

27 February 2017

Professor Rosalind Croucher AM
President
Australian Law Reform Commission
Level 40, MLC Tower
19 Martin Place
Sydney NSW 2000

Elder Abuse Discussion Paper

Dear Professor Croucher,

The Benevolent Society (TBS) welcomes the release of this landmark report and congratulates the ALRC, members of the Advisory Committee and those who have contributed their ideas and experiences.

TBS has been delivering services for over 200 years, supporting some of the most vulnerable and disadvantaged people in our community. Last year our ageing and disability services supported 24,000 people to remain living independently in their homes and accessing their community. Our services span aged care packages, Assistance with Care and Housing for the Aged and other Commonwealth Home Support Program services, including meals on wheels services and carer support (in-home, flexible, overnight and consumer directed respite). We are an approved provider under the Aged Care Act 1997.

TBS supports changes which strengthen protections from abuse for older Australians, promote equal participation, prevention and reporting of abuse, and better prevalence data.

TBS supports a National Plan to address elder abuse to facilitate long term, strategic whole of government and community responses. TBS particularly welcomes the goal of the National Plan as promoting the autonomy and agency of older people and promoting respectful intergenerational relationships. However TBS envisages that such a plan would be a critical element of a broader national agenda on older Australians.

There is currently no national plan for older Australians which incorporates a broader agenda like tackling ageism, financial security and housing, work and training, mobility and transport, social inclusion and participation, preventing and responding to abuse, and fostering age friendly environments.

TBS argues that a holistic national approach is a pressing priority in order to capture the benefits and opportunities, and manage the challenges, that our shifting demographics presents.

TBS believes in a society that inspires and supports people to grow and participate actively their whole lives with dignity, choice and independence. TBS is committed to promoting attitudes, behaviours, policies and programs that support older Australians to age well and live their best lives - at all ages.

TBS response to specific proposals

In relation to the specific proposals made in the discussion paper TBS provides the following comments:

10 - Social Security

As a primary site for the detection and prevention of elder abuse, TBS supports the proposal that the Department of Human Services develop an elder abuse strategy for those older Australians in contact with Centrelink and that staff are properly trained.

11 - Aged Care

11.1- Reportable incidents scheme

TBS broadly agrees with the intention to establish a reportable incidents scheme under aged care legislation. However, we believe there remains a number of issues and questions relating to the design and articulation of the scheme to ensure fair procedures and outcomes for all stakeholders including older people, families, care workers and aged care providers alike.

11.2 Definition of reportable incident

TBS generally supports the broadening of the definition of reportable behaviours and observations under the Aged Care Act from 'reportable assault' to 'reportable incident'.

We do however wish to raise three concerns regarding the general framework of the proposal, ie:

1. that compulsory reporting of some incidents in some situations – notably where the care recipient does not have a diagnosis of cognitive impairment – may remove the care recipient's right to individual agency and personal choice in making or not making a complaint;
2. following point 1. above, the framework needs to further acknowledge that many residents or clients who are able to choose whether or not to make a complaint, may genuinely fear retribution if they do so. Sadly, some providers may exploit that fear in order to avoid reporting incidents.
3. clarification is needed around whether this is also intended to capture incidents where the injury or abuse is committed by someone other than either the care worker or another care recipient – for example a family member, neighbour, friend or other acquaintance of the care recipient.

11.3 Removing the exemption

This is a critical issue which must be addressed but TBS does not support this proposal in its current form. While we acknowledge and respect the right of every individual to the same protections under the law, we have some concerns about the practical impact of the change and some possible unintended negative consequences that could arise.

Our first concern is the likely volume of reports that would be required on a weekly basis for many residential aged care providers following the removal of this exemption, and the considerable administrative burden that could be added to established care and monitoring systems.

Unfortunately even in the best managed group environments with high quality care, there can be a higher risk of physical assault among people who have a diagnosis of cognitive impairment. It is best practice for care providers to avoid physical and chemical restraints in caring for people with dementia and other cognitive impairments, even when managing behaviour which is intrusive, unwanted and sometimes physically aggressive or violent.

Our concern is that the removal of the current exemption to reporting provisions could lead to a considerable increase in the administrative burden for aged care providers which could potentially act as a disincentive for them to accept and accommodate residents who may have 'challenging behaviours'.

This scenario could, in turn, raise issues of equity of access to care, possibly resulting in denial of care for some people or the creation of care 'ghettos' with high concentrations of people with complex needs.

11.4 National employment screening process

TBS agrees that there should be a national employment screening process for Australian Government funded aged care to determine whether a clearance should be granted to work in aged care. However we believe a screening process based only on *a) a person's national criminal history*, should be sufficient.

Even in screening for criminal history, there are issues of individual circumstance that will need to be considered. Very clear guidelines are necessary to ensure that potential employees are not inadvertently treated unfairly and wrongly denied access to employment.

TBS believes that decisions about the introduction and implementation process for a national employment screening process, should not be made without close consultation with approved aged care providers.

11.5 National database

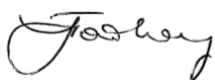
TBS agrees that a national database should be established to record the outcome and status of employment clearances.

11.6 Unregistered workers

TBS agrees in principle that requiring unregistered aged care workers to sign up to the planned National Code of Conduct for Health Care Workers is reasonable in principle, pending a review of the final agreement of the terms of the code.

TBS thanks you for the opportunity to provide input. For any further information or clarification please contact Marlene Krasovitsky at Marlene.Krasovistky@benevolent.org.au.

Yours sincerely



Jo Toohy
CEO