law, the author has a strong understanding of the rule of law and how this must continue to apply even to those members of society who are unable to champion it for themselves.

This submission will focus on addressing Question 45 of the Elder Abuse Inquiry Issues paper. The specific interest of this submission will be in regards to mandatory reporting, who should be required to report any instances of elder abuse and under what circumstances those reports must be made. It will analyse the current laws surrounding mandatory reporting of child abuse and how the adoption of this style of reporting across all Australian jurisdictions can be modelled to reduce the instances of elder abuse within our society.

**Mandatory Reporting Background**

Mandatory reporting where there are instances of abuse against children has been introduced across all Australian state jurisdictions. While there are a number of differences between the legislation in the jurisdictions, the underlying foundation of mandatory reporting remains the same. It has been defined as ‘The legal requirement to report suspected cases of child abuse and neglect’[[1]](#footnote-1) and each jurisdiction has the same underlying principles for why the legislation was adopted. It has been adopted because of the belief that it is the responsibility of an entire community to raise children and children do not have the necessary resources available to them in order to prevent abuse against themselves[[2]](#footnote-2). All jurisdictions have applied their mandatory reporting laws to those professions who are deemed to be in regular contact with children and who have a deep understanding of the development of children[[3]](#footnote-3). These professions include teachers, nurses, doctors and child care workers.

**Application to Elder Abuse**

The success of mandatory reporting in the prevention of child abuse has been seen across all jurisdictions which have adopted these laws. It has been observed that where mandatory reporting laws have been introduced there has been a substantial and sustained increase in the identification of cases of child abuse[[4]](#footnote-4). This model can be applied in order to increase the identification of cases where elder abuse is occurring. The rationale for the adoption of mandatory reporting for instances of elder abuse is similar to that used in the adoption of the child abuse laws. Elderly people often do not have the resources available to them in order to be able to report or are often intimidated or manipulated in order to prevent them from reporting these circumstances. By adopting the recommendations in the submission, the law reform commission will be acknowledging the exploitation that occurs against elders within our community and will afford them the protections they require in order to continue living their lives to their potential as well as giving them the full protections that they should be afforded under the rule of law.

**Recommendations**

This submission makes a number of recommendations for the Commission to consider:

1. Mandatory Reporting law be adopted in all Australian jurisdictions;
2. A broad definition be given to the term ‘Elder’ in the legislation in order to afford protection to the greatest number of vulnerable people in our society;
3. The term ‘abuse’ refer to the physical, sexual, financial and psychological mistreatment of the defined people;
4. That ‘abuse’ include the unfair taking advantage of the defined people;
5. That reporting be made mandatory to the professions of doctors, lawyers, nurses, nursing home staff and any other profession which the Commission sees fit.

# Conclusion

In order to protect some of the most vulnerable people in our society, mandatory reporting laws of elder abuse of any kind must be adopted. This will see an increase in the identification and rectification of any abuse which has occurred. This extremely serious issue must be addressed with the full weight of the law in order to ensure that elderly people within our society continue to be afforded the full protections under the rule of law.

1. Australian Institute of Family Studies, *Mandatory reporting of child abuse and neglect* (February 2009) South Eastern Centre Against Sexual Assault & Family Violence <http://www.secasa.com.au/assets/Documents/mandatory-reporting-of-child-abuse-and-neglect.pdf>. [↑](#footnote-ref-1)
2. Ben Mathews and Kerryann Walsh, ‘Issues in mandatory reporting of child sexual abuse by Australian teachers’ (2004) 9 *Australia and New Zealand Journal of Law and Education* 4. [↑](#footnote-ref-2)
3. Ibid. [↑](#footnote-ref-3)
4. Ben Matthews, Xing Ju Lee and Rosana Norman ‘Impact of a new mandatory reporting law on reporting and identification of child sexual abuse: A seven year time trend analysis’ (2016) 56 *Child Abuse and Neglect* 79. [↑](#footnote-ref-4)