

Australian Law Reform Commission
Sydney NSW



Response to a call for written submissions

Elder Abuse Discussion Paper

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Response to call for submissions by the Australian Law Reform Commission

Anglicare SA – Elder Abuse Discussion Paper submission

Organisational background

AnglicareSA has been working for the community of South Australia for over 150 years. Our 1700 staff and 700 volunteers support nearly 55,000 people each year. AnglicareSA's diverse community services include aged care, disability, foster care, parenting, financial literacy, new-arrivals, Aboriginal services, emergency assistance, homelessness and mental health.

Overall comments

AnglicareSA welcomes the Australian Law Reform Commissions (ALRC) Elder Abuse Discussion Paper which considers the interaction of state and territory laws and the identification and modelling of best practice legal frameworks. The paper explores how these frameworks will promote and support older people's ability to participate equally in their community and protect them against misuse or advantage taken by formal and informal supporters or representatives. AnglicareSA has a strong commitment to promoting social justice and responding to needs and issues in ways which enhance and protect an individual's dignity and integrity, therefore the organisation is appreciative of the opportunity to contribute to the inquiry.

AnglicareSA provides residential aged care, independent living, community based care and home supports to over 4,600 consumers. Within Active Living, our Aged Care service stream, we provide a range of residential, independent, allied health and in home services across 590 residential aged care beds, 80 independent living units and in home services to over 1400 older South Australians. Further to this, the organisation provides services to older South Australians within housing and community services.

AnglicareSA's response to the ALRC Elder Abuse discussion paper has been informed by services which engage extensively with older individuals. It draws on experiences and insight from a number of Active Living and Corporate Service Managers who have the primary aim of ensuring that customer wellbeing is the primary focus of all that we do.

AnglicareSA supports the objective to provide a clear framework for a national and community approach to combat ageism, support older persons in protecting their rights and stop elder abuse. Responses to selected proposals and questions are documented within this submission.

Proposal / Question #	Proposal / Question	Discussion Paper Page #	AnglicareSA comments
P 2.1	A National Plan to address Elder Abuse should be developed	47	A national plan and approach to elder abuse will promote improved governance through consistent practice and therefore proposal 2 – 1 would be viewed positively. There is agreement that this approach would lead to increased awareness and improved response to elder abuse through the embedding of a consistent supportive framework.
P 3 - 4	<p>In responding to the suspected abuse or neglect of an older person, public advocates or public guardians may:</p> <p>(a) refer the older person or the perpetrator to available health care, social, legal, accommodation or other services;</p> <p>(b) assist the older person or perpetrator in obtaining those services;</p> <p>(c) prepare, in consultation with the older person, a support and assistance plan that specifies any services needed by the older person; or</p> <p>(d) decide to take no further action.</p>	72	In regards to point d) ‘decide to take no further action’, there is a perceived need to consider a further expansion of this statement to ‘that no further action is taken as the alleged abuse or neglect has not been substantiated’. This suggestion will ensure that interventions or investigations will not cease until there is reassurance that abuse or neglected has not been proven.
P 3- 5	<p>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:</p> <p>(a) liable, civilly, criminally or under an administrative process;</p> <p>(b) found to have departed from standards of professional conduct;</p> <p>(c) dismissed or threatened in the course of their</p>	73	This proposal is supported and considered vital to provide protection for aged care workers who report elder abuse.

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	employment; or (d) discriminated against with respect to employment or membership in a profession or trade union.		
P 5 -1	A national online register of enduring documents, and court and tribunal orders for the appointment of guardians and financial administrators, should be established	88	The concept outlined in proposal 5 -1 would increase accountability and strengthen a national and robust approach however the financial implications and administrative requirements may lead to non-compliance with a national register.
P 5- 4	<p>Enduring documents should be witnessed by two independent witnesses, one of whom must be either a:</p> <ul style="list-style-type: none"> (a) legal practitioner; (b) medical practitioner; (c) justice of the peace; (d) registrar of the Local/Magistrates Court; or (e) police officer holding the rank of sergeant or above. <p>Each witness should certify that:</p> <ul style="list-style-type: none"> (a) the principal appeared to freely and voluntarily sign in their presence; (b) the principal appeared to understand the nature of the document; and (c) the enduring attorney or enduring guardian appeared to freely and voluntarily sign in their presence. 	100	Older people from ATSI and CALD backgrounds can be extremely vulnerable in the event of abuse. The importance of an independent witness being able to speak the same language as the principal should be an expectation to minimise the risk of abuse through individuals signing documents that they do not have the ability to adequately understand or interpret.

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P 6- 1	Newly-appointed non-professional guardians and financial administrators should be informed of the scope of their roles, responsibilities and obligations.	121	<p>Training and information regarding the role of a non - professional guardian and financial administrator would be a positive recommendation however this may lead to refusal to take the role due to administrative or financial burden for the non-professional guardian or administrators.</p> <p>Community access to information regarding the roles, responsibilities and obligations would be beneficial.</p>
P 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	200	A robust system that ensured accountability of reporting expectations by service providers would enhance outcomes for older individuals and therefore be supported
P 11 - 2	<p>The term ‘reportable assault’ in the <i>Aged Care Act 1997</i> (Cth) should be replaced with ‘reportable incident’.</p> <p>With respect to residential care, ‘reportable incident’ should mean:</p> <p>(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;</p> <p>(b) a sexual offence, an incident causing serious</p>	200	<p>There is support for this proposal however the language requires further clarification to ensure that there is certainty with direction and expectations as there is the potential for subjective interpretation or missed abuse due to lack of clarity of what constitutes an incident. .</p> <p>The description of an incident leading to an unexplained serious injury may result in a range of interpretations and therefore variances in reporting. The utilisation of the term ‘ill treatment’ as a descriptive of a reportable incident is also viewed as being unclear and open to subjective</p>

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	<p>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.</p> <p>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.</p>		<p>interpretation</p>
P 11 - 3	<p>The exemption to reporting provided by s 53 of the <i>Accountability Principles 2014</i> (Cth), regarding alleged or suspected assaults committed by a care recipient with a pre-diagnosed cognitive impairment on another care recipient, should be removed.</p>	200	<p>The removal of this exemption will result in higher reporting rates and therefore increased demand and expectation for service providers to comply with reporting and management of reportable incidents. The process must be robust with minimal administrative burden to ensure compliance across the aged care industry.</p> <p>If this proposal is intended to address poor management and non compliance with resident to resident incidents/ abuse by a minority of providers, other non legislative mechanisms should be considered that will improve care for recipients without adding additional administrative burden to the broader industry.</p>

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P 11 - 4	<p>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:</p> <ul style="list-style-type: none"> (a) a person’s national criminal history; (b) relevant reportable incidents under the proposed reportable incidents scheme; and (c) relevant disciplinary proceedings or complaints. 	222	<p>A national process for employment screening would be embraced provided it promoted a streamlined system for both employees and service providers.</p> <p>Service providers should retain discretionary authority to ensure that they can manage the complex aged care workforce and ensure that the specific role is a consideration when accepting or rejecting an individual’s employment screening findings.</p> <p>There is agreement with paragraph 11.165 that the scheme for employment screening in aged care should align with the screening for working with children. The concept of a national approach to screening staff for suitability for working with vulnerable groups is sound as the industry and workforce is becoming more responsive to working across the disability, children’s and aged care sectors, therefore the additional checks that are undertaken for individuals working with children, should be considered for the broader aged care and disability services environment.</p> <p>A commitment to a national screening process for individuals working with vulnerable individuals would be supported and provide a consistent approach for service providers to staff screening when working with vulnerable people. Further clarity is required for (c) regarding the identification and management of disciplinary and complaints proceedings for individual staff.</p>

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P 11 - 5	A national database should be established to record the outcome and status of employment clearances.	222	<p>A national employment screening data base would provide transparency and ease for both service providers and individuals however issues regarding how this data base would be managed and resourced must be addressed and confirmed.</p> <p>Access, confidentiality and privacy issues will also be an area requiring further clarity and there should be caution where considering further administrative processes that may cause unnecessary burden for service providers and aged care workers.</p>
Q 11 - 1	Where a person is the subject of an adverse finding in respect of a reportable incident, what sort of incident should automatically exclude the person from working in aged care?	228	<p>If there is an aim to truly pursue a ‘zero tolerance’ approach to elder abuse, then any person working in aged care who is subject to an adverse finding from any reportable incident should be automatically excluded from working with vulnerable people. There is an argument for a consistent and national approach where individuals working with vulnerable people across aged care, disability and children service areas have clear and consistent expectations for employment as well as for exclusion from employment.</p> <p>The South Australian Department of Education and Child Development (DECD) has identified recommendations of what may exclude a person from working with children. Within the DECD recommendations, exclusion of any relevant personnel can occur if there is the subject of an allegation, arrest, charge or conviction for any offence of a</p>

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			<p>sexual nature, an offence of indecency, violence or deprivation of liberty (whether indictable or not), or other indictable offence, or, any offence or notification from the Minister that the individual is not suitable to be involved in the service.</p> <p>The inclusion of ‘allegation’, without the need for them to be proved, in these guidelines may be viewed as being too restrictive and difficult for service providers to embed in practice while managing their workforce. Particularly whilst there seems to be no time limitation on these allegations or charges, nor is any other relevant factors considered.</p> <p>A directive regarding exclusion of persons working in aged care must be clear, consistent and realistic to ensure compliance and optimal outcomes for consumers while still ensuring the protection of vulnerable people remains paramount.</p>
Q 11 - 2	How long should an employment clearance remain valid?	230	Two years
Q 11 - 3	Are there further offences which should preclude a person from employment in aged care?	231	Offences that warrant exclusion from employment for working within the aged care environment should align with exclusions across the disability and children sectors to ensure consistent practice and expectations across the community. Further offences that would preclude a person from working in the aged care sector would include fraud, theft and financial abuse.

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P 11 - 6	Unregistered aged care workers who provide direct care should be subject to the planned National Code of Conduct for Health Care Workers.	233	<p>It is a requirement that professional health workers must be registered with Australian Health Practitioner Regulation Agency (AHPRA). This agency provides a forum for ensuring that health professionals are suitably trained and qualified to practice in a competent and ethical manner with an aim to ensure public safety. The agency provides a forum for reviewing and determining the status of registration in the event of misconduct or unprofessional practice whether registration should continue. AHPRA also provides an avenue for complaints to be made regarding an individual worker and has the ability to deregister individuals if appropriate, providing an avenue for the removal of unsuitable staff.</p> <p>The majority of workers within the aged care sector are not covered by the authority of AHPRA and therefore there is not a governing body that can provide oversight for this key aged care worker cohort. The development of a governing body would provide an administrative burden for service providers and care workers that may not be justified.</p> <p>The office of the South Australian Health and Community Services Complaints Commissioner (HCSCC) is a statutory office established by the <i>Health and Community Services Complaints Act 2004</i> (the Act), and currently HCSCC has a code of conduct for unregistered health professionals that has been made under the health and community services complaints regulations 2005.</p>

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			<p>The development of a National Code of Conduct for unregistered Health Care workers would be a positive action, however expanding it to include all staff working within the aged care environment and not only direct care workers is worthy of consideration. The scope of the code of conduct should cover all aged care staff including administration, hospitality and maintenance roles that may at times have direct access with residents and community based customers.</p> <p>There are a number of reporting streams that could be followed to report concerns regarding conduct of a health professional within the aged care, with state based oversight for unregistered health professionals. There is a fragmented approach and a centralized body to address breeches of ethical codes for all staff within the aged care environment would be a positive model to explore.</p>
<p>P 11 - 7</p>	<p>The <i>Aged Care Act 1997</i> (Cth) should regulate the use of restrictive practices in residential aged care. The Act should provide that restrictive practices only be used:</p> <ul style="list-style-type: none"> (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 	<p>238</p>	<p>External guidance regarding restrictive practices within the aged care environment currently provides the framework for internal service provider policies and practice. At this time, internal practices align with the recommendations outlined in proposal 11 -7, and further regulation through the Aged Care Act would provide more rigorous accountability of the use of restrictive practices within the aged care environment.</p> <p>A requirement to establish and maintain an internal</p>

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	management plan.		restrictive practices register where all restrictive practices are recorded, monitored and reviewed would promote sound adherence to internal policies related to this area of service provision. The register would provide regular reports and evidence of practice and a framework for internal auditing and evaluation.
<p>AnglicareSA is pleased to have the opportunity to make a submission to the ALRC Elder Abuse discussion paper. While noting that the paper is lengthy, complex and difficult to read, it has been a very positive process to review and discuss the paper.</p> <p>As a general observation, terminology within the discussion paper is open to interpretation and we would encourage further clarity and definition to be applied to the final recommendations to ensure compliance across the sector.</p> <p>An awareness of the unique and potentially amplified needs of advocacy and support for the ATCI and CALD communities when elder abuse is suspected cannot be underestimated. The final recommendations should highlight the needs of ATCI and CALD and special needs groups within our community.</p> <p>In summary, AnglicareSA embraces the implementation of a robust and formal approach to ensuring that rights of older individuals are respected and that they are able to live dignified lives free from exploitation, violence and abuse. There is also awareness that the recommendations within the ALRC paper will add increased administrative and/ or financial requirement to the community, service providers and aged care workforce. Reviewing the recommendations and desired outcomes against the potential deterrents for all stake holders should be undertaken to identify the potential impact on compliance to the determined process.</p>			