



7 February 2018

Ms Lauren Mesiti
Select Committee into Elder Abuse
Parliament House, 4 Harvest Terrace
West Perth WA 6005

Dear Ms Mesiti,

Re Submission to Select Committee into Elder Abuse – Inquiry into Elder Abuse

Thank you for the opportunity to make a submission to the Inquiry into Elder Abuse. I appreciate you providing me with some extra time to make the submission. As a result, I have been unable to make the contribution I was hoping to provide to you. Having said that, I am more than happy to appear before the Committee and speak to any of the suggestions I make in this submission. I have also provided a list of my current and published research that may be of interest to the Committee.

I am a Professor in the Curtin Law School. I am the Director of the Consumer and Small Business Law Discipline and have introduced and coordinate the elder law program. My research focuses on elder law, particularly elder financial abuse, housing issues, wills and estates and access to justice for older people. I am a foundation member (with Professor Wendy Lacey and Ms Lise Barry) of the Australian Research Network on Law and Ageing (ARNLA) and in August 2017, I was appointed to the Law Reform Commission of Western Australia.

In my view, the law in Western Australia is inadequate in its response to elder abuse. This is not a criticism of Western Australia per se, this is a problem throughout Australia. In my observation, governments remain unable to adequately grasp the issue. There is still a feeling that elder abuse involves a family/domestic situation and there is a reluctance to get involved. This is a serious problem, in my view, particularly - but not exclusively - in relation to the enforcement of the criminal law.

Criminal Law

Although it is not a popular view in some quarters, I believe that the generic provisions of the Criminal Code are not working in relation to addressing elder abuse. Although physical and financial abuse can theoretically be addressed by the existing provisions, the fact it the provisions are rarely used. I would suggest specific provisions be inserted in the Criminal Code to address elder abuse. **I have recently written a short article on this issue and will forward it to you in a separate email.**

Civil Law

Equity and trusts

There are several ways in which equity and trusts may be relevant to elder abuse issues:

- Equitable doctrines can recognise rights where there is no remedy available under the common law. Although a valid contract may have been entered into at law, equity may recognise that the conduct of one of the parties offends conscience.

