

Submission

on

Elder Abuse Discussion Paper (DP83)

to the

Australian Law Reform Commission

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1. Introduction

The Attorney-General, Senator the Hon George Brandis QC announced a new Inquiry for the Australian Law Reform Commission ('ALRC') on 'Protecting the Rights of Older Australians from Abuse' on 24 February 2016.

The ALRC released an Issues Paper on 15 June 2016 and called for submissions from the public. Submissions closed on 18 August 2016.

The ALRC then released a Discussion Paper in December 2016 with proposals for reform, and again called for submissions by 27 February 2017. The reporting date is May 2017.

FamilyVoice Australia is a national Christian voice – promoting true family values for the benefit of all Australians. Our vision is to see strong families at the heart of a healthy society: where marriage is honoured, human life is respected, families can flourish, Australia's Christian heritage is valued, and fundamental freedoms are enjoyed.

We work with people from all mainstream Christian denominations. We engage with parliamentarians of all political persuasions and are independent of all political parties. We have full-time FamilyVoice representatives in all states.

FamilyVoice commends the ALRC for pursuing an inquiry aimed at securing the rights and wellbeing of older Australians. FamilyVoice believes that the way we care for the most vulnerable members of our community is indicative of the nature of our society.

2. Terms of Reference

Protecting the Rights of Older Australians from Abuse

I, Senator the Hon George Brandis QC, Attorney-General of Australia, having regard to:

- the principle that all Australians have rights, which do not diminish with age, to live dignified, self determined lives, free from exploitation, violence and abuse
- the principle that laws and legal frameworks should provide appropriate protections and safeguards for older Australians, while minimising interference with the rights and preferences of the person, and
- relevant international obligations relating to the rights of older people under United Nations human rights conventions to which Australia is a party.

REFER to the Australian Law Reform Commission (ALRC) for inquiry and report, pursuant to subsection 20(1) of the *Australian Law Reform Commission Act 1996* (Cth), the consideration of:

- existing Commonwealth laws and frameworks which seek to safeguard and protect older persons from misuse or abuse by formal and informal carers, supporters, representatives and others. These should include, but not be limited to, regulation of:
 - financial institutions

- superannuation
- social security
- living and care arrangements, and
- health
- the interaction and relationship of these laws with state and territory laws.

3. Definition of Elder Abuse

3.1. Use of the terms ‘harm’ and ‘distress’

1.11 While there is no universally accepted definition of elder abuse, a widely used definition is the one put forward by the World Health Organization, describing elder abuse as

a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person¹.

1.12 This description is used across a range of government and non-government bodies.

While use of the terms ‘harm’ and ‘distress’ in a definition of elder abuse is helpful in a range of contexts, the discussion paper highlights the problems posed by use of the term ‘distress’ in a legal framework. ‘Distress’ is a more subjective term, signifying more indirect effects of action, as opposed to direct action against a person. It does not necessarily denote actual harm.

However, there could be room for the use of the term ‘distress’ in any legal definition of elder abuse, if demonstration of intention on the part of the perpetrator of the abuse was required, and a legal burden of proof was necessary. Any definition including the term ‘distress’ that did not include intention would be problematic.

Recommendation 1: That, to the extent to which any legal definition of ‘elder abuse’ includes ‘distress,’ any proposed sanction against a person said to have caused that ‘distress’ include both intention on the part of such person and an objective ‘reasonable person’ test.

4. Legal consistency and safeguarding

4.1. Euthanasia debate

1.79 In the ALRC’s 2010 Family Violence inquiry, the ALRC considered the complex interactions across the federal landscape, particularly between the Family Law Act 1976 (Cth) and state and territory family violence and child protection laws.[100] In that context the ALRC identified, as a

key policy goal, the aspiration of ‘seamlessness’. Where legislation includes different definitions and requirements, consistency has been identified as an important goal. As it was in the Family Violence Inquiry, a need for consistent laws was a dominant theme among stakeholders in this Inquiry.[101] As National Seniors observed:

It makes little sense that the legal frameworks to protect older Australians from abuse differ across the various states and territories. National laws or at the least nationally consistent laws are required to reduce confusion and improve protections for older people.

FamilyVoice would like to draw attention to the problem of euthanasia in the context of the search for seamlessness and consistency in safeguarding older Australians. The recent defeat of euthanasia legislation in the South Australian parliament by a single vote highlights the danger of legal contradiction in relation to issues affecting older Australians, should such legislation be passed in the future.

The introduction of laws for euthanasia and assisted suicide risks the wellbeing of society’s most vulnerable members. These include the elderly, who may feel themselves to be a burden on their loved ones.

The link between elder abuse and euthanasia is no mere fiction. Experience in Oregon (US), which has “physician-assisted dying”, shows that physical suffering is not a major issue for those requesting physician assisted suicide – but fear of being a burden is. Of the 673 people who had died under the provisions of the Act as of 14 January 2013, only 23.5% listed “inadequate pain control or concern about it” as consideration.²

Earlier annual reports noted: “Patients discussing concern about inadequate pain control with their physicians were not necessarily experiencing pain.”³ By contrast some 38.6% of those who died after taking prescribed lethal medication cited concerns about being a “burden on family, friends/caregivers” as a reason for the request.⁴

The legalisation of euthanasia creates an environment in which older people are susceptible to harm through coercion or pressure to end their lives. A New South Wales Legislative Council elder abuse inquiry drew attention to a link between skyrocketing property prices in Sydney and coercion of elderly parents to ‘help out’ financially, or to sell property of significant value.⁵ The report highlights the inhumane behaviour that can be exhibited when large sums of money are involved. If any Australian jurisdiction were to legalise euthanasia, much greater pressure is likely to come to bear upon elderly and other vulnerable persons to request termination. Moreover, the law may become effectively powerless to control euthanasia, as has occurred overseas. In the interests of protecting and safeguarding vulnerable older Australians, therefore, FamilyVoice believes it is incumbent upon all jurisdictions to reject proposals for legal euthanasia.

Recommendation 2: To maximise the protection of elderly and other vulnerable people, the Australian Law Reform Commission should vigorously urge all Australian jurisdictions to reject proposals for legal euthanasia.

4.2. Endnotes

¹ World Health Organization, *The Toronto Declaration on the Global Prevention of Elder Abuse* (2002).

² Oregon Health Authority, *Oregon's Death With Dignity Act -2012 Table 1, Characteristics and end-of-life care of 673 DWDA patients who died after ingesting a lethal dose of medication as of January 14, 2013, by year, Oregon, 1998-2012*, p 4.

³ Oregon Health Authority, *Sixth Annual report on Oregon's Death With Dignity Act*, 2004, p 24.

⁴ Oregon Health Authority, *Oregon's Death With Dignity Act -2012 Table 1, Characteristics and end-of-life care of 673 DWDA patients who died after ingesting a lethal dose of medication as of January 14, 2013, by year, Oregon, 1998-2012*, p 4.

⁵ General Purpose Standing Committee No 2, *Elder Abuse in NSW*, Report no. 44, Sydney, NSW, June 2016.