INQUIRY INTO INQUIRY INTO ELDER ABUSE IN NEW SOUTH WALES

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CRIMINAL JUSTICE RESPONSES TO ELDER ABUSE

Submission to the NSW Upper House Inquiry into Elder Abuse

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While older Australians are less likely to experience most forms of interpersonal violence (1.9% of those over 55 years; ABS, 2012a), it is expected that structural ageing will increase the social, economic and environmental conditions for the victimisation of older people, particularly violence against the person and fraud. To date, there is a policy and practice vacuum in relation to policing elder abuse in Australia. In large part, policing organisations have managed elder abuse as they would comparable crimes committed against younger victims. In this sense, policing organisations have yet to identify the unique characteristics of violence against older Australians, and as such, have utilised service-delivery and criminal investigation techniques that may not effectively respond to, nor secure prosecutions for, this distinctive violence. More problematically, the issue of the role of the police and the criminal justice system in preventing elder abuse has yet to be systematically examined in an Australian context.

**Elder Abuse: Definitions**

Biggs and Goergen (2010), and Wilber and Acierno (2008) suggest that a lack of conceptual clarity and inadequate definition of the issue have made it difficult to ‘determine incidence, prevalence, antecedents, and costs’ of elder abuse. Elder abuse was first described in medical journals in the 1970s, and was subsequently linked to discussions about family violence (Wolf, 2000). Yet, there is wide variability in the definition of elder abuse, neglect and mistreatment (Biggs, Menthorpe, Tinker, Doyle and Erens, 2009; Kurrle and Naughtin, 2008; Lowenstein 2009; Morgan, Johnson, and Sigler 2006).

Elder abuse tends to be an all-inclusive term to describe the mistreatment of older people through a myriad of victimisations along a spectrum which includes acts of commission (abuse) as well as omission (neglect). These definitions therefore construct elder abuse as both an intentional and unintentional act. In line with those definitions adopted by the Australian, Queensland, Tasmania and NSW governments, elder abuse is ‘a single or repeated act occurring within a relationship where there is
an implication of trust, which causes harm to an older person’ (Tasmanian Department of Health and Human Service, 2010: 9).

According to Ashton (1995), this generalised definition of elder abuse captures three types of action against the elderly: neglect (isolation, abandonment, social exclusion); violation (human, legal and medical rights), and; deprivation (choices, decisions, status, finances and respect). Each of these can include various dimensions of physical, psychological or emotional, financial and material, sexual, and social abuse (DHHS 2010: 11; James, 1992).

The ‘Dark Figure’ of Elder Abuse

As the proportion of older people continues to grow, the issue of elder abuse is expected to increase in magnitude, especially in the contexts of structural ageing and increased inter-generational sharing of the family home. According to the Australian Bureau of Statistics, residents over the age of 65 currently represent 14 per cent of the Australian population, but this is projected to increase to 22 per cent by 2061 (ABS, 2012b). Despite the increasing attention to the needs of older Australians in the context of structural ageing, Naughtin argues that elder abuse is still a ‘predominantly hidden issue’ and that Australian criminal justice systems have ‘failed to collect statistics on the numbers of reported and substantiated cases of elder abuse’ (2008: 27). Further, apart from the work undertaken by Payne (2002) and Payne et al (2001; 2005) in the US, unlike the disciplinary areas of health and welfare, criminology and policing studies have largely ignored this issue.

What research exists shows that the prevalence of overall abuse ranges between 2 per cent and 27.5 per cent depending on the population being studied and the measures and definitions used (Cohen, Levin, Gagin, & Friedman, 2007; Cooper, Selwood, & Livingston, 2008; McAlpine, 2008; Wolf, 2000; Biggs, Manthorpe, Tinker, Doyle & Erens, 2009; Kurrle and Naghtin, 2008; Clare, Blundell & Clare,
Research conducted by Bagshaw et al (2009) for the Australian Domestic and Family Violence Clearinghouse suggests that prevalence of elder abuse in Australia is likely to mirror that of the UK, which is estimated at 4-6 per cent. Yet, in earlier research conducted by an Aged Rights Advocacy Service (ARAS) in Adelaide, it was found that 20 per cent of participants had been abused, and that 56 per cent of abusers lived with the victim; with the adult child being the most common offender (Cripps, 2000, 2001). The Director of the Elder Abuse Prevention Association, ‘guestimated’ that there were approximately 100 000 cases of elder abuse in Australia annually (cited in O’Neill, 2009).

**Under-reporting of Elder Abuse**

Similarly to their peers who experience comparable violence, victims of elder abuse are reluctant to report abuse inflicted by another person—especially when there is an intimate or familial relationship with the offender (Heenan, 2004). There may be shame associated with being abused by people they trust, as well as the fear of jeopardising relationships with family and friends. Additionally, older Australians may fear that a complaint of elder abuse may result in their placement in a residential facility and a consequential loss of independence (James, 1992; Ellison et al., 2004). Some may have endured a lifetime of abuse, while others may become victims of elder abuse due to personal or situational factors such as reduced self-confidence and self-esteem after the loss of a partner, change in health or move into residential care. However, research clearly indicates that social isolation is a precursor to much of the reported elder abuse, and that social inclusion is its remedy.

Despite the increased surveillance of elder abuse in Australian nursing homes, there continues to be little or no reliable data on the prevalence of elder abuse of those living in the community (with the exception of Cripps, 2000). The lack of reporting of, and awareness about, elder abuse has resulted in limited data from criminal justice sources on the rates of victimisation (Kurrle, Sadler & Cameron, 1991;
Lowenstein, 2009). In fact, the multi-disciplinary nature of responding to elder abuse has led to multiple layers of monitoring with little or no consistency in reporting techniques, nor the capacity to consolidate reports of elder abuse from across the various health, welfare and criminal justice agencies (Payne 2002; Daniels, Baumhover, Formby and Clark-Daniels, 1999).

**Policing Strategies**

To date, elder abuse has been managed by most policing services, including NSW Police Force, as a form of domestic or family violence. Although Thomas (2009) found that approximately 80 per cent of offenders were family members, the classification of, and policing response to, elder abuse as a form of family violence raises significant issues in the case of those older Australians who experience violence that is not familial. Additionally, addressing elder abuse within the operational contexts of family violence is also problematic given the pro-arrest and pro-prosecution strategies employed by policing organisations. This approach prioritises the safety of the victim, but in the case of elder abuse, may generate additional problems relating to care and independence.

Relatedly, a critical issue often encountered by policing services in managing suspected cases of elder abuse is that when an individual is removed from the family home for family or intimate partner violence, a common response to their homelessness is their re-housing with their elderly parents. This creates a situation where an abuser, who often has deep-seated anger over their removal from their home, are entrusted with the care of their parents as a means to resolve their own accommodation problems. This has been found to be deeply problematic as it increases the chances of family violence occurring in the extended as well as the nuclear family.

While the inter-agency committees established in most Australian states enable knowledge transfer, this is limited to policies and practices, and rarely includes the transmission of reported elder
abuse data (NSW Family & Community Services, 2014). The development of third-party reporting systems and helplines (such as the NSW Elder Abuse Helpline and Resource Unit) may assist in increasing knowledge about and responses to elder abuse; however, as with so many victims of family violence, the willingness and capacity to make a complaint against a family member may mean that these reports to non-policing organisations will not be recorded, and policing services will be unable to justify the necessary resources for a crime problem of which there is little or no evidence.

It is important to note that the online information provided by NSW Elder Abuse Helpline on strategies to address elder abuse only recommends contacting the police in an emergency situation, when an older person is in immediate danger or at risk of serious harm. While the service privileges the autonomy of older people to make decisions about when to contact police, they do not promote this to older Australians as a critical step in resolving elder abuse, and caution against advocates, family and friends contacting the police without the permission of the older person. Policing strategies on family and intimate partner violence have long known that this approach does not work, and leads to the abrogation of responsibility for reporting interpersonal violence to those who are least able to do so.

Investigating Elder Abuse

On the rare occasions when elder abuse is reported to criminal justice agencies, police and other investigators are often faced with multiple and competing factors that influence how a criminal investigation will proceed. US research undertaken by Ashton (1995) and Payne et al. (2001) found that senior police officers believed they had a responsibility to protect vulnerable older victims, and that they made a significant contribution to the fight against elder abuse. However, they also believed that older complainants were not good witnesses for reasons of frailty, senility, poor memory or lack of understanding of the legal system.
Payne et al (2001) also identified that the lack of knowledge about elder abuse, and the appropriate mechanisms to respond to elder abuse, sharply reduced the confidence of frontline police officers to label and investigate incidents as elder abuse. Additionally, while police recruits are provided assessable learning opportunities in relation to the wider issue of family violence, few recruit training courses address the specific issues and necessarily particularistic operational practices required for policing elder abuse.

There are many factors that reduce the likelihood of elder abuse victims reporting to a criminal justice agency. These factors have led some advocates to call for the introduction of mandatory reporting mechanisms for elder abuse (such as those in the UK and USA). However, unlike child abuse, such measures are not universally supported in Australia. This is largely due to the fear that removing agency from older people on the issue of elder abuse may be devastating to their independence, especially if the primary carer is the abuser, and such strategies may effectively infantilise the victim (Advocacy Tasmania, 2007; Elder Abuse Prevention Unit (QLD), 2006). As such, there is a gap between the rhetoric of responding to elder abuse in the community, and the development of appropriate monitoring instruments that would ensure incidents are reported, recorded and investigated. In turn, greater knowledge of key trends from available data on the extent and scope of this problem can influence the development of clearer and more strategic policing practices.

While older Australians are currently subject to greater levels of surveillance in supported care, there remain significant questions about whether and how these approaches might influence the protection of vulnerable older people in the general community. Policing organisations have developed sophisticated operational strategies for addressing a wide range of forms of interpersonal violence, but there are profound questions regarding how these existing approaches are appropriate to, and effective at, resolving the issues of elder abuse.
Even if there is general public acceptance of the need to criminalise elder abuse as a distinct form of interpersonal violence (Morgan, Johnson and Sigler, 2006), re-imagining the role of policing organisations is hampered by the lack of recognition of elder abuse, under-reporting of crime (ie the ‘dark figure’ of elder abuse), and flow-through to police investigations. Currently, we know too little about criminal forms of elder abuse to develop evidence-based strategies.

**Recommendations**

I have spent a large part of the last 10 years seeking to gain traction with policing organisations and funding bodies to recognise the critical importance of:

- investigating the victimisation and offending characteristics of elder abuse in Australia, and
- developing specific service enhancements and operational strategies for maximising the reporting, investigation and prosecution of criminal elder abuse
- reviewing and evaluating current policing approaches and standard operating procedures for family and intimate partner violence for their impact on the exacerbation of elder abuse victimisation

Until recently, the response has been lukewarm primarily because there is little data to indicate that elder abuse is a significant problem. If nothing else is to be generated from this inquiry, I hope that the critical gap in evidence is addressed as a matter of urgency, including a large scale victimisation study that reveals the experiences of older Australians, and the reasons for deciding not to report their experiences to the police. This vital first step is essential before we can begin to develop evidence based policing strategies. I hope that this parliamentary inquiry is successful is changing the culture that minimises elder abuse, and is able to reinvigorate the political and policing debates about how elder abuse is best addressed by law enforcement organisations in NSW.
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Author Biography

Nicole L. Asquith is the Associate Professor of Policing & Criminal Justice at Western Sydney University, and University Associate with the Tasmania Institute of Law Enforcement Studies. She has worked for and with Australian and UK policing services for over 20 years. Her current research investigates:

- the policing of vulnerability and difference
- intrafamilial hate crime
- the individual and social costs of fear of prejudice
- elder abuse
- women and radicalisation

In 2014 she was appointed the Co-Director of the Vulnerability, Resilience and Policing Research Consortium, which brings together practitioners and scholars from Western Sydney University, the University of Tasmania, Victoria University and the Australian Institute of Police Management to collaborate of the issues related to the policing of vulnerability.

Her work has been published in a range of edited collections and journal articles including Perry’s five-volume collection, Hate Crimes. She is the author of Text and Context of Malediction, and co-author (with Rob White and Janine Haines) of Crime and Criminology, and co-editor (with Isabelle Bartkowiak-Théron) of Policing Vulnerability. Her recent publications include:


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