244. Lutheran Church of Australia

Name of organisation: Lutheran Church of Australia

Proposal 2–1

**Introduction**

This submission has been written by the Lutheran Church of Australia’s Committee for Ministry with the Ageing. The Committee for Ministry with the Ageing provides support and advice to Lutheran Aged-Care facilities, as well as to Lutheran congregations and agencies, in the area of ministry and care with, and for, the ageing.  There are currently 34 Lutheran aged care facilities in Australia, catering for over 4000 residents. There are over 300 congregations of the Lutheran Church of Australia caring for over 14000 baptised members.

Lutheran Aged and Community services are an expression of the caring witness of the Lutheran Church of Australia and are communities:

* That acknowledge God as creator and join in the ongoing creation and care of the world and all people.
* That respond to people in need with care and compassion.
* Lutheran Aged and Community Services are communities that act justly and for the good of all.
* That love and serve people by catering for their physical, material, social, emotional and spiritual needs.
* Whose acts of service are offered graciously and unconditionally.
* That acknowledge that the calling to care comes from God.
* That are accepting and inclusive, founded on Christian values.

Christian teachings (and Christian values) promote respect for elders, therefore

* all people have dignity because God creates them in his image; their dignity remains even if their capabilities diminish
* we are called to honour our elders.

The need for laws, penalties, compliance and accountability to deter elder abuse is a sign of failure to promote, internalise and live out these Christian teachings and values.

**The Lutheran Church of Australia supports this proposal.**

We offer the following commentary to assist in the development of a National Plan.

The Committee for Ministry with the Ageing have concluded that the actions detailed for a national plan are heavily weighted to the severe end of the continuum of abuse. In the words of a very experienced Director of Nursing:

It feels like a good response to the small number of people who are just money pinching or nasty miscreants, but a poorer one where support and assistance to those who have simply gone astray is concerned.

During my working life, I was a legal custodian to the frail elderly under my care (a Director of Nursing thing). Albeit I seldom had to think about this too much, staff did alert me if relatives were choosing their own monetary gains over the quality of life of their financially able loved one. I always found a friendly chat together with a comment about the potential of a report to the then Guardianship Board was enough to remedy the situation.

Having said this, it is my experience that most families or carers will go a long way to support and assist their frail elderly relative or friend. I am of the view that a goodly portion of alleged mistreatment of the elderly is a combination of ignorance of the ageing process combined with an extremely frail, needy and sometimes forgetful person who is struggling.  For many people their parent/s may appear to be wilful and terribly annoying and strange when in fact they are simply ageing and may also have some memory loss. One does not have to have a diagnosis of dementia to be awfully forgetful…it just comes with old age.

As a Justice of the Peace, I also assisted with Powers of Attorney (POA), Medical and Guardianship type documents. I did find that many families or friends were trying to get these in place when the horse had already bolted in that the elderly person concerned was mentally beyond giving lawful consent (i.e. fully understanding what they were signing). For this reason, I always asked for a doctor’s advice as to the mental status of the resident before agreeing to sign off documents being drafted. Now these experiences are important as they suggest that both Justices of the Peace and General Practitioners can play a part in reducing elder abuse. GPs can vet the capacity of the elderly frail person and the JPs can be encouraged to play a role in making sure documents being signed do not disadvantage a vulnerable older person.

As Lutherans, we acknowledge God as creator and join in the ongoing creation and care of the world and all people. We believe that people are created, precious and loved children of God. We are, however, broken and imperfect people. Never the less God calls us to love and serve our family, friends and others, including our elders.

What the discussion document lacks is a framework to support our community to do the right thing. It goes straight to remedial action and control mechanisms rather than processes that may help our community to correctly assist the elderly as their personal circumstances change. Getting it right initially, and conciliating as things change or where there may be disputes between the parties, would be a more wholesome approach from our Christian perspective.

The Committee for Ministry with the Ageing suggests:

1. Discussion on elder abuse include a set of ‘reasonable’ standards (rights) related to older people regardless of their health and other status. These standards would be a guide and form a tool to measure actions of the agents and families concerned.
2. Discussion on elder abuse include a range of options to educate and support families/carers entering agreements. This can be through the web, councils and libraries etc. Such support would be resource intensive at the front end, however, preventative measures are likely to reduce the need to appeal to the measures seen in the discussion document.
3. Discussion on elder abuse should include conciliation opportunities where disagreements between parties exist. We do not see this at the level of Public Advocates in the first instance. Rather this should occur at a much lower level where mutually agreed changes can be implemented. Legal efforts would then be limited to those times when things go off the rails. Ultimately, one would hope only the significant issues would need to be addressed through the control mechanisms cited in the discussion document. Perhaps the web could become a user-friendly resource and repository for formal and less formal agreements.
4. Discussion on elder abuse should ensure that people undertaking powers of attorney type roles should be given adequate information and education about their obligations. Anecdotally, there are many instance where families believe signed documents are a ‘licence’ for financial abuse when this is far from the truth.
5. The redrafting of documents (e.g. POA, POG, MPOA) to ensure they are understood by the frail elderly. Documentation should include an area for the person gaining support to stipulate what they expect out of the arrangement. Prompts would help with identification of these areas. Then if circumstances change all are clear about the expectations and a renegotiation can occur.
6. JPs could be encouraged or educated to ensure the expectations noted above are evident in the documentation. Further training of JPs would make this a powerful tool in the drafting of agreements and place the older person’s rights front and centre.
7. Because POAs etc. are often written and signed when an emergency arises a ‘gate keeper role’ by GPs, or other authorised medical practitioners, be considered. GPs could verify that an elderly person is capable of signing legal documents. In aiming to reduce the number of incidents of signing documents by confused people, a GP signature could be required to assure all of the older person’s capacity to authorise. The additional signature of an authorised medical practitioner could be mandated for documentation for persons over a certain age or for person who have been hospitalised within a certain period.

Proposal 2–2

**The Lutheran Church of Australia supports this proposal.**

Proposal 3–1

**The Lutheran Church of Australia supports this proposal.**

The discussion paper appears to assume the worst and has many measures in place to deal with aberrance. Apart from a few comments it does not clearly state the ‘reasonable’ rights of the elderly (regardless of health status) against which the action of others can be measured. It is important to be clear about what older people can reasonably expect from those acting as their agents for the purposes of financial, lifestyle and health care etc.

Proposal 3–2

**The Lutheran Church of Australia supports this proposal.**

The Lutheran Church of Australia believes that all people are created in God’s image and as such should be treated with respect and with dignity. We also believe that people have the right to make choices about whether they accept support, assistance or protection if they are being abused or neglected.

There are legal provisions that have been established to allow people to indicate their wishes for when they are unable to make their own decisions,  for example, Advanced Care Directives and Enduring Powers of Attorney, and we would encourage the promotion of these within the wider community so that people can make plans for when they are unable to speak for themselves.

Proposal 3–3

**The Lutheran Church of Australia supports this proposal.**

Proposal 3–4

**The Lutheran Church of Australia supports this proposal.**

Proposal 3–5

**The Lutheran Church of Australia supports this proposal.**

Proposal 5–1

**The Lutheran Church of Australia supports this proposal.**

Proposal 5–2

**The Lutheran Church of Australia supports this proposal.**

Proposal 5–3

**The Lutheran Church of Australia supports this proposal.**

Question 5–1

Access should be limited, and such limitations spelled out as for the mechanism referred to below.

Question 5–2

The Lutheran Church of Australia is in favour of the establishment of a mechanism to monitor the management of principals’ financial affairs.

Proposal 5–4

**The Lutheran Church of Australia supports this proposal.**

Proposal 5–5

Financial abuse can significantly compromise the number and extent of options open to the victim. It is difficult to mitigate the effects of any sort of abuse, but compensation for financial losses that were caused by the failure of trusted persons/bodies to comply with their obligation would go part of the way to do that.

**The Lutheran Church of Australia supports this proposal.**

Proposal 5–6

**The Lutheran Church of Australia supports this proposal.**

Proposal 5–7

**The Lutheran Church of Australia supports this proposal.**

Any person who has been found guilty of mismanaging financial matters under an enduring power of attorney or who has been found guilty of elder abuse should be included in this list above.

Proposal 5–8

**The Lutheran Church of Australia supports this proposal.**

Other matters to be considered is enacting of the principal’s wishes should legislation be changed e.g. legislation passed that permits euthanasia/death with dignity.

Proposal 5–9

**The Lutheran Church of Australia supports this proposal.**

Proposal 5–10

**The Lutheran Church of Australia supports this proposal.**

Proposal 5–11

**The Lutheran Church of Australia supports this proposal.**

Proposal 5–12

**The Lutheran Church of Australia supports this proposal.**

Proposal 5–13

**The Lutheran Church of Australia supports this proposal.**

Proposal 6–1

**The Lutheran Church of Australia supports this proposal.**

Question 6–1

Given that guardians and financial administrators will have varying degrees of literacy and numeracy, and come from all ethnic backgrounds, it is critical that information about this role is accessible to all. Resourcing, whether in the form of compulsory training, or the provision of education, must address issues such as the rights of the principal and that guardianship and financial administration is provided to serve the best interests of the principal. The information must be culturally appropriate and accessible.

Proposal 6–2

**The Lutheran Church of Australia supports this proposal.**

Question 6–2

The Lutheran Church of Australia does not wish to comment on this question.

Question 6–3

The Lutheran Church of Australia does not wish to comment on this question.

Proposal 7–1

**The Lutheran Church of Australia supports this proposal.**

Proposal 7–2

**The Lutheran Church of Australia supports this proposal.**

Question 7–1

The Lutheran Church of Australia does not wish to comment on this question.

Question 7–2

The Lutheran Church of Australia does not wish to comment on this question.

Proposal 8–1

If there are conflicts within a family, it is imperative that there is an advocate for the principal who is outside of the family, and whose authority over-rules the family to ensure that the best interests of the principal are served.

**The Lutheran Church of Australia supports this proposal.**

Question 8–1

We are aware that there are many configurations of family, and we appreciate the need for family to be adequately defined in this context. We support the effective accountability of ‘family members’, and the need to protect vulnerable older people.

Proposal 9–1

**The Lutheran Church of Australia supports this proposal.**

Proposal 9–2

**The Lutheran Church of Australia supports this proposal.**

Proposal 9–3

**The Lutheran Church of Australia supports this proposal.**

Proposal 10–1

**The Lutheran Church of Australia supports this proposal.**

Proposal 10–2

**The Lutheran Church of Australia supports this proposal.**

Proposal 10–3

**The Lutheran Church of Australia supports this proposal.**

Proposal 10–4

**The Lutheran Church of Australia supports this proposal.**

Centrelink staff may well be the first to become aware of irregularities that may indicate financial abuse and as such need to be well trained to identify and respond to elder abuse. Abuse may not be immediately obvious to an alert worker, and recording systems should allow for concerns to be logged and a situation to be monitored.

Proposal 11–1

The reportable incidents scheme should allow for the establishment of a national register of those who have perpetrated abuse. The systems in place for managing child abuse notifications need to be considered in the management of elder abuse notifications.

The development of Information Sharing Guidelines within the child protection system has defined ways of implementing privacy principles but also honouring the need to keep children safe. If there are concerns in regards to elder abuse, it may be important for that information to be shared with other professionals with or without the usual consents being obtained.

**The Lutheran Church of Australia supports this proposal.**

Proposal 11–2

Investigations should take into account all relevant factors. For example, a worker found guilty of neglect or ill-treatment might not be the only person disciplined if investigations also revealed that the facility managers had neglected to provide adequate staffing levels, adequate training for staff or appropriate equipment.

**The Lutheran Church of Australia supports this proposal.**

Proposal 11–3

The response to the assault of a care recipient – or a staff member – by another care recipient is complex. The rights of and responsibilities of all concerned are to be recognised and managed. As resources for managing those with cognitive impairment decrease, the temptation to rely on physical or chemical restraints increases. The pressure on our mental health systems can exacerbate this. Assaults by care recipients need to be monitored carefully to ensure that all involved are treated with appropriate dignity and respect.

In removing the exemption, appropriate safeguards need to be identified to ensure that everybody concerned is kept safe.

Proposal 11–4

**The Lutheran Church of Australia supports this proposal.**

It is also suggested that consideration be given to the employment screening processes that are used in child protection systems and how these systems can speak into and complement processes for screening aged care employees.

It is worth noting that there is one group of vulnerable people whose care workers may not be included in screening systems - those who are over 18 years of age and who are cared for by those outside of Australian Government funded aged care. This includes adults with physical disabilities and cognitive impairments. Should they not also be entitled to the protection that this screening and reporting proposal provides?

Proposal 11–5

**The Lutheran Church of Australia supports this proposal.**

Question 11–1

It is important that the response to a reportable incident is commensurate with the seriousness of the incident.

Residential care facilities are finding it more and more difficult to sustain levels of nursing staff due to funding pressure. This has led to a reliance on lower qualified staff, and increasing numbers of staff with low levels of English literacy who are responsible for providing a broad range of care to residents. This reality does not provide an excuse for a reportable incident. It purely elaborates on a ‘pressure point’ in the delivery of aged care services. Further to the debate on the definition of an ‘incident’ that leads to exclusion, the need for suggestions for preventative measures is encouraged.

Question 11–2

Currently police checks and clearances in child protection related work need to be renewed every three years. We would suggest that the time frames for employment clearances for those who work in aged care should be similar to those who work with children.

Question 11–3

Drug related offences, and those involving violence and aggression should preclude a person from employment in aged care. Once again, we suggest that there should be significant commonalities between the child protection and the aged care system, as both systems involve working with vulnerable people.

Proposal 11–6

**The Lutheran Church of Australia supports this proposal.**

Proposal 11–7

**The Lutheran Church of Australia supports this proposal.**

Adequate resourcing is required to implement this practice and it is important that there are appropriate options to manage behaviour in a way that preserves and enhances the dignity of the person to whom the restrictive practice is being applied. It is not acceptable for people to be physically or chemically restrained as a regular practice. There are other alternatives, which can be life enhancing rather than diminishing.

Proposal 11–8

**The Lutheran Church of Australia supports this proposal.**

Proposal 11–9

**The Lutheran Church of Australia supports this proposal.**

Proposal 11–10

**The Lutheran Church of Australia supports this proposal.**

Proposal 11–11

**The Lutheran Church of Australia supports this proposal.**

**Conclusion:**

Thank you for the opportunity to respond to the questions and proposals regarding the Elder Abuse discussion paper.

Included in this submission are references to matters that could be deemed outside the scope of the inquiry, however, we believe that these are significant social justice issues that impact on, or are related to, the issue of elder abuse. These include:

* The suggestion that the high standard of screening systems for child protection be applied to all vulnerable people including aged people, and these screening systems inform and complement each other.
* Concern for those who fall outside of the child protection and aged care protection system who need similar protection i.e. adults with physical disabilities and/or cognitive impairment.
* Adequate resourcing for care provision for our most vulnerable people in order to ensure that appropriate services are available and staff are not placed under undue pressure.
* Education and training for community members to reduce the risk of abuse and to protect vulnerable older people.
* Education and training for staff to reduce the risk of abuse and to protect vulnerable older people.
* Development and documentation of reasonable expectations for JPs, GPs and conciliation processes.

The Committee for Ministry with the Ageing recommend that a framework be developed that supports our community to respect and protect vulnerable people, while recognising the need for remedial action and control mechanisms. We encourage the inclusion of processes that help our community to appropriately assist the elderly as their personal circumstances change. Preventative measures, conciliating as circumstances change or where there may be disputes between parties is encouraged. In many cases, the more that support is provided, the less there is a reliance on compliance.

May these proposals ensure that our elders can maintain their dignity and that their family and friends can be assured that they are safe.

Respectfully submitted on behalf of the Committee for Ministry with the Ageing,

of the Lutheran Church of Australia.

Dr Tania Nelson

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