19 August 2016

The Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

**Submission to the Australian Law Reform Commission (‘ALRC’) regarding inquiry into elder abuse in Australia**

I welcome the opportunity to provide a submission to the ALRC in its inquiry into elder abuse in Australia. I write this submission in my capacity as a 4th year student of Law at Murdoch University and an informed individual who identifies with a significant portion of immigrants employed in residential aged care facilities (‘RACF’) – specifically those of African origin.

My position stems from expressed concerns and personal experiences of loved ones who care for the mentally ill in RACF and remain directly impacted by the laws (present and future) related to this inquiry. I will address the question of *what changes to the requirements concerning quality of care in aged care should be made to improve safeguards against elder abuse* with a focus on prevention of elder abuse by immigrant carers in RACF.

Little research in Australia has explored the experiences of immigrant carers of different nationalities in RACF even though they form part of ‘those who are likely to be the source of assault due to their positions of trust over residents’.[[1]](#footnote-1) Apart from occupying approximately 23% of these positions,[[2]](#footnote-2) their presence is said to rise in accordance with the ‘demand for residential aged care, which is estimated to reach more than threefold by 2045.[[3]](#footnote-3) For this reason alone, it is worth investing in research that explores the concerns of immigrant carers in order to affect proper change.

Based on available resources, it appears that this cohort ‘does not experience a strong support infrastructure’ whilst providing care, particularly when they become the victims of abuse. For example, a friend of mine observed a care recipient verbally abusing a co-worker based on the colour of their skin and nothing was done about it. A recent study supported this claim and found that RACF do not usually have formal support mechanisms or complaint channels to assist those who experience discrimination in the course of their work.[[4]](#footnote-4) Consequently, carers are forced to resolve these issues themselves, which generally entails either confronting the perpetrator directly in the form of assault (in this case the residents) or downplaying the significance of the event.[[5]](#footnote-5)

RACF carers are usually well informed about the mental capacities of residents and hence their view of unfairness and underlying discrimination are harboured, not towards residents, but towards co-workers and managers for colluding in, or tacitly accepting racism or prejudice coming from residents and other employees.[[6]](#footnote-6) Needless to say, these experiences have a negative impact on the carers’ morale and self –esteem[[7]](#footnote-7) with some going as far to say that ‘you would hate yourself’*.*[[8]](#footnote-8)

Although great strides are made through further educating staff on what the job entails and what challenges they may meet, the difficulties faced by State and Territory Governments in resolving elder abuse are predominantly attributed to the incomprehensive nature of existing policies amongst other things. For instance, Victoria’s policy on elder abuse only provides one preventative approach, which involves developing a care plan to support an older person from being further abused.[[9]](#footnote-9) Apart from only operating on the assumption that a form of abuse has already occurred, the care plan attempts to solve future abuse instead of initial abuse. Perhaps the inability to prevent abuse at first instance is due to failing to understand what motivates these particular carers to abuse residents. Albeit state governments have identified that the ‘stress of caring for an older person contributes to unintentional or intentional abuse,’[[10]](#footnote-10) it does not necessarily extend to non-family paid carers; which deems it insufficient in trying to understand the reasons behind elder abuse in RACF.

In light of the Constitutional limitations placed on the Commonwealth Government to legislate with respect to elderly Australians and aged care,[[11]](#footnote-11) and the added complexity presented by the interconnectedness of the different State and Territory laws which may apply, my recommendation is to amend the *Aged Care Act* 1997 (Cth) (‘the Act’) as followed:

Incorporate provisions that impose an obligation on RACF to:

1. adopt appropriate policies and support mechanisms for immigrant workers that experience any form of abuse from care recipients and co-workers.
2. to include a ‘buddy system’ that aims to pair care recipients with carers they feel comfortable and safe with; as part of existing care systems.

If you wish to consult with me on any of the above points, please feel free to contact me by email at kmelba@y7mail.com.

Kind Regards,

Melba G Karemu

1. *Lister & Ors v Hesley Hall Limited* [2001] 2 All ER 769, 800. [↑](#footnote-ref-1)
2. Aged and Community Services Australia, The Aged Care Workforce in Australia: Position Paper (2015) 8 < http://www.agedcare.org.au/news/copy\_of\_2014-news/acsa-position-paper-the-aged-care-workforce-in-australia>. [↑](#footnote-ref-2)
3. Michael Barnett and Robert Hayes, ‘Not Seen and Not Heard: Protecting Elder Human Rights in Aged Care’ (2010) 14 *University of Western Sydney Law Review* 45. [↑](#footnote-ref-3)
4. Martha Doyle and Virpi Timonen, ‘The Different Faces of Care Work: Understanding the Experiences of the Multi-Cultural Care Workforce’ (2009) 29 *Ageing and Soiety* 337, 342. [↑](#footnote-ref-4)
5. Ibid. [↑](#footnote-ref-5)
6. Ibid; In Sue Richardson and Bill Martin, ‘The Care of Older Australians – A Picture of the Residential Aged Care Workforce’ (Research Discussion Paper No 3454, National Institute of Labour Studies, 2004) 2, the authors asserted that carers in aged care facilities are highly educated with 29% having more than one tertiary qualification. [↑](#footnote-ref-6)
7. Martha Doyle and Virpi Timonen, ‘The Different Faces of Care Work: Understanding the Experiences of the Multi-Cultural Care Workforce’ (2009) 29 *Ageing and Soiety* 337, 341. [↑](#footnote-ref-7)
8. Ibid 342. [↑](#footnote-ref-8)
9. Victorian State Government, *Elder Abuse Policy (*2 February 2009) Department of Health and Human Services <*Policy*<http://www.nwhn.net.au/admin>/file/content2/c7/2%20Elder\_Abuse\_Policy\_FINAL\_2\_February\_2011.pdf>. [↑](#footnote-ref-9)
10. UnitingCare Community Elder Abuse Prevention Unit, *A Guide for Elder Abuse Protocol* (2006) Elder Abuse Prevention Unit <http://www.eapu.com.au/uploads/EAPU\_general\_resources/EA\_Protocols\_FEB\_2012-EAPU.pdf>. [↑](#footnote-ref-10)
11. Australian Institute of Family Studies, *Elder Abuse: Understanding Issues, Frameworks and Responses* Research Report No 35 (2016) 6 <https://aifs.gov.au/publications/elder-abuse/6-structures-frameworks-and-organisation#footnote-2242-6-backlink>. [↑](#footnote-ref-11)