



Government of **Western Australia**
Department of **Justice**
Office of the Commissioner for Victims of Crime

All enquiries: Kati Kraszlan
Phone: 9264 9707
Your Ref: A632542

Ms Lauren Mesiti
Committee Clerk
Select Committee into Elder Abuse
Legislative Council
Parliament House
PERTH WA 6000

By Email: eld@parliament.wa.gov.au

Dear Madam

Submission - Inquiry into Elder Abuse

Thank for the opportunity to provide a submission on the issue of elder abuse. This office has over its four year existence spoken to many elderly victims, both primary victims and secondary victims. The range of crimes for which they have contacted this office is diverse involving homicide, financial abuse and traffic. The overwhelming feature of these contacts is that elderly victims cannot be perceived as a homogenous group whose responses to crime are simple to define but rather as a diverse group with a range of experiences.

This submission is not focused on the frequency or nature of elder abuse but rather the issues that may need to be considered when the witness and/or victim in a criminal justice procedure is an older person. It is important that the specific needs of victims and witnesses are supported in the criminal justice system, and this is more important when particular groups have special needs. Our experience with children as witnesses indicates that when they provided with the appropriate supports the likelihood of a conviction increases and that victims are not likely to come forward if they feel unsupported.

Considerable research has recently been conducted into the frequency of abuse, neglect and mistreatment of the elderly. Whilst there has been a steady increase in our understanding of the issue of elder abuse we are probably at the level of understanding we reached regarding child abuse 30 years ago and domestic violence 10-20 years ago¹. It is also clear that issues relating to the older people as

¹ Anita Bowers, Boyd Davis, Dena Shenk, Karel Kalaw, Mary Smith and Kina Jackson. A multidisciplinary approach to understanding elder mistreatment: Creating a University-Community partnership. *American Journal of Criminal Justice* 37 no 2 (2012): 276-290.

participants in the criminal justice system have not received the same amount of attention as other age or victim groups and there is considerable need for more research and discussion. The research which has been conducted indicates that these victims and witnesses may have very distinct needs which deserve special attention.

There is also some difficulty in determining at what age a person can be defined as elderly, there is no research evidence to suggest that there is a specific age which is directly associated with a rapid decline in cognitive or physical functioning. There are however some clear physical and cognitive differences which start to appear once a person is over sixty and some of these changes may have direct effects on an individual's ability to fully participate in the criminal justice system. For the purpose of this submission an older person is defined as an individual over 65 years of age.

Older persons are generally considered to be especially vulnerable to crime, but data both local and international demonstrates that, despite considerable underreporting, older people are the least likely of all age groups to be a victim of crime, but report an elevated fear of crime and of becoming a victim of crime². Surveys have found that older people believe themselves to be the easiest target for criminals regardless of whether it is personal crime or property crime³.

They are more likely to stay at home in a surrounding perceived as safe (often in a situation which is 'hardened' through locks, chains bars and alarms). When they go out they limit themselves to places perceived as safe, this can mean that they avoid activities such as walking down some streets, travelling on public transport and going to public events. For some this fear of crime is so acute that they become prisoners in their home with an associated direct impact on quality of life. Loneliness and lack of participation in social and cultural life have a strong relationship with fear of crime and the concomitant increases in depression and anxiety. Social isolation and loneliness are also risk factors for elder abuse, that is that individuals who are socially isolated are more vulnerable than those with strong social connections. Specific crime prevention strategies are required for older persons, and these should focus on the changing the perception of risk and supporting behavioral change.

Psychological research into the justice system has consistently demonstrated poor performance from eyewitnesses of any age; eyewitnesses regardless of age are not skilled at making accurate identifications in any context⁴. As well as the normal constraints on accurate identifications older people can have additional physical and cognitive difficulties which further impacts on their accuracy. In particular normal age related changes in vision and memory function results in poorer performance than that observed in younger witnesses. It is important to note that when the older

² Marianne James. The Elderly as Victims of Crime, Abuse and Neglect. *Australian Institute of Criminology, Trends and Issues* No37 (1992)

³ James, The Elderly as Victims of Crime, Abuse and Neglect, 3.

⁴ Mats Dahl, Carl M Allwood, Benjamin Scimone and Mikael Rennemark. Old and very old adults as witnesses: Event memory and metamemory. *Psychology, Crime & Law* 2 no8. (2015).764-775

witness has normal vision, hearing and cognition there are no apparent age affects. Older people are also not viewed as competent witnesses, research has found that when 'elderly stereotypes' are used to describe the witness then their testimony is less likely to be believed by jurors in mock trials⁵. This lack of believability has been observed with child witnesses and resulted in the development of judicial instructions aimed at reducing bias against the testimony of a child. Similar to child witnesses it is important that older witnesses are believed in the courtroom and that biases based on stereotypes, such as memory loss, are not used to discredit their testimony.

The older witness may have some changes in memory function as a result of aging, these changes should not make the witness less believable but may require police and judicial officers to consider the use of supported interviewing techniques in order to elicit the best testimony⁶. Considerable work has been undertaken to develop appropriate interviewing techniques for children and similar work needs to be undertaken with elderly witnesses. Key issues to be considered are that older adults are likely to have poorer event and episodic memory than younger people but that they are well aware of their memory limitations. There are a number of interviewing techniques including context reinstatement and directed questions which may be able to assist in improving recall in older witnesses in forensic setting. It is important that more research is undertaken which identifies strategies that limit the effects of age related memory loss on witnesses. This will allow the focus to be on the testimony of the witness rather than on the limitations of their memory.

The needs of the elderly as victims and witnesses of elder abuse and other crimes within the criminal justice system can also include any of the following⁷:

- Poorer visual acuity, age related changes in vision may require that written instructions are available in larger print.
- A large percentage of elderly people have some form of hearing impairment but choose not to wear a hearing aid or have not been diagnosed, as a consequence they may miss instructions or not hear complete statements and there should be some checks on the amount of information retained.
- Physical impairments such as arthritis may impact on an individuals ability to sit for a long period of time consequently elderly witness may need more breaks;

⁵ Anita Blowers. Elders and the Criminal Justice System. *Journal of Crime and Justice* 38 no 1 (2015): 1-8.

⁶ Rachel Wilcock, Ray Bull and Aldert Vrij. Are old witnesses always poorer witnesses? Identification accuracy, context reinstatement, own age bias. *Psychology, Crime & Law* 13 no 3 (2007): 305-316

⁷ Eve. M Brank. Elder Research: Filling an important gap in psychology and law. *Behavioural Sciences and the Law* 25 (2007): 701-716.

- The elderly witness may also need more toilet breaks due to physiological changes and may be uncomfortable asking for such breaks;
- The elderly witness may not be fully comfortable with online and computerised systems and require assistance in completing online forms or feel more supported when dealing with a person.

The criminal justice system needs to treat elderly victims and witnesses with respect, and ensure that they feel valued and that when they report abuse they are believed and able to present their evidence in a supportive environment. Failure to successfully prosecute the perpetrators of elder abuse will impact on the willingness of victims and witnesses to report.

As the population ages the elderly will become a larger proportion of victims, offenders, prisoners, jurors and other consumers of the court system, we currently lack of sufficient knowledge about the impact of the criminal justice system on the elderly to ensure that their needs are met.

Yours sincerely



PP Katalin Kraszlan
A/COMMISSIONER FOR VICTIMS OF CRIME

23 November 2017