



## About us

The Australian Association of Gerontology (AAG) is Australia's peak national body linking professionals working across the multidisciplinary fields of ageing. Since 1964, we have engaged professionals to help them connect and collaborate on evidence based approaches to improve the experience of ageing. We have an Elder Abuse Special Interest Group to promote exchanges between AAG members who have an interest in research, advocacy, and increasing knowledge or awareness of elder abuse.

The National Ageing Research Institute (NARI) is recognised as a leading research institute in the area of ageing including falls and balance, pain, dementia, physical activity, healthy ageing, public and preventive health, and health systems evaluation. NARI also conducts a broad range of other clinical and psychosocial research including a focus on wellbeing, mental health and elder abuse.

AAG and NARI have decided to make a joint submission to the Australian Law Reform Commission inquiry into Elder Abuse Law Reform. In line with these organisations' expertise, the following submission focuses on proposals 2 (national plan), 3 (powers of investigation) and 11 (aged care).

## National Plan

**Proposal 2-1: A National Plan to address elder abuse should be developed.**

We strongly support this proposal and the four proposed components of the plan (at paragraph 2.11):

- a) promoting respectful intergenerational relationships
- b) making systems work together effectively
- c) improving responses to elder abuse
- d) improving the evidence base.

We note that the Coalition Federal Government committed \$15 million to develop a national plan during the 2016 Federal Election in its [\*Policy to Protect the Rights of Older People\*](#).

### **a) Promoting respectful intergenerational relationships**

We strongly support promoting respectful intergenerational relationships.

We also agree that there is a need for strategies that are directed towards understanding the specific experiences of older people from diverse groups (at paragraph 2.19), including older people from Aboriginal and Torres Strait Islander (ATSI); culturally and linguistically diverse (CALD); and lesbian, gay, bisexual, transgender and intersex (LGBTI) communities; and people living in regional and remote (RRR) communities.

AAG is working with the National Aboriginal Community Controlled Health Organisation (NACCHO), Federation of Ethnic Communities' Councils of Australia (FECCA), and the National LGBTI Health Alliance (Alliance) to develop and implement a *Diversity Framework* that will address the high level principles and common issues that affect diverse groups, with the creation of specialist action plans for each of the CALD, ATSI and LGBTI communities. On 23 November 2016, the now Minister for Aged Care and Indigenous Health Ken Wyatt gave support to the framework. The framework will make a valuable contribution to addressing the specific needs of older people from diverse groups.

#### **b) Making systems work together effectively**

We agree that a national approach, with consistent laws and coordinated responses is a key element in addressing elder abuse (at paragraph 2.23). The National Plan should consolidate the work that has been (or is being) undertaken across the states and territories.

In August 2016 NARI received a Major Grant from Gandel Philanthropy to develop an *Action Plan on Elder Abuse* for Victoria. NARI has begun scoping what is being done in Victoria at a research, policy and practice level. This project seeks to identify gaps in understanding and service, and identify the organisations or services that could potentially address those gaps. The research is expected to be concluded in late 2017. NARI's action plan will make a valuable contribution to the proposed National Plan.

#### **c) Improving responses to elder abuse**

We agree that in addition to national consistency, there are several other essential elements in improving the response to elder abuse (at paragraph 2.29) including: training people who interact with older people to recognise and respond to elder abuse; improved accessibility of services; and better responses to perpetrators.

We would also suggest that consideration needs to be given to how to ensure that people experiencing elder abuse will be directed to the most appropriate service regardless of where they initially seek help (i.e. a *no wrong door* approach). This will require knowledge sharing and referral protocols between organisations that 'deal with older people' and organisations that deal with other relevant forms of abuse. For example, centres against sexual assault and family violence support organisations will have a range of responses and services that may be appropriate for older people in some circumstances.

#### **d) Improving the evidence base**

##### **Proposal 2-2: A national prevalence study of elder abuse should be commissioned.**

We strongly support the proposal for a national prevalence study and reiterate our previous comments about specific issues to be considered in establishing the study (noted by the ALRC at paragraph 2.38).

However, we believe that this proposal does not go far enough. We believe that a comprehensive program of research and data collection on elder abuse is required to provide a solid evidence-base for good policy and practice. Further consideration and consultation is needed about the key gaps in the evidence-base. Based on work done by NARI and AAG (see further information below), we suggest that an elder abuse research and data program should at least include:

- the risk factors for elder abuse (for both people experiencing abuse and people perpetrating abuse)
- effectiveness of existing prevention, intervention and remediation responses to address elder abuse
- ongoing collection and reporting of relevant data by aged care providers, complaints bodies, financial institutions, law enforcement agencies and guardianship tribunals.

We note that the [Coalition's 2016 Federal Election policy](#) (referred to above) included developing measures to enhance the knowledge base relating to risk factors and the effectiveness of existing responses.

Relevant work done by NARI and AAG that assists with identifying gaps in the evidence base includes:

- In June 2015, NARI in partnership with Seniors Rights Victoria (SRV) published [Profile of elder abuse in Victoria: an analysis of data about people seeking help for elder abuse](#). The report shows the kinds and frequency of abuse and other matters being reported to the SRV helpline, as well as some of the common characteristics of the people who experience abuse and those who perpetrate it, and the common responses currently provided. The report concludes that in order to address elder abuse, further research is needed into understanding *intergenerational family conflict*.
- In September 2016, NARI in partnership with the Melbourne Social Equity Institute completed an *Elder Abuse Scoping Paper*. The paper is a consideration of the research literature on understanding how elder abuse is conceptualised, what interventions have been used to address it, and how effective these interventions have been. The paper will provide a valuable contribution to identifying the gaps in current research and improving the evidence base. The paper finds that while there is an overall lack of high-quality evidence supporting elder abuse interventions, there are some interventions that address intergenerational familial elder abuse that show evidence or promise and should be further and more rigorously researched and evaluated.
- In June 2016, NARI and SRV published [The older person's experience: outcomes of interventions into elder abuse](#). This report documented the unique experiences of 28 older people who had experienced abuse and sought help from SRV. The report highlighted the need for a range of interventions to address elder abuse because each case has its own unique features. However key recommendations included the need for: greater efforts to ensure older people are aware of their legal rights; awareness raising about elder abuse; and further refinement and testing of non-legal therapeutic approaches, such as family mediation.
- In November 2016, AAG held a number of sessions on elder abuse at its [Annual National Conference](#). These presentations explored some of the other aspects of elder abuse that may warrant further research, for example:
  - *A scoping study of responses to elder abuse in Tasmania* by Susan Banks (University of Tasmania).
  - *Education as intervention in elder abuse* by Gary Ferguson (Seniors Rights Victoria).
  - *Elder mediation: a collaborative approach to addressing elder abuse* by Anita Frayman (Elder Solutions).

## Powers of investigation

Proposal 3-1: State and territory public advocates or public guardians should be given the power to investigate elder abuse where they have a reasonable cause to suspect that an older person:

- a) has care and support needs;
- b) is, or is at risk of, being abused or neglected; and
- c) is unable to protect themselves from the abuse or neglect, or the risk of it because of care and support needs.

Public advocates or public guardians should be able to exercise this power on receipt of a complaint or referral or on their own motion.

We strongly support this proposal in principle but note that it will only be effective if there is much better resourcing by state governments to enable public advocates or public guardians to conduct proper investigations. This may result in significant disparities between states and territories.

We also believe that further consideration and consultation is needed about the following aspects of the proposal:

- Should this investigative power depend on who the (actual or potential) abuser is? For example, is it intended that the public advocate could investigate abuse by a stranger or a co-resident (in residential aged care)? Traditional definitions of 'elder abuse' might exclude these examples because they are relationships where there is no expectation of trust.
- Should the definition of 'care and support needs' (at paragraph 3.32) include physical restraint but exclude other forms of restrictive practices? For example, is it intended that the public advocate:
  - could investigate instances of physical restraint in private homes and/or residential aged care, but
  - could not investigate instances of mechanical restraint, chemical restraint, seclusion or detention (as defined at paragraph 11.236)?

See further comments about restrictive practices below (proposal 11-7).

Finally, we note that this expanded power will represent a significant departure from the current business of public guardians, from working with people who do not have mental capacity to make decisions to working with people who have 'care and support needs' but may still have mental capacity. This will require careful change management around policies, practices, training and supervision.

Proposal 3-2: Public advocates or public guardians should be guided by the following principles:

- a) older people experiencing abuse or neglect have the right to refuse support, assistance or protection;
- b) the need to protect someone from abuse or neglect must be balanced with respect for the person's right to make their own decisions about their care; and
- c) the will, preferences and rights of the older person must be respected.

We strongly support this proposal.

Proposal 3-3: Public advocates or public guardians should have the power to require that a person, other than the older person:

- a) furnish information;
- b) produce documents; or
- c) participate in an interview relating to an investigation of the abuse or neglect of an older person.

We support this proposal in principal. However, we believe further consideration and consultation is required about appropriate legal safeguards for people furnishing information, providing documents or participating in interviews, for example:

- the right to silence
- the right to seek legal advice
- the privilege against self-incrimination.

We suspect that older people may refuse support from the public advocate if they believe an investigation may expose the perpetrator to later criminal or civil proceedings. NARI's analysis of calls to Senior Rights Victoria found that 67% of alleged perpetrators were the sons or daughters of the older person (further information in our earlier [submission no.65](#)).

As noted by the ALRC (at paragraph 3.5), a study by NARI and Senior Rights Victoria found that some of the negative outcomes of intervening to address elder abuse related to fear for the welfare of the perpetrator.

Proposal 3-4: In responding to the suspected abuse or neglect of an older person, public advocates or public guardians may:

- a) refer the older person or the perpetrator to available health care, social, legal, accommodation or other services;
- b) assist the older person or perpetrator in obtaining those services;
- c) prepare, in consultation with the older person, a support and assistance plan that specifies any services needed by the older person; or
- d) decide to take no further action.

We support this proposal in principle in relation to the responses to the older person. However, we believe that further clarification of the proposal to *'assist the older person in obtaining those services'* is required, in order to manage expectations. For example, is it intended that assistance would extend to providing social worker services? Would it extend as far as providing financial assistance to enable the older person to obtain legal services or alternative accommodation? This would require clear guidelines and agreed protocols with service providers as to what action can be taken should elder abuse be identified. There is a risk of raising unrealistic expectations regarding resolution of the elder abuse unless the next steps post investigation are clearly identified and adequately resourced.

We believe further consideration and consultation is needed about the proposed responses to the perpetrator. We are concerned that there may be an actual or perceived conflict of interest if the public advocate assists both the older person and the perpetrator. On the other hand, we acknowledge that sometimes the best outcome for the older person is for the perpetrator to obtain assistance. We believe the public advocate's primary objective should be to the older person, regardless of who they are assisting.

Proposal 3-5: Any person who reports elder abuse to the public advocate or public guardian in good faith and based on a reasonable suspicion should not, as a consequence of their report, be:

- a) liable, civilly, criminally or under an administrative process;
- b) found to have departed from standards of professional conduct;
- c) dismissed or threatened in the course of their employment; or
- d) discriminated against with respect to employment or membership in a profession or trade union.

We support this proposal in principle. However, we believe further consideration and consultation is needed about ways to support health, aged care and other relevant professionals with the decision to make a report. We believe that guidance and protocols about consultation with the older person and about the process for decision-making would help professionals to act in a manner that is:

- respectful of the older person, and
- consistent with relevant standards of professional conduct.

## Aged care

Proposal 11-1: Aged care legislation should establish a reportable incidents scheme. The scheme should require approved providers to notify reportable incidents to the Aged Care Complaints Commissioner, who will oversee the approved provider's investigation of and response to those incidents.

Proposal 11-2: The term 'reportable assault' in the *Aged Care Act 1997 (Cth)* should be replaced with 'reportable incident'. With respect to residential care, 'reportable incident' should mean:

- a) a sexual offence, sexual misconduct, assault, fraud/financial abuse, ill treatment or neglect committed by a staff member on or toward a care recipient;
- b) a sexual offence, an incident causing serious injury, an incident involving the use of a weapon, or an incident that is part of a pattern of abuse when committed by a care recipient toward another care recipient; or
- c) an incident resulting in an unexplained serious injury to a care recipient. With respect to home care or flexible care, 'reportable incident' should mean a sexual offence, sexual misconduct, assault, fraud/financial abuse, ill-treatment or neglect committed by a staff member on or toward a care recipient.

Proposal 11-3: The exemption to reporting provided by s 53 of the *Accountability Principles 2014 (Cth)*, regarding alleged or suspected assaults committed by a care recipient with a pre-diagnosed cognitive impairment on another care recipient, should be removed.

We have reservations about these proposals. We believe further consideration and consultation is needed given the concerns raised by a range of stakeholders (at paragraph 11.64).

Proposal 11-4: There should be a national employment screening process for Australian Government funded aged care. The screening process should determine whether a clearance should be granted to work in aged care, based on an assessment of:

- a) a person's national criminal history;
- b) relevant reportable incidents under the proposed reportable incidents scheme; and
- c) relevant disciplinary proceedings or complaints.

Proposal 11-5: A national database should be established to record the outcome and status of employment clearances.

Aged and Community Services (ACSA) has pointed out the lack of evidence about the efficacy of such checks (at paragraph 11.178) and that there are a range of options for improving staff screening ([ACSA Elder Abuse Position Statement 2016](#)). The ALRC has already noted that both the *Aged Care Legislated Review* and the *Senate Inquiry into the Future of Australia's Aged Care Sector Workforce* will be considering workforce strategies (at paragraph 11.223). We suggest that these proposals should be further considered as part of those reviews, to ensure that they are properly integrated with broader aged care workforce policy settings.

Proposal 11-6: Unregistered aged care workers who provide direct care should be subject to the planned National Code of Conduct for Health Care Workers.

We support this proposal.

Proposal 11-7: The *Aged Care Act 1997 (Cth)* should regulate the use of restrictive practices in residential aged care. The Act should provide that restrictive practices only be used:

- a) when necessary to prevent physical harm;
- b) to the extent necessary to prevent the harm;
- c) with the approval of an independent decision maker, such as a senior clinician, with statutory authority to make this decision; and
- d) as prescribed in a person's behaviour management plan.

We support this proposal in principle. However, we believe that further consideration and consultation is needed about:

- a consistent approach to be used across the disability, health and aged care sectors (as per ALRC recommendation 8-2 in the [Equality, Capacity and Disability Report 2014](#))
- what constitutes appropriate safeguards, monitoring and oversight. We note that the provisions in Part 7 of the [Disability Act 2006 \(Vic\)](#) are significantly different to this proposal.

Proposal 11-9: The Department of Health (Cth) should develop national guidelines for the community visitors scheme that:

- a) provide policies and procedures for community visitors to follow if they have concerns about abuse or neglect of care recipients;
- b) provide policies and procedures for community visitors to refer care recipients to advocacy services or complaints mechanisms where this may assist them; and
- c) require training of community visitors in these policies and procedures.

We support the principle of providing policies and procedures to guide community visitors if they have concerns about elder abuse or neglect. We note that community visitor scheme organisations will need to be properly resourced to provide training.

Proposal 11-10: The *Aged Care Act 1997 (Cth)* should provide for an 'official visitors' scheme for residential aged care. Official visitors' functions should be to inquire into and report on:

- a) whether the rights of care recipients are being upheld;
- b) the adequacy of information provided to care recipients about their rights, including the availability of advocacy services and complaints mechanisms; and
- c) concerns relating to abuse and neglect of care recipients.

Proposal 11-11: Official visitors should be empowered to:

- a) enter and inspect a residential aged care service;
- b) confer alone with residents and staff of a residential aged care service; and
- c) make complaints or reports about suspected abuse or neglect of care recipients to appropriate persons or entities.

We believe further consideration is needed about whether/how these proposals overlap with role of the Aged Care Quality Agency, to ensure that they are properly integrated with broader aged care regulatory settings.

## Authorisation

This submission has been authorised by the Chief Executive Officer of AAG and the Director of NARI.



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