CPSA COMBINED PENSIONERS & SUPERANNUANTS ASSOCIATION

Submission to the Australian Law Reform Commission's Elder Abuse Discussion Paper (DP 83)

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Combined Pensioners & Superannuants Association of NSW Inc (CPSA)

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CPSA is a non-profit, non-party-political membership association founded in 1931 which serves pensioners of all ages, superannuants and low-income retirees. CPSA has 106 branches and affiliated organisations with a combined membership of over 21,000 people living throughout NSW. CPSA's aim is to improve the standard of living and well-being of its members and constituents.

Summary of Recommendations:

- **Recommendation 1:** That the Australian Government instates a Minister for Ageing to oversee the development and implementation of a National Plan to address elder abuse.
- **Recommendation 2:** That the ALRC considers the need for an aged care accreditation system based on the actual care provided to recipients.
- **Recommendation 3:** That the ALRC consider the impact of insufficient staffing on the incidence of elder abuse, particularly neglect, in aged care.
- **Recommendation 4:** That residents of residential aged care facilities be permitted to install video surveillance cameras in their private rooms.
- **Recommendation 5:** That the higher threshold of harm for reportable incidents perpetrated by a resident with cognitive impairment be removed.
- **Recommendation 6:** That a set of guidelines for the use of restrictive practices in residential aged care settings be developed and that compliance with these guidelines be enforced by the Department of Health in conjunction with the Australian Aged Care Quality Agency through the Accreditation Standards.
- **Recommendation 7:** That a system for the mandatory reporting on the use of physical restraints is developed and implemented to record the type of restraint used, reasons for using the restraint, strategies attempted prior to using the restraint and evidence of proper consent, to ensure transparency and accountability in the use of physical restraints.
- **Recommendation 8:** That the Department of Health and Australian Aged Care Quality Agency should have the capacity to ban the use of particular physical restraints where there is evidence that such restraints present a significant risk to the health, safety or wellbeing of residents.
- **Recommendation 9:** That the ALRC consider the impact of implementing Proposal 11-9, in light of the existing MoUs established between volunteer community visitors and residential aged care facilities.
- **Recommendation 10:** That Proposal 11-9 as specified in the Elder Abuse discussion paper should not proceed.
- **Recommendation 11:** That the Community Visitors Scheme in its current form be expanded.
- **Recommendation 12:** That an information sheet on elder abuse with clear referral pathways be developed for CVS coordinators.

- **Recommendation 13:** That the proposed Official Visitors Scheme should function independently and separately to the Aged Care Complaints Commission, the Australian Aged Care Quality Agency and the Department of Health.

CPSA welcomes the opportunity to provide feedback on the Elder Abuse Discussion Paper (DP 83) released by the Australian Law Reform Commission (ALRC). The majority of this submission responds to Chapter 11 of the Discussion Paper, which related to aged care. CPSA has extensive experience in the area of aged care and also auspices a Community Visitors Scheme (CVS) service in Sydney.

While CPSA is a strong supporter of the ALRC's involvement in elder abuse and the broader attention to the issue by state and territory governments, as a grass-roots organisation our members have raised a number of concerns with the terminology used. The term elder is not generally used in Australian society when talking about older people. The exception to this is within Aboriginal communities, where the term Elder holds particular cultural meaning and significance. In addition, members have expressed concern that the term elder abuse is ambiguous, as it can imply that the elder is the one perpetrating abuse. For these reasons, CPSA's preferred terminology is the abuse of older people. However, as the ALRC's terms of reference refer to elder abuse, this submission will also use the term to describe the abuse of older people.

National Plan

CPSA supports Proposal 2-1 and Proposal 2-2, to develop a National Plan to address elder abuse and to commission a national prevalence study of elder abuse. In particular, CPSA supports a focus on the agency and autonomy of older people as the key principle underpinning the National Plan, as well as the conceptualisation of elder abuse as a human rights issue.

It is critical that the development and implementation of a National Plan to address elder abuse is adequately funded and overseen by an appropriate body or department. CPSA is concerned that there is currently no Minister or Department with responsibility for issues relating to ageing and older Australians. Accordingly, it is unclear where responsibility for the development and implementation of a National Plan would sit. There is a strong need for leadership on policy issues affecting older Australians, particularly around elder abuse.

- **Recommendation 1:** That the Australian Government instates a Minister for Ageing to oversee the development and implementation of a National Plan to address elder abuse.

Aged care accreditation framework

CPSA is concerned that the Elder Abuse discussion paper contains no proposals relating to the regulation and accreditation of aged care providers. Rather, these issues are referred to the Aged Care Legislated Review. While the Legislated Review may consider these issues, it is a review predominantly focused on aged care funding arrangements and does not explicitly consider the quality of care being delivered through the sector. This is despite longstanding calls for a review of the aged care accreditation standards[1].

A 2005 parliamentary inquiry 'Quality and equity in aged care' made a number of recommendations, including that the Accreditation Standards be reviewed to include a clear definition of the expected outcomes associated with each of the standards[2]. Despite some changes to the Accreditation Standards in 2014, they do not currently consider the care outcomes residents experience. Rather they consider the organisation's processes and systems as a proxy for quality care. It is concerning that the regulatory framework for ensuring quality of care does not actually consider the care being provided to recipients, to say the least. It is even more concerning that the Australian Government is pushing towards an even more lax system of accreditation and regulation as part of the move towards a marketised aged care system, where the ultimate goal is for no Government regulation beyond consumer protections[3]. This would likely have a devastating effect on vulnerable aged care recipients.

Accordingly, CPSA urges the ALRC to consider the longer term implications of the shift to a market based consumer directed care model on elder abuse in aged care. Specifically, CPSA is concerned about declining staffing levels in residential aged care, which is discussed in depth in the next section of this submission.

- **Recommendation 2:** That the ALRC considers the need for an aged care accreditation system based on the actual care provided to recipients.

[1] As specified in the Quality of Care Principles 2014 (Cmth)
[2] Senate Standing Committee on Community Affairs (2005) 'Quality and Equity in Aged Care: Recommendation 14' *Commonwealth of Australia* available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Completed_inquiries/2004-07/aged_care04/report/index
[3] Please see: pp13 Aged Care Sector Committee (2016) 'Aged Care Road Map' available at: https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/04_2016/strategic_roadmap_for_aged_care_web.pdf

Staffing in residential aged care facilities

CPSA is disappointed that the Elder Abuse discussion paper proposals relating to staffing in aged care are limited to the introduction of a national employment screening process; the introduction of a national employment clearance database; and the introduction of a code of conduct for unregistered workers. While CPSA supports all of these proposals on the basis that they are reasonable and would likely improve the safety of residents, they do not address the systemic issues within the aged care sector that perpetuate the abuse of residents. The proposals related to staffing conceptualise abuse as something perpetrated by individual staff members and while this may well be the case, it obscures the responsibility aged care providers have to ensure resident safety by ensuring all shifts are sufficiently staffed.

CPSA has identified three clear pathways as to how insufficient staffing can give way to elder abuse in residential aged care settings:

1. *Elder abuse perpetrated by stressed staff members* – being given additional responsibilities and being required to care for more residents with fewer resources is stressful for workers. The consequences of worker stress in aged care are serious, with both residents and workers placed at risk.

2. *Neglect and insufficient care stemming from staff shortages* – when there are not enough staff rostered on to each shift, individual staff members will not have enough time to complete all tasks or may not receive the supervision required to perform their duties. This means that care is missed and residents do not receive the same level of care they would if there were more staff on duty.

3. *Resident-on-resident abuse stemming from a failure of staff to monitor residents and manage issues as they arise* – insufficient staffing means less time with each resident and this can result in a failure to recognise clinical symptoms. Particularly in people with advanced dementia, where verbal communication is limited, pain and discomfort stemming from infection, illness or injury can increase agitation if left untreated.

It is critical that the ALRC considers the broader, institutional and policy factors at play which may contribute to the abuse of those living in residential aged care facilities. CPSA notes that questions 11-1, 11-2, and 11-3 refer to employment clearances for aged care

workers and what should happen when workers are the subject of an adverse finding in respect to a reportable incident. While CPSA supports strong consequences for staff found to have perpetrated abuse, aged care providers and the management teams at facilities where abuse has been perpetrated must be held accountable for any unsafe staffing practices that may have contributed to the abuse.

CPSA has been contacted by numerous aged care workers concerned about staffing cuts at their workplace and the impact these cuts have on their capacity to provide quality care to residents. These stories highlight the same issues raised by aged care workers themselves through the Senate Inquiry into the Future of Australia's Aged Care Workforce[4].

There is significant evidence to suggest that current staffing levels in the residential aged care system permit systemic neglect, which is a form of elder abuse. According to analysis by Aged Care Crisis as well as a recent research report investigating aged care staffing and skills mix, residents receive on average just 2.84 hours of direct care per day[5]. Evidence suggests that the health, safety and wellbeing of residents receiving fewer than 4.3 hours of direct care per day are at risk due to insufficient care[6].

This failure to deliver basic care becomes even more alarming when considered within the context of the deskilling of the aged care workforce. The results of the Australian Aged Care Workforce Census and Survey show that Registered Nurses (RNs) comprised 21% of the direct care workforce in 2003, while Personal Care Attendants/Assistants in Nursing (PCAs/AINs) comprised 58.5%. In 2012, RNs comprised less than 15% of the direct care workforce, while PCAs/AINs comprised 68%. This is occurring despite the increasing frailty of residents upon entry into residential

[4]A significant proportion of submissions from individuals – both identified by name and name withheld – are reports from staff who have worked in the aged care sector. These submission are available on the Inquiry webpage: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Aged_Care_Workforce/Submissions

[5]Submission no. 302 Aged Care Crisis – Supplementary to Submission 302.2. Senate Standing Committee on Community Affairs Inquiry into the Future of Australia's Aged Care Workforce. Available: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AgedCareWorkforce45/Submissions

Willis, E., Price, K., Bonner, R., Henderson, J., Gibson, T., Hurley, J., Blackman, I., Toffoli, L and Currie, T. (2016) Meeting residents' care needs: A study of the requirement for nursing and personal care staff. Australian Nursing and Midwifery Federation

[6]Ibid.

Bowblis, J. (2011) 'Staffing Ratios and Quality: An Analysis of Minimum Direct Care Staffing Requirements for Nursing Homes' Health Services Research

care. In 2004/05 64%[7] of residents were classified as requiring a high level of care, while in 2012 this was up to 80%[8]. RNs perform a central role in coordinating and managing the care of residents. Their extensive training and expertise in the management of patients with complex care needs means they can identify and treat issues proactively. RNs also perform an important leadership and supervisory role, providing care staff with advice to support the delivery of care and acting as a point of escalation when issues arise. In contrast PCAs/AINs are trained to provide basic personal care and support rather than clinical nursing care.

It is critical that the ALRC consider as part of the inquiry into elder abuse how staffing shortages serve to increase the risk of elder abuse. It is unreasonable to increase the burden on individual aged care workers, while aged care providers continue to cut staff in order to maintain profitability. Residential aged care providers must be accountable for elder abuse stemming from unsafe staffing practices. However, as there are no specific legislative requirements around safe staffing levels, it is unlikely aged care providers will improve current staffing levels.

- **Recommendation 3:** That the ALRC consider the impact of insufficient staffing on the incidence of elder abuse, particularly neglect, in aged care.

CPSA notes that among our membership, there is strong support for legislative changes to allow residents living in aged care facilities to install video surveillance cameras in their private rooms, should the resident or their representative feel this is appropriate. This became an issue of significant concern following the release of footage which appeared to show an aged care worker abusing a resident with dementia[9]. The prosecution of abusers can be difficult when the abuse has occurred in a residential care facility, as where the witness is a fellow resident, that person is often not deemed fit to give evidence. In many more cases there are no witnesses, so claims of abuse cannot be sufficiently proven in court.

- **Recommendation 4:** That residents of residential aged care facilities be permitted to install video surveillance cameras in their private rooms.

[7] Department of Social Services (2005) 'Report on the Operation of the Aged Care Act 1997' p13.
[8] Australian Institute of Health & Welfare (2012) 'Care needs of permanent aged care residents'. Available at: http://www.aihw.gov.au/aged-care/residential-and-community-2011-12/permanent-residents/
[9] Park, A. (2016) 'Secret camera captures abuse of elderly man in nursing home including attempted "suffocation"' ABC News Online, 25 July 2016. Available: http://www.abc.net.au/news/2016-07-25/secret-camera-captures-nursing-home-attempted-suffocation/7624770

Compulsory reporting of incidents

Strong regulations are necessary to safeguard the most vulnerable and frail residents living in aged care, particularly those experiencing cognitive decline, who may be otherwise unable to speak out for themselves. Accordingly, CPSA is an avid supporter of Proposal 11-1, Proposal 11-2 and Proposal 11-3, which constitute a significant and much needed improvement to the current framework for reporting reportable assaults in residential aged care. In particular, CPSA supports the shift towards a model that requires reflection on the factors that may have contributed to the incident. It is critical that serious incidents and assaults are followed up and that steps are put in place to mitigate the risk of such an incident or assault occurring again. CPSA is also a keen supporter of the automatic treatment of reportable incidents as complaints, which would be followed up by the Aged Care Complaints Commissioner.

CPSA supports the extension of mandatory reporting to resident-on-resident assaults, however there are some concerns regarding the need for these incidents to meet a higher threshold of risk/harm, based on the disability reportable incidents scheme. Where the perpetrator of an assault or incident is experiencing cognitive decline, it is critical that steps are taken to assess the cause of this incident so that steps can be taken to prevent any further occurrences. Residents experiencing cognitive decline should be assessed by clinical staff so that any underlying or untreated issues that may have contributed to the incident can be addressed as a matter of urgency. Sadly, there have been a number of cases where a resident has died following an assault by a fellow resident experiencing cognitive decline whose behaviour was not sufficiently managed by staff, according to coronial proceedings[10]. Accordingly CPSA views the higher threshold of risk/harm for resident-on-resident assaults as potentially dangerous.

- **Recommendation 5:** That the higher threshold of harm for reportable incidents perpetrated by a resident with cognitive impairment be removed.

CPSA welcomes the extension of the reportable incident scheme to include mandatory reporting where a resident presents with an unexplained serious injury. This provision, in

[10]Knaus, C. (2016) 'Family of killed dementia patient speak of hurt at losing 'wise, charming' man' Canberra Times, 21 April 2016. Available online: http://www.canberratimes.com.au/act-news/family-of-killed-dementia-patient-speak-of-hurt-at-losing-wise-charming-man-20160421-gobqlh.html
SkyNews (2016) 'Woman bludgeoned to death in nursing home attack' Sky News Online, 23 November 2016. Available online: http://www.skynews.com.au/news/national/sa/2016/11/23/woman-bludgeoned-in-nursing-home-attack.html

combination with the automatic treatment of incidents as complaints to be followed up by the Aged Care Complaints Commissioner represents a significant safety improvement, particularly for residents experiencing cognitive decline who may be otherwise unable to communicate experiences of abuse. This will ensure that incidents are identified, investigated and followed up.

For the purposes of transparency and accountability, access to information regarding reportable incidents and assaults must be made publically available. This is a matter of safety and prospective residents need to be able to check the history of a particular residential aged care facility as an informed decision cannot be made without this information.

Restrictive practices

CPSA supports Proposal 11-7, which would see the use of restrictive practices in residential aged care regulated. CPSA notes that the Department of Health's submission to the ALRC Elder Abuse issues paper says that toolkits on the use of restrictive practices are available for staff and management. However, these are toolkits which have not been made public, so it is impossible to know whether they are consistent with clinical best practice. Accordingly, CPSA calls for the development of a national set of guidelines for the use of restrictive practices in residential aged care lead by clinical experts. Given that the improper use of restrictive practices can amount to a serious breach of individual rights, compliance with these guidelines must be mandatory and should be included in the accreditation standards.

- **Recommendation 6:** That a set of guidelines for the use of restrictive practices in residential aged care settings be developed and that compliance with these guidelines be enforced by the Department of Health in conjunction with the Australian Aged Care Quality Agency through the Accreditation Standards.

CPSA notes that numerous coroners' reports[11] as well as a recently published study[12] have linked the use of restrictive practices to the death of a resident. It is critical that information regarding the use of restrictive practices is collected and monitored, in order to identify particular practices or restraints that may present a serious risk to the health, safety and/or wellbeing of residents. Accordingly, CPSA proposes that the use of restrictive practices in a residential aged care facility should be treated as reportable incidents. CPSA also supports the referral of these incidents to the Aged Care Complaints Commissioner for investigation. It is critical that the use of restrictive practices is kept to an absolute minimum and CPSA is very concerned about their potential improper use as a result of staffing and skills shortages in particular facilities.

[11] Coroners reports available on request

[12] Bellenger, E. Ibrahim, J. Bugeja, L. Kennedy, B. (2017) 'Physical Restraint Deaths in a 13-year National Cohort of Nursing Home Residents' Age and Ageing, 1(6), https://academic.oup.com/ageing/article-abstract/doi/10.1093/ageing/afw246/2801280/Physical-restraint-deaths-in-a-13-year-national?redirectedFrom=fulltext

- **Recommendation 7:** That a system for the mandatory reporting on the use of physical restraints is developed and implemented to record the type of restraint used, reasons for using the restraint, strategies attempted prior to using the restraint and evidence of proper consent, to ensure transparency and accountability in the use of physical restraints.

Where a particular restrictive practice or restraint has been identified as presenting a significant risk to residents, the Department of Health, in conjunction with the Australian Aged Care Quality Agency must have the capacity to ban the use of that restraint. For example, the KA524 bed pole has been identified as unsuitable for use in a number of coroner's reports. In response, the Department of Health has issued two notices to aged care providers advising of this risk, however they do not have the legislative power required to ban providers from using the KA524 bed pole. It is critical that the regulatory bodies have sufficient legislative power to act.

- **Recommendation 8:** That the Department of Health and Australian Aged Care Quality Agency should have the capacity to ban the use of particular physical restraints where there is evidence that such restraints present a significant risk to the health, safety or wellbeing of residents.

Community Visitors Scheme

CPSA has been the auspice of a Community Visitors Scheme (CVS) service in Sydney since 1991. CPSA's CVS service employs one full time coordinator and is funded for 85 volunteers. The CVS delivers one-on-one services to clients receiving home care packages and both group and one-on-one services to clients who live in residential aged care. This part of the submission has been developed in consultation with CPSA's CVS coordinator.

The Community Visitors Scheme Visitors Handbook[13] contains a memorandum of understanding (MoU), which must be signed by both the volunteer visitor and the residential aged care provider. The MoU specifies the obligations volunteers must meet and establishes clear boundaries which serve to limit volunteers to the role of companion or friend. Among other things, the MoU states that volunteers must NOT monitor standards at an aged care home, be involved in investigating or following up complaints, interfere with or have any involvement in the day-to-day running of the aged care home. CPSA is concerned that if implemented Proposal 11-9 may contravene the terms of this MoU. The identification of elder abuse in a residential aged care setting and any subsequent action required by the proposed policies and procedures would likely constitute a breach of existing MoUs, particularly if volunteers were required to refer clients to advocacy services or complaints mechanisms. CPSA is also concerned that aged care providers may be less willing to allow volunteers to visit residents, given that existing MoUs would no longer hold.

- **Recommendation 9:** That the ALRC consider the impact of implementing Proposal 11-9, in light of the existing MoUs established between volunteer community visitors and residential aged care facilities.

CPSA is concerned that proposal 11-9 may have significant unintended consequences in terms of the viability of the CVS as a whole. A major strength of the CVS at a national level is its clear focus on the provision of social support by means of facilitating a relationship between clients and volunteers. The CVS is successful because it does not place overly onerous expectations on volunteers or clients, with success dependent on both volunteers and clients freely choosing to establish and maintain a relationship. The

[13]Department of Health and Ageing (2007) 'Community Visitors Scheme: handbook' Available from the National Library of Australia via: http://trove.nla.gov.au/work/11297440?selectedversion=NBD42468181&q&versionId=43770553

simplicity and flexibility of the CVS is one of the key factors attracting volunteers to participate in the scheme. CPSA is concerned that increasing the responsibility of volunteers in relation to identifying and responding to cases of elder abuse would place significant pressure on volunteers and that this, in turn, is likely to make attracting and retaining volunteers more difficult.

In addition to increasing the risk of CVS volunteer attrition, Proposal 11-9 may in fact go as far as to undermine the current purpose of the scheme, which is companionship. The relationship dynamic between volunteers and clients is one of equality, which provides the basis for companionship. Proposal 11-9 would require volunteers to take up a surveillance role in monitoring for suspected signs of elder abuse and this would result in a significant shift in the relationship dynamic, by casting clients as potential victims and volunteers as potential saviours. This is likely to be disempowering for clients, who have opted to participate in the CVS for the purposes of companionship and friendship. It also places significant pressure on volunteers.

Loneliness and a lack of social support, both of which contribute to social isolation, are factors known to increase the risk of elder abuse in community settings[14]. Through the provision of regular social interactions with an emphasis on companionship, the CVS in its current form has proved an effective program in delivering social support and reducing loneliness among clients, particularly those living at home in the community. Given the CVS's success in combatting these two known risk factors, it is CPSA's view that expanding the CVS in its current form, as opposed to implementing Proposal 11-9, would be a more effective means of addressing Elder Abuse. A preventative approach should always be prioritised.

- **Recommendation 10:** That Proposal 11-9 as specified in the Elder Abuse discussion paper should not proceed.
- **Recommendation 11:** That the Community Visitors Scheme in its current form be expanded.

While CPSA does not support the introduction of mandatory policies and procedures for volunteers to follow in cases of suspected or identified elder abuse, it is critical that the CVS coordinator is equipped to respond where volunteers are concerned about abuse.

[14] Johannesen, M. LoGiudice, D. (2013) 'Elder Abuse: a systematic review of risk factors in community-dwelling elders' Age and Ageing, 24(3) 292-298 https://academic.oup.com/ageing/article/42/3/292/24179/Elder-abuse-a-systematic-review-of-risk-factors-in#232185

Given that the CVS coordinator is a dedicated professional who is employed to deliver the program, it is more appropriate that responsibility for responding to instances of elder abuse sits with the coordinator. While volunteers should not be responsible for identifying and responding to cases of elder abuse, it is inevitable that issues may arise. These issues should be referred to the CVS coordinator, who should be equipped with the information necessary to refer cases of alleged elder abuse on through the appropriate pathways.

- **Recommendation 12:** That an information sheet on elder abuse with clear referral pathways be developed for CVS coordinators.

Official Visitors Scheme

CPSA broadly supports Proposal 11-10 and Proposal 11-11, which call for the implementation of an Official Visitors Scheme, similar to those which currently operate in the disability sector. CPSA views an Official Visitors Scheme as a more appropriate and effective way of dealing with elder abuse than extending the responsibilities of CVS volunteers. CPSA notes that the introduction of an Official Visitors Scheme would address a number of the gaps and shortcomings with the existing accreditation and complaints systems identified in the discussion paper.

It is critical that the proposed Official Visitors Scheme operates to provide staff and residents of residential aged care facilities with an opportunity to raise their concerns with an independent and impartial observer, without fear of retribution from the facility. One of the biggest issues with the current complaints scheme, administered by the Aged Care Complaints Commissioner, is that all issues are referred back to the facility as part of the resolution process. This is a significant deterrent for residents experiencing abuse. The Official Visitors Scheme must avoid falling into this same trap by ensuring that the privacy, autonomy and agency of both residents and staff are a priority. It is critical that the response of the Official Visitors Scheme to cases of elder abuse does not result in the 'outing' of any residents.

In order for the Official Visitors Scheme to function as intended, it must be independent, adequately funded and sufficiently staffed. It is CPSA's view that the Scheme should operate autonomously from the existing complaints and accreditation schemes as well as the Department of Health. There is strong public perception, particularly among CPSA's membership, that recent moves to increase the independence and effectiveness of the Complaints Scheme and aged care accreditation system have amounted to little more than an exercise in rebranding.

- **Recommendation 13:** That the proposed Official Visitors Scheme should function independently and separately to the Aged Care Complaints Commission, the Australian Aged Care Quality Agency and the Department of Health.