



Speech Pathology Australia's Submission to the Australian Law Reform Commission

Elder Abuse Discussion Paper

27 February 2017





The Australian Law Commission (ALRC)
GPO Box 3708
Sydney NSW 2001

Speech Pathology Australia is pleased to provide feedback on the Elder Abuse Discussion Paper. We would like to thank the ALRC for its consideration of Speech Pathology Australia's submission to the Elder Abuse Issues Paper December 2016.

Speech Pathology Australia is the national peak body for speech pathologists in Australia, representing more than 7,000 members. Speech pathologists are the university trained allied health professionals with expertise in treating communication and swallowing difficulties (dysphagia). Speech Pathology Australia does not directly advocate on behalf of individual with communication difficulties; however, our members have a significant role in supporting consumers to exercise their rights by supporting their communication access.

While communication problems affect people across the lifespan, the prevalence and complexity of these disorders increases with age. The body's natural ageing process can impact on memory, processing speed, voice, hearing, language, and speech processes. Furthermore, many common aged related conditions such as stroke, dementia, and Parkinson's disease have a high prevalence of communication problems.

Communication difficulties can have a direct negative effect on a person's adaptation to the ageing process, ability to make life decisions (including acting on these decisions), and to access and utilise basic human services including medical care. Evidence indicates that individuals with lifelong and acquired communication difficulties are a vulnerable group and can experience an imbalance in the power relationship with those who provide them with support. The nature of communication disability exposes individuals to the potential for abuse and ill-treatment.

Communication difficulties may negatively impact on an individual's ability to voice their concerns, to self-advocate, and to disclose/report harm done to them by another. As such, Speech Pathology Australia strongly supports the need for legal reform and a National Plan to address elder abuse that is equipped to protect older adults with communication, swallowing and mealtime related disabilities. Any Plan or framework developed must have adequate provisions and safeguards in place to address the barriers that people with communication difficulties face in navigating the aged care system and engaging with complaints processes.

Please contact Dr Jade Cartwright, Aged Care Advisor at the Speech Pathology Australia National Office on 03 9642 4899 or via agedcare@speechpathologyaustralia.org.au if you require further information or assistance.

Yours faithfully

Gaenor Dixon
National President





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Speech Pathology Australia's Submission to the Australian Law Reform Commission's Elder Abuse Discussion Paper

Speech Pathology Australia welcomes the opportunity to provide comment on the Australian Law Reform Commission's Elder Abuse Discussion Paper.

Speech pathologists are university trained allied health practitioners with expertise in the assessment and treatment of communication and/or swallowing difficulties (dysphagia). Speech Pathology Australia is the peak professional body representing speech pathologists in Australia. At present, Speech Pathology Australia provides professional support services to over 7000 speech pathologists in Australia. Provision of services for older Australians living with communication and /or swallowing difficulties is a core area of professional practice for speech pathologists. Speech Pathology Australia employs an Aged Care Advisor to provide support for members working with older Australians, and convenes an Aged Care Advisory Group of members who are recognised leaders in our profession within aged care. The expertise of these members has been drawn on in preparing this submission.

Speech Pathology Australia welcomes any legal and policy reform that upholds communication as a basic human right, and seeks to safeguard and protect older persons from mistreatment or abuse by formal and informal carers, supporters, representatives and others. Speech Pathology Australia is particularly interested in Commonwealth laws and frameworks that safeguard and protect older persons with communication, swallowing and/or mealtime difficulties.

Our submission begins with an overview of the communication, swallowing and mealtime difficulties that may be encountered by older people and the role that speech pathologists have with this cohort. We then provide comments in relation to the proposals and questions included with reference to a sub-set of chapters of the Discussion Paper.

About older people with communication and swallowing difficulties

Communication problems encompass difficulties with speech (producing spoken language), understanding or using language, voice, fluency (stuttering), and pragmatics (the social use of language), or a combination of areas. Swallowing problems (dysphagia) affect the ability to safely swallow food or liquids and can lead to medical complications including malnutrition, chest infections/pneumonia and death. Difficulties in communication and swallowing can occur in isolation or a person may have difficulties in more than one area. For example, following a stroke a person may have speech, expressive and/or receptive language, and swallowing difficulties.

Communication and swallowing difficulties can arise from a range of conditions and may be present from birth (e.g., cleft palate, Down Syndrome or Autism Spectrum Disorder), emerge during early childhood (e.g., stuttering, severe speech sound disorder), or during adult years (e.g., traumatic brain injury, stroke and head/neck cancers, dementia, Alzheimer's disease, Parkinson's disease, other neurodegenerative diseases).

While communication difficulties affect people across the lifespan, the prevalence and complexity of these disorders increase with age. Both communication and swallowing functions are vulnerable to the natural ageing processⁱ. Changes in anatomy, physiology, sensory and motor functioning can lead to reduced function and increased risk in relation to eating and drinking safely. Similarly, the body's natural ageing process can impact on memory, processing speed, voice, hearing, and speech processes which can have an effect on how effectively the older person can communicateⁱⁱ. Even subtle age-related changes in communication skills such





as voice have been demonstrated to have a significant impact on a person's everyday life and social participationⁱⁱ.

There is of course the added possibility of disease or disorder in older Australians, and many common age related conditionsⁱⁱⁱ including stroke^{iv}, dementia^{vi} and Parkinson's disease^{vii} have a high prevalence of communication, swallowing and mealtime difficulties associated with them. The communication, swallowing and mealtime difficulties associated with ageing vary significantly in type and severity.

The prevalence of communication, swallowing and mealtime difficulties in older people in Australia is unknown due to the absence of a national mechanism for data collection and monitoring. Health Workforce Australia in its recent report on the speech pathology workforce noted that despite the number of potential data sources that exist, each has substantial limitations in providing a complete picture of demand for speech pathology services in Australia^{viii}.

Incidence and prevalence figures for both communication and swallowing problems in older people are commonly related to specific disorders/diseases. For example, the vast majority of people living with dementia will experience some form of communication difficulty ranging from trouble retrieving words, to problems keeping track of conversation, and to complete loss of communication in the later stages of the condition^v.

Older people with communication difficulties are vulnerable to all types of abuse, including financial, psychological, physical, sexual, and chemical abuse^{ix}. Individuals living with communication difficulties face many barriers in society that are discriminatory including negative attitudes and stigma, and limited access to information within supported and accessible communication environments^x. This may result in difficulties participating in discussions or processes where elder abuse may be identified and acted on^{xi}. Protections are required to remove such barriers in order to support and empower older people with communication difficulties to describe their experiences, express their preferences and values, and to make official complaints^{xii}. Policies and laws should be designed with the involvement of people living with communication difficulties with a focus on enabling participation in all aspects of society.

In some cases, the abuse or mistreatment of older people with communication difficulties may be unintentional, due to the general lack of understanding and awareness of communication disorders and support needs. This may occur across any member of society including people in positions of authority. Older people with communication difficulties are at heightened risk of social isolation and neglect, with implications for an individual's health and wellbeing^{xiii}.

Older people with communication difficulties must be afforded the opportunity and tailored communication supports to participate in medical, lifestyle and financial decisions, including specific supports that may be required by an individual to make a complaint. Negative stereotypes and misconceptions persist in the community that communication impairment is synonymous with loss of competence and autonomy, with such stigma resulting in violations of human rights.

Swallowing disorders affect the ability to safely swallow food or liquids and can lead to medical complications including chest infections/pneumonia^{xiv}. Swallowing difficulties impact on a person's health and well-being and often lead to poor nutrition, health complications and social isolation^{xv}. Swallowing is a critical bodily function and swallowing complications (dysphagia) can lead to malnutrition, respiratory problems and in some circumstances, death. People with swallowing difficulties may require mealtime support (where they are assisted to swallow safely). Neglecting to provide such support is in the view of Speech Pathology Australia, a form of neglect and places the person at significant risk of increased morbidity (through inadequate





nutrition, acute aspiration of fluid or food into the lungs leading to medical complications and potentially death through choking).

Speech pathology and aged care

Speech pathologists, as experts in the assessment, diagnosis, and treatment of communication and mealtime support needs (for those with swallowing problems) are essential members of the multi-disciplinary healthcare team providing services to older people.

Speech pathologists can provide identification of disease/disorder, assessment, intervention, counselling/support of families and caregivers, education of other professionals, case management, consultation, and advocacy. Speech pathologists have an important role to play in promoting healthy ageing and minimizing the social, emotional and economic costs associated with communication disability and swallowing disorders. Speech pathologists also provide valuable contribution to the assessment of decision making capacity and the facilitation of supported decision making for older people with communication support needs^{xvi}. This includes developing communication accessible health information and decision making procedures and protocols^{xvi}.

Speech pathologists provide services in the acute care (hospitals), sub-acute care, rehabilitation and primary care sector (including community health and general practice) as well as within other sectors such as disability, residential and community based aged care, education, juvenile justice, and community settings. We work across public and privately funded services.

A small, but significant proportion of speech pathologists in Australia work in the aged care sector: 1,790 Speech Pathology Australia members identify as working with adults aged 65 years or older. This is approximately 24.8% of the current Speech Pathology Australia membership.

To date speech pathology is not an included profession in the National Registration and Accreditation Scheme (NRAS). Subsequently, Speech Pathology Australia maintains robust self-regulation of its members mirroring that required by NRAS in relation to monitoring and systematic self-regulation mechanisms for quality and safety in the delivery of health care by practitioners. This includes responsibilities for developing and maintaining the clinical, educational and ethical standards that promote high quality and safe speech pathology care.

There are no formally recognised/credentialed areas of specialty within the speech pathology profession in Australia. New graduate speech pathologists enter the workforce with a minimum level of skills that equip them to commence working with the full range of ages and speech pathology client groups. It is recognised within the profession, however, that there are a number of client groups (e.g. older people) and a number of speech pathology services (e.g. palliative care) that benefit from further skills and competencies. Practitioners tend to work within areas of special interest. Consequently, our Association has a range of special interest groups in relation to specific areas of practice or clinical interests. There is an active Ageing and Aged Care online network as well as a number of state based special interest groups, whereby members share information regarding topics relevant to speech pathology in aged care.

Response to the Elder Abuse Discussion Paper

Chapter 1: Introduction

Speech Pathology Australia agrees that when identifying or defining abuse, the focus should be on the impact or effects on the older person, rather than the intention of the perpetrator (pages 25-26). Speech Pathology Australia endorses recommendations that the definition of elder





abuse should be widened beyond situations involving trust relationships, to include abuse by strangers (e.g. telemarketing scams; page 27). Older adults with cognitive and/or communication difficulties, including lower literacy, may be particularly vulnerable to such scams^{xvii}. Speech Pathology Australia recommends further attention to the issue of payment for services. Speech Pathology Australia agrees with Relationships Australia that the definition of elder abuse should be consistent for informal and formal relationships, regardless of payment for services, however, the varying opinion suggests that this is a complex issue worthy of further consideration.

Speech Pathology Australia supports use of a broad definition of elder abuse to inform policy responses. Speech Pathology Australia agrees with the recommendation in the Discussion Paper that conceptualising elder abuse within a framework of capacity, and not simply age, may be a more useful metric when considering an individual's level of vulnerability to abuse (page 22). Communication ability is a central component of capacity and decision making ability and is a critical factor that may contribute to power imbalances. Speech Pathology Australia strongly endorses elder abuse being positioned as fundamentally a human rights issue, considering the *United Nations Principles for Older Persons*. Speech Pathology Australia supports the framing principles identified: dignity and autonomy, and protection and safeguarding. The presence of cognitive and/or communication difficulties should be seen as a major barrier to autonomy and an older person's ability to make decisions and choices in their lives. As noted in the discussion paper, the *United Nations Principles for Older Persons* emphasises that 'older persons should be able to pursue opportunities for the full development of their potential'. For older people with cognitive and communication difficulties this is often not possible, presenting barriers to active ageing, independence and participation. To optimise an individual's autonomy, communication accessibility, communication friendly environments, and provision of tailored communication supports must be considered in the National Plan.

Speech Pathology Australia agrees that balancing autonomy with appropriate protections and safeguards against abuse requires careful consideration. Speech Pathology Australia was interested to read the comment by the National Ageing Research Institute (NARI, page 39) that the approach based on empowerment works for people in a position to advocate for themselves, but it 'doesn't work for people with cognitive difficulties or limited capacity'. Speech Pathology Australia would like to emphasise that older people with cognitive and/or communication difficulties can still be empowered and enabled to participate in decisions and make choices about their life when the right supports are in place. The potential for this cannot be underestimated. Evidence-based guidelines and regulatory frameworks are however required to ensure appropriate safeguarding and provision of tailored communication support.

There is evidence from the speech pathology literature that there can be problems and risks around ensuring the 'autonomy' of the message for a person with communication difficulties. Familiar communication partners (such as partners, carers or adult children) can deliberately or unwittingly contribute their own messages, based on an assumption that they 'know' what the person is expressing, or that they know what the person wants and/or needs. There is also evidence that people with communication difficulties are vulnerable to being actively and intentionally directed and exploited by family members and others who are in a caring role. While this occurs in the minority of instances, it is a possibility which needs to be acknowledged, and addressed in systems based strategies and responses to identifying, reporting and investigating elder abuse.

Speech Pathology Australia welcomes attention to the assessment of decision making capacity and supports the recommendation that the emphasis of such assessments should be on determining the support needed to exercise legal agency, rather than an assessment of 'capacity'. This would enact a more empowering approach.





Speech Pathology Australia highlights the important role that communication processes play in determining an individual's decision making capacity^{xviii}. The determination of capacity requires a comprehensive and multi-disciplinary approach to assessment. For example, assessment by a speech pathologist is important for determining whether an individual can understand information relevant to the decision and the effect of the decision. The individual's understanding may be enhanced through provision of tailored communication supports. Without the input of a speech pathologist and tailoring of communication strategies, a person's decision making capacity may be under or overestimated, with direct implications for autonomy, choice and control. It is important to recognise that there will be instances where a person may have capacity to make decisions, however they have lost their capacity to communicate their decisions or preferences. As such, appropriate safeguards and supports for individuals with communication difficulties are required in order to assist active decisions about their care.

Chapter 2: National Plan

Speech Pathology Australia welcomes the development of a National Plan (Proposal 2-1) to guide reform and action to address elder abuse. Speech Pathology Australia agrees that any framework developed must be multidimensional and broad, for example, including strategies to combat ageism in addition to supporting older persons in protecting their rights and preventing elder abuse. Speech Pathology Australia endorses a nationally streamlined approach and agrees that legal frameworks to protect older Australians from abuse should not vary between states and territories. Speech Pathology Australia would welcome any opportunity to work with the steering committee developing the National Plan on issues relating to older people with communication, swallowing and/or mealtime support needs.

Speech Pathology Australia agrees that the National Plan should focus on promoting the autonomy and agency of older people. Specific consideration should be given to supporting older people with cognitive and/or communication difficulties^{xix}. This also relates to strategies for improving the response to elder abuse. Training provided to all those who deal with older people to recognise and respond to elder abuse should have a strong focus on effective communication skills.

Speech Pathology Australia advocates for recognition of communication difficulties as a critical risk factor when considering the vulnerability for abuse and/or human rights violations in the National Plan. Older people with communication difficulties are inherently vulnerable to all types of abuse due to the mere fact that they are often unable to raise concerns or seek assistance. Strategies are also required to raise public awareness of the increased vulnerability to abuse where cognitive or communication difficulties are present.

Specific safeguards should be considered for older people with communication difficulties to minimise the risk of ill-treatment and neglect. This should recognise address the inherent barriers that communication difficulties present to legal processes. Legislation requires a principle of "appropriate communications", mandating use of necessary and appropriate modifications and adjustments to ensure that older people with communication difficulties have equal access to information and legal processes.

Speech Pathology Australia supports the commissioning of a national prevalence study of elder abuse (Proposal 2-2), with specific consideration of communication impairment as a potential factor when examining cases of abuse. Speech Pathology Australia was pleased to see reference to cognitive impairment, language barriers, and inability to communicate as factors contributing to under-reporting of elder abuse and distortion of prevalence data. This will require careful consideration when collecting data and interpreting the outcomes of the prevalence study.





Chapter 3. Powers of Investigation

Speech Pathology Australia supports the proposal that the role of state and territory public advocates and public guardians be expanded to investigate elder abuse where they have reasonable cause to suspect that an older person has care and support needs, is, or is at risk of, being abused or neglected, and is unable to protect themselves from the abuse or neglect, or the risk of it because of care and support needs (Proposal 3-1). Speech Pathology Australia agrees with the proposed consent-based 'support and assist' model, which would function to preserve the dignity and autonomy of older people even when they are vulnerable and unable to make decisions about abuse and neglect. In determining a definition of 'vulnerability', Speech Pathology Australia recommends recognition of cognitive and communication impairment as critical factors impacting an individual's ability to look after themselves, or safeguard their own well-being, property, rights or other interests.

Training for public advocates and public guardians should place heavy emphasis on the communication skills required to perform this investigative and support role. Speech Pathology Australia would like to highlight that the definition of 'care and support needs' should consider cognitive and/or communication impairment in addition to physical or mental impairment or illness (line 3.32, page 69). The presence of communication impairment can present a significant barrier to an individual seeking support and assistance as well as participating in any investigative process. Tailored supports may be required to assist the public advocate or public guardian to ascertain the person's preferences and to inform them of their options and rights. Assessment by a speech pathologist may be required to provide the public advocate or public guardian with tailored communication support strategies. Furthermore, public advocates and public guardians would be required to have comprehensive knowledge and understanding of the full range of available health care, social, legal, accommodation, and other service options in order to develop a support and assistance plan in response to suspected abuse or neglect of an older person (Proposal 3-4).

Speech Pathology Australia supports the ALRC's recommendation that public advocates/guardians are well-placed to play a crisis management and coordination role to strengthen elder abuse strategies and responses (line 3.49). Fulfilment of this role will again be dependent on the public advocate/guardian having sufficient knowledge of the range of available services and supports that may be required in addressing elder abuse.

Chapter 4: Criminal Justice Responses

It is disappointing that the Discussion Paper does not outline specific proposals and strategies in relation to criminal justice responses as this is a critical component of a "system" to prevent and respond to elder abuse. Whilst it is recognised that state and territory governments are responsible for the creation of laws governing the protection of vulnerable people in their state or territories justice systems, it is critically important that a National Plan reflects the challenges involved and encountered by people with cognitive and/or communication impairment. Strong leadership at a national level, coordinated efforts between states through relevant cross-governmental mechanisms would assist in harmonising the approaches taken by the different jurisdictions in terms of protection of older people from abuse and the pursuance of criminal proceedings against offenders.

All people with communication difficulties should be considered as vulnerable witnesses as their ability to provide testimony, make statements, comprehend instructions, and understand the processes and language of the justice system are compromised^{xx}.

People with communication difficulties will likely pose challenges for police and court officials to interview. The questioning style can result in incomplete or inaccurate information.





The justice systems across Australia need to be reformed to make them more accessible, equitable and responsive to the needs of people with disability – in particular, to the needs of older people whose communication difficulties render them less able to participate in the highly verbally mediated legal processes^{xxi}.

Often people with communication difficulties lack the skills to render a consistent or concise account of the events they witnessed or experienced. This means that their stories can be disregarded and viewed as less credible when considered in terms of evidence.

It is critical that older people with communication impairments who wish to seek legal redress for abuse or neglect are given every opportunity to understand the investigative process and are supported to provide accurate information to the best of their ability.

The recommended way in which older people with communication problems can be supported is through the use of an independent Communication Intermediary.

Communication Intermediary schemes (sometimes called Communication Assistant or Communication Partner schemes) operate in a number of other countries including New Zealand, Canada, South Africa, Israel, England, Wales and Norway.

Whilst schemes differ depending on the legal systems, the best practice examples offer a Communication Intermediary who is an independent, trained person who assists the person to achieve complete, coherent and accurate communication during interaction with the justice system. They do this by assessing the person's communication capabilities and advising on (among other things) appropriate styles of questioning to be used that are congruent with the person's comprehension and communication capacity.

In Australia, there is growing recognition of the need for Australian judicial systems to support communication impaired people to interact with the justice systems. For example, New South Wales is in the midst of trialling a Communication Intermediary/Children Champion scheme, South Australia is currently defining the parameters of their scheme and the Tasmanian Law Reform Commission is currently investigating a communication assistant/intermediary scheme.

The impetus for these reforms is a growing recognition that people with communication needs have been excluded from obtaining access to justice. This contention has been supported by the work of the Royal Commission into Institutional Responses to Child Sexual Abuse and the recent Senate Inquiry into the sexual abuse and exploitation of people with disabilities in Australia. Also, Australian courts have an obligation within the International Human Rights frameworks set out in Article 12 of the UN *Convention on the Rights of the Child* and article 13 of the UN *Convention on the Rights of Persons with Disabilities* to optimise the circumstances for people with disabilities and children to give their accounts of events and participate in criminal justice processes.

Trained, independent Communication Intermediaries can assist to ameliorate the difficulties older people with communication problems who are the victims of elder abuse will experience when providing accurate and reliable evidence during legal processes.

Significant improvements in helping people with communication difficulties to access the justice systems could be achieved by:

- The development of communication accessible information about their rights and how to seek justice. This should be written in Easy English – a style which includes simple words, a clear visual layout and key concepts presented in pictorial form.
- Accessible information should include:
 - What to do if a person experiences abuse, harm or mistreatment
 - Who to report such issues to





- How to report it
- What happens if a person reports a crime to the police (e.g. Interview by police, making a statement, going to court)
- The general criminal justice system process
- Pictorial resources to aid comprehension and expression should be available in all police stations

Chapter 5: Enduring Powers of Attorney and Enduring Guardianship

Speech Pathology Australia supports the establishment of a national online registration scheme for enduring documents and the provision of significant safeguards in a national legal framework for enduring documents. Speech Pathology Australia agrees that the register must be accessible and easy to use in order to prevent reduced use of enduring documents and that an individual should have the opportunity to provide consent during the registration process. Health information about the person would need to be recorded and shared in line with health privacy legislation.

Speech Pathology Australia notes the concerns raised in a number of submissions to the Inquiry relating to enduring documents not being understood by those who have appointed an attorney or guardian, those who have been so appointed, and more broadly, in the community (line 5.102). It is important that education and information material is available in accessible formats, ideally in Plain English.

Speech Pathology Australia supports the adoption of a single model of agreement to improve consistency across Australia in the form and content of enduring documents, including terminology and assessments of capacity or decision-making ability (line 5.103-5.104). Speech Pathology Australia agrees that the model agreement should be short, simple and easily 'navigatable', ideally available in accessible formats (i.e. Plain English, aphasia friendly formats).

Speech Pathology Australia supports implementation of the Commonwealth decision-making model and the emphasis on supported decision making to avoid the appointment of substitute decision makers wherever possible (Line 5.108). This respects the fact that a spectrum of support is required, important in the context of older adults with communication difficulties who may retain the capacity to make and communicate decisions about their own life and medical care when provided with appropriate and tailored supports. This is dependent upon comprehensive assessment of an individual's communication support needs. Where the support person is adequately trained and skilled, individuals with communication difficulties can be empowered to exercise greater choice and control.

Speech Pathology Australia supports the move away from the terms attorney and guardian to adopt the term 'representative' where a substitute decision maker is required (Proposal 5-11). Speech Pathology Australia agrees with the description of the term representative (line 5.122), emphasising that the will and preferences of the principal continue notwithstanding a loss of decision-making ability at law.

Chapter 6: Guardianship and Financial Administration Orders

Speech Pathology Australia welcomes additional safeguards that focus on protecting older persons subject to guardianship or financial administration orders.

Speech Pathology Australia strongly supports a requirement that where possible, the tribunal should be required to speak directly with a person who cannot attend the hearing (Question 6-3). Wherever possible, a face to face meeting is recommended noting that the majority of people subject to guardianship and financial administration orders are older persons with





dementia, with cognitive and or communication difficulties that may pose a barrier to telephone contact or understanding written advice via post that an application for guardianship or financial management has been made. Such conversations need to take place in person with a skilled communication partner to provide communication support and accessible information. Similar to the hearing (line 6.49), communication aids may be required to enable the person's participation^{xxii}.

Chapter 11: Aged Care

Speech Pathology Australia congratulates the ALRC on the comprehensive examination of elder abuse in the context of home care and residential aged care services. Speech Pathology Australia welcomes reforms to aged care laws and legal frameworks to enhance safeguards against abuse for older people in receipt of aged care.

The Aged Care System

Speech Pathology Australia supports concerns raised in submissions to the Inquiry regarding the risks of abuse in a consumer directed care model, in particular relating to how older people with cognitive impairment or mental ill-health are assisted to make decisions (line 11.23). This should be expanded to include older people with communication difficulties and language barriers. The need for high quality accessible information delivered in a range of modalities is of paramount importance in the provision of consumer directed care.

Speech Pathology Australia is pleased to see reference to concerns raised in the Inquiry about how quality and safety will be regulated in an environment in which approved home care providers can sub-contract or broker services to provide consumer directed care to an older person (line 11.27). This is an issue that Speech Pathology Australia is concerned about with a need to ensure clear detail regarding the rights and responsibilities of service providers, sub-contractors and consumers in this context. Speech pathologists are rarely employed directly by aged care organisations in either community or residential aged care settings. Speech pathology services are typically brokered or sub-contracted from private speech pathologists often working as sole providers in small private practices. This raises concerns regarding accreditation and regulation of standards of care. Speech Pathology Australia notes reference to the *Department of Health Home Care Packages*: that where service approved providers do sub-contract or broker services, they remain responsible for service quality and meeting all regulatory requirements. Further consideration is required regarding how standards will be assessed for sub-contracted staff.

Compulsory Reporting of Abuse and Complaint Handling

Speech Pathology Australia agrees with the proposal to expand the scope of the type of incidents required to be reported under the *Aged Care Act 1997* and establishing a reportable incident scheme (Proposal 11-1, 11-2). Speech Pathology Australia is pleased to see that a number of submissions to the Inquiry highlighted the narrow definition of 'reportable assault' failing to address things such as poor nutrition, hydration, social isolation, failing to connect or flush feeding tubes, and verbal and emotional abuse (lines 11.97-11.103). Speech Pathology Australia agrees that it is very important that all forms of elder abuse are considered under the scheme with broad definitions and a wide range of examples provided. This should include incidents relating to the restriction of communication - for example failing to set up a prescribed communication device or providing access to a reliable mode of communication for the person. Failure to provide an appropriate form of communication for someone who is communication impaired (when one could be available) is equivalent to 'gagging someone' and should be formally recognised as ill-treatment or neglect.





Speech Pathology Australia was concerned to read the case studies in the Discussion Paper that illustrate examples of elder abuse and neglect in aged care (e.g. line 11.230). A number of these examples refer directly to the vulnerabilities associated with older people who are “unable to speak up for themselves”, particularly in care contexts where time constraints, inadequate training and resource limitations are common. This supports the need for mandatory communication training for all aged care workers.

When describing types of abuse, ill-treatment or neglect of older persons Speech Pathology Australia recommends specific consideration of care recipients with swallowing and/or mealtime support needs. Choking is a leading cause of premature death^{xxiii} in residential aged care settings demonstrating that older people with significant swallowing difficulties and/or feeding dependency should be recognised as a vulnerable clinical population where specific protections and safeguards are required. Dehydration, malnutrition, and medically unexplained weight loss are recognised signs and symptoms of possible elder abuse or neglect^{vii}.

Failure to seek appropriate clinical advice from a speech pathologist or medical practitioner for an older person with a swallowing difficulty should be considered a form of neglect.

Providing texture modifications of food and liquid at an inappropriate level for someone who has swallowing difficulties should be considered ill-treatment. For example, providing a smooth pureed diet to someone requiring a less modified, soft diet. Failure to follow clinical recommendations from a speech pathologists regarding the need to texture modify food and liquid for an older person with swallowing problems should be considered neglect.

In regards to complaints mechanisms, Speech Pathology Australia highlights that complaints processes are communication heavy, relying on commitment by the person to raise concerns, often at a crisis point. For this reason, individuals with communication difficulties face profound challenges raising concerns and engaging with complaints processes. It has been recommended in the literature that cognitive (and communication) impairment should be screened for before investigating for abuse in older people and determining the most appropriate course of action^{vii}. Furthermore, provision of tailored communication support should be required during any investigative or resolution process.

Employment Screening and Code of Conduct for Aged Care Workers

Speech Pathology Australia supports the introduction of enhanced employment screening processes, and ensuring that unregistered staff are subject to the proposed National Code of Conduct for Health Care Workers (Proposal 11-4).

In regards to other employment safeguards that may operate, such as registration requirements for certain professions in aged care, speech pathology is an example of an allied health profession that is not included in the National Registration and Accreditation Scheme (NRAS). In the absence of national registration, Speech Pathology Australia maintains robust self-regulation of its members. The Certified Practicing Speech Pathologist (CPSP) credential ensures speech pathologists have the credentials and recency of practice to work as a speech pathologist. This credential is accepted by organisations such as all private health funds, Medicare, Department of Veteran Affairs, and the Commonwealth Home Support Programme for aged care, who all require speech pathology providers to be CPSP members of the Association. It is important that speech pathologists are required to have the certified practicing speech pathologists (CPSP) credential to deliver aged care services, equivalent to the protections in place for registered health professions under the NRAS.

Clarification is needed in relation to Proposal 11-6 as to whether aged care workers who provide direct care and are from self-regulated professions would be subject to the National Code of Conduct for Health Care Workers. The National Code provides consistency for





definitions of terms and scope of application nationally, as well as containing elements that pertain to prevention of elder abuse, ie. prohibition of financial exploitation or sexual abuse. Speech Pathology Australia considers the National Code to describe a baseline of standards applicable to all health service providers that is enhanced and expanded for speech pathologists by the Speech Pathology Australia Code of Ethics. To date, full national roll out of the National Code has not been achieved, however Speech Pathology Australia would consider it appropriate for the National Code to include specific reference to the role of health professionals, including allied health specifically, in identification and response to elder abuse.

Speech Pathology Australia supports the development of an Aged Care Provider Register, for all individual and organisational providers of supports funded through the Commonwealth Aged Care Funding. In the absence of registration through the NRAS for health professions, Speech Pathology Australia strongly recommends that to be a registered provider of speech pathology interventions under Commonwealth aged care funding, individuals must demonstrate that they have met the standards required by Speech Pathology Australia, currently Certified Practising Speech Pathologist.

The Speech Pathology Australia Code of Ethics (2010) supports speech pathologists to demonstrate the highest standards of professional integrity and ethical practice^{xxiv}. The Code of Ethics describes the values of professionalism and respect and care, amongst others, which mandate an obligation for speech pathologists to act in a professional and objective manner at all times within their professional role. This obligation extends to provision of intervention that is in the best interests of the client while respecting the rights and dignity of clients and the context in which they live. The Safety and Welfare Standard of Practice obliges Speech Pathology Australia members to ensure client safety and comply with all relevant legislation.

While the Code of Ethics does not specifically reference identification of and response to elder abuse, the values, principles and standards described within the document bind members of Speech Pathology Australia to providing services as identified and needed by clients, including the identification of and appropriate response to instances of elder abuse. The Speech Pathology Australia Code of Ethics supports robust self-regulation within speech pathology, in that failure to abide by the Code of Ethics can result in ineligibility of membership. The Association's ethics board can receive complaints about people working in the profession and issue sanctions where breach of the Code of Ethics is determined. The names of Speech Pathology Australia members who have had their membership suspended or terminated due to a breach of the Code of Ethics are published on the Speech Pathology Australia website.

Restrictive Practices

Speech Pathology Australia supports the regulation of use of restrictive practices in aged care in the *Aged Care Act*.

Where restrictive practices are required there should be a requirement for clear documentation, monitoring and review to ensure that they are implemented for the least possible period of time and only where they are required to minimise risk to the individual or others.

Decision Making

Speech Pathology Australia was pleased to see that a number of submissions to the Inquiry identified abuse of formal and informal decision-making powers as a form of elder abuse, including failures to respect or acknowledge the decision-making ability of an older person (line 11.247). Speech Pathology Australia endorses this view and highlights that this is a particular concern for older people with communication support needs. For individuals with limited verbal





communication it is easy to underestimate cognitive and decision making ability without systematic assessment by a speech pathologist.

Speech Pathology Australia was pleased to see reference to its submission to the Inquiry (Submission 168) referencing the statement that 'communication difficulties are one of the greatest barriers to the execution of choice and active participation in decision making and care planning, including the development of a support or care plan under a consumer directed care model' (line 11.255).

Speech Pathology Australia welcomes reform of aged care laws to ensure consistency with the Commonwealth decision-making model. Speech Pathology Australia is also pleased to see that the need for revision of guidelines and operational manuals across the aged care system to ensure consistent guidance about decision making and training and education for aged care workers in principles for decision making for care recipients has been highlighted in the Discussion Paper. Communication training and provision of tailored communication support strategies to enable decision making must be a critical component of this review and development of education material.

It is vitally important that older people with cognitive and communication difficulties have access to tailored communication supports and tools to assist the individual and their carers, guardians or advocates to support decision making and expression of preferences, values and concerns. This should be considered in the Commonwealth decision-making model. Older people with cognitive and communication difficulties have the right to be involved in decisions about their care. Legislation should require that all decisions are made in line with the preferences and values of the older person, adopting a person-centred approach and taking the relevant human rights issues into account.

Speech pathology services play an important role in ensuring provision of tailored communication. The speech pathologist role includes:

- Comprehensive assessment to determine an individual's communication abilities
- Provision of information to other team members about communication support needs
- Identification of appropriate interventions and supports to assist a person to understand their choices and express their preferences for medical treatment and care
- Provision of health care information that is clear, appropriately targeted, and accessible in order for a person and their family to understand the choices available to them and to make informed decisions relating to medical treatment and care.

Similar to the frameworks currently used in the NDIS, the aged care legislation should place emphasis on the role of family, carers and others in providing informal support to older people to assist decision making under a consumer directed care model. Specific training and information should be required for those providing informal and formal decision making support to older people with cognitive and/or communication difficulties. An older person should be able to appoint a support person to assist the development of a support plan or to determine care preferences and choices.

Requiring Appointed Decision Makers

Speech Pathology Australia agrees that aged care agreements cannot require that a person has formally appointed a decision maker for lifestyle, personal or financial matters as a condition of entry into residential aged care (Proposal 11-8). The Discussion Paper clearly outlines the complexities and challenges that aged care providers face in relation to decision making, particularly where an older person does not have an advance care directive about the appointment of a guardian prior to their loss of competency (line 11.259). This highlights the need for ongoing training and education for all aged care workers and health professionals





regarding the importance of advance care planning and having those difficult conversations with clients as early as possible and across all levels of contact with the health and aged care systems. This must be seen as core business and addressed as a central element of aged care reform.

Community Visitors

Speech Pathology Australia supports Proposal 11-9 and the development of national guidelines for the community visitors scheme.

Official Visitors

Speech Pathology Australia supports Proposal 11-10 regarding provision for an official visitors scheme for residential aged care in the *Aged Care Act*. This would provide an additional independent safeguarding mechanism for monitoring whether the rights of care recipients are being upheld, separate (yet complementary) to existing complaints and advocacy processes. This would be an effective safeguard for care recipients who are unable to initiate a complaint or seek the assistance of an advocate independently, for example, care recipients with limited means of spoken communication (line 11.268). This would also provide more of a soft-entry points into the elder abuse investigation and legal processes as recommended in Speech Pathology Australia's submission to the Inquiry. Similar to points discussed under *Advocacy Services* (line 11.279), accessibility for those with cognitive and/or communication impairment must be considered to ensure that an official visitors scheme operates as an effective safeguard for all older people. Official visitors would require extensive training in working with care recipients with cognitive and/or communication support needs.

Section 12: Other Issues

Speech Pathology Australia agrees with statements made in this chapter in relation to health professionals and multidisciplinary approaches. In particular, Speech Pathology Australia welcomes inclusion of training and guidance for health professionals in identifying and responding to elder abuse in the National Plan.





Recommendations

Speech Pathology Australia recommends:

- 1) That the National Plan addressing elder abuse should give specific consideration to how older people with cognitive and/or communication difficulties are supported to ensure appropriate safeguarding and protections. This includes:
 - a. Formal recognition that communication impairments are an underlying risk factor/vulnerability for abuse, neglect and ill-treatment
 - b. Evidence-based guidelines and regulatory frameworks to ensure appropriate safeguarding and communication support so that older people are able to report abuse and neglect and participate in any investigative process, for example, the provision of tailored communication strategies, access to communication friendly environments and access to speech pathology assessment at an early point in the investigative process if communication/cognitive problems are suspected. Legislation requires a principle of “appropriate communications”, mandating use of necessary and appropriate modifications and adjustments to ensure that older people with communication difficulties have equal access to information and legal processes.
 - c. Mandatory training to all health professionals and workers who deal with older people to recognise and respond to elder abuse – particularly against older people with communication or cognitively impairment.
 - d. Awareness raising campaign to increase the general public’s understanding of the heightened vulnerability of abuse where cognitive or communication difficulties are present.
 - e. Formal recognition of the challenges encountered by people with cognitive and/or communication impairment during their contact with the criminal justice system.
 - f. Communication accessible information developed and provided to older Australians regarding their rights and how to seek justice.
 - g. Cognitive and communication impairment screened for before investigating for abuse in older people, and before determining the most appropriate course of action.
- 2) That further consideration be given to how elder abuse or neglect is defined in situations where there is no payment/or a payment for services.
- 3) That older people with swallowing difficulties and/or feeding dependency be recognised as a vulnerable clinical population where specific protections and safeguards are required. Failure to seek appropriate clinical advice from a speech pathologist or medical practitioner for an older person with a swallowing difficulty should be considered a form of neglect.
- 4) That legal and policy frameworks for elder abuse recognise the withholding of health services as a form of neglect.
- 5) That legal responses and processes for elder abuse and neglect characterise all older people who are communication impaired as ‘vulnerable witnesses’ and have appropriate supports in place to enable their effective participation in judicial processes.
- 6) That independent Communication Intermediary Schemes are established in every state and territory to support older people who are victims of elder abuse to participate in legal processes.
- 7) That the tribunal be required to speak directly with a person who cannot attend a hearing for a guardianship and financial administration order. Such conversations need to take place in person with a skilled communication partner to provide communication support and accessible information for older people with a communication or cognitive impairment.
- 8) That training and information should be provided to people providing decision making support to older people with cognitive and/or communication difficulties. An older person should be able to appoint a support person to assist the development of a support plan or to determine care preferences and choices.
- 9) That further consideration be given to how standards of care will be assessed, monitored and ensured for sub-contracted staff providing services to older people.





- 10) Implementation of an official visitors scheme requires extensive training in working with care recipients with cognitive and/or communication support needs for official visitors.
- 11) An awareness raising campaign for medical and allied health professionals is developed to support identification of elder abuse. Training should emphasise the importance of advance care planning and appointment of a guardian prior to the loss of competency.

If Speech Pathology Australia can assist in any other way or provide additional information please contact National Office on 03 9642 4899, or contact Jade Cartwright on 03 9642 4899 or by emailing agedcare@speechpathologyaustralia.org.au





Appendix A: Evidence used in the development of this submission

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