321. Carers NSW

Name of organisation: Carers NSW

Proposal 2–1

Carers NSW supports the development of a National Plan to address elder abuse. A National Plan would correspond with the transition to nationally consistent approaches to aged care, disability and carer support services. It would also be consistent with national initiatives in relation to domestic and family violence and child protection, which establish principles that may be transferrable to protecting vulnerable adults, including older people, from abuse. Finally, we believe a National Plan would facilitate a coordinated approach to collecting and analysing data regarding the prevalence of elder abuse.

We also believe the establishment of a National Plan would be a good opportunity to consider the convergence of issues and strategies regarding abuse, neglect and exploitation in ageing, disability and carer contexts. Concurrent yet discrete work is currently being conducted nationwide in the area of disability abuse and safeguards, and in relation to elder abuse; and carer abuse, while largely overlooked, has been identified as an issue in need of further investigation by the National Network of Carers Associations. We therefore recommend that the National Plan relate to the Abuse of Vulnerable Adults, encompassing the abuse of people with disability, older people and carers.

The success of a National Plan will also be contingent upon adequate state and territory accountability mechanisms. Currently, some states and territories, such as Victoria, have a Public Advocate which has the power to investigate allegations of elder abuse. Such agencies would be natural leaders in the implementation of a National Plan. States and territories which do not have a Public Advocate, such as NSW, would need to either create one or allocate this role to an existing agency, such as the NSW Public Guardian, in order to ensure consistent application of the Plan across jurisdictions.

Should a National Plan be established, Carers NSW believes it should include:

1. A clear definition of abuse, including explanation of the various types of abuse
2. Acknowledgement that not all abuse is deliberate or malicious, and there needs to be support for preventative rather than punitive approaches in these cases
3. Recognition of carers as potential partners in identifying and preventing abuse
4. Clearly defined roles for key agencies and sectors in responding to abuse allegations, including law enforcement, health system, Public Advocates and Guardians
5. A component addressing the prevention of abuse through resourcing, training and supporting potential perpetrators
6. Suggested training content for service providers, My Aged Care staff, Regional Assessment Services, Aged Care Assessment Teams, and other stakeholders.

Proposal 2–2

Carers NSW strongly supports a national prevalence study of elder abuse, as existing data regarding the prevalence of elder abuse in Australia is limited and lacking in rigor. A national prevalence study should, however, only take place following the establishment of a National Plan, in order to ensure that data collection and analysis is nationally consistent and contributes to specified goals and outcomes.

Of central importance to this process will be national agreement about how the term ‘carer’ is used in data collection. In NSW, data claiming to establish the prevalence of elder abuse sometimes uses the term ‘carer’ to refer to both family and friend carers AND paid workers, which impacts the interpretation and application of collected data on elder abuse.

Further, family members and friends who are alleged as having perpetrated abuse may be referred to as ‘carers’ even if they do not have a caring arrangement with the victim. For example, a person may have experienced alleged financial abuse at the hands of their ‘carer’, but it remains unclear whether the perpetrator was in fact a paid worker, a family member or friend with caring responsibilities, or simply a family member or friend with no particular caring role.

The national prevalence study should therefore prioritise national consistency in how carers are identified and labelled, seeking advice from the National Network of Carers Associations.

In situations where a carer has been correctly identified as the alleged perpetrator, the broader context of the caring relationship should be considered in order to identify factors that are likely to cause a carer to perpetrate elder abuse. Greater information on risk factors will enable support organisations to more easily identify risk factors early and provide tailored preventative support to the carer and care recipient.

For example, allegations of neglect in particular may in fact indicate a lack of support or capacity within the existing caring arrangement, and responsive referral to services such as case management, respite, formal services and training may either address or prevent further abuse.

Proposal 3–1

As noted in our response to Proposal 2-1, Carers NSW supports a more consistent framework for national accountability with regard to elder abuse allegations. NSW does not have a Public Advocate with powers to investigate these allegations, however the NSW Public Guardian could be given this role and responsibility. More importantly, the NSW Public Guardian could be appointed and resourced as the leading agency for addressing elder abuse in NSW. As it stands, the NSW response to elder abuse lacks coordination and relies on interagency initiatives in partnership with the NSW Elder Abuse Helpline and Seniors Rights Service. Service providers and consumers would undoubtedly benefit from a central agency leading stakeholder engagement, preventative education, data collection and legal intervention.

Proposal 3–2

Proposal 3–3

Proposal 3–4

Carers NSW commends the Commission on including the alleged perpetrator as a potential recipient of support services, as in some cases the perpetrator may not have exhibited abusive behaviour deliberately or maliciously, and may require support in identifying and addressing their problem behaviour. Carers NSW especially believes that non-legal interventions should be prioritised in cases of unintended abuse or neglect by a family or friend carer, especially where it is in the interests of both parties to continue their care arrangement and the issue can be reasonably resolved by training, skills development or other support.

Proposal 3–5

Proposal 5–1

Proposal 5–2

Proposal 5–3

Question 5–1

Carers NSW supports a centralised, searchable record of Enduring Power of Attorney and Enduring Guardianship appointments. This could streamline service interactions for carers when dealing with banks, Centrelink, the health system and service providers. We propose a similar approach to that taken within aged care currently, whereby Home Support Assessors, Aged Care Assessment Teams and My Aged Care call centre staff can access an assessor portal, which is also accessible to service providers once a client has been accepted through the portal.

Question 5–2

Carers NSW does not support annual checks of enduring attorneys’ management of principals’ financial affairs and believes random checks would be an adequate safeguard that would also limit the impost on the majority of attorneys who are not perpetrating abuse. However, additional steps could be taken in order to further limit unnecessary audits such as partnering with financial institutions to detect suspicious account management, or setting up reporting pathways to allow service providers and members of the public to report suspected abuse. With these feedback mechanisms in place, management checks could be limited only to attorneys who display certain risk markers.

Proposal 5–4

Carers NSW believes at least one independent witness should have the relevant training to assess or identify the capacity of the principal to understand the nature of the document. The other witnesses listed in this proposal could only be expected to make a superficial assessment of an individual’s capacity without relevant training and experience.

Proposal 5–5

Proposal 5–6

Proposal 5–7

Proposal 5–8

Clarity is paramount to ensuring that the terms agreed to by the attorney are understood and can be carried out. The Carers NSW Carer Line regularly receives calls from carers considering guardianship and power of attorney arrangements who are confused about the duties and expectations associated with each role. Explicitly identifying both the limitations and expectations of these roles could mitigate the risk of an attorney entering into an agreement they do not fully understand or are unable to fulfil at a later time. In addition, explicit written guidelines should be supported by the provision of training and information available in various formats and in community languages.

Proposal 5–9

Proposal 5–10

Carers NSW supports nationally consistent laws governing enduring powers of attorney and guardianship as this would support further clarity on the limits and expectations of the respective roles and enable consistent information and advice to be available to carers in any state or territory, regardless of where the principal lives.

Proposal 5–11

Carers NSW has supported a formalised supported decision making model in our submission to the NSW Law Reform Commission review of the Guardianship Act 1987, Question Paper 2. We extend this support to the principle of a Commonwealth decision-making model that recognises that there is a spectrum of support required, from supported decision making to full support.

However, it is imperative that service providers and representatives clearly understand the limitations and differences between substitute decision making and representative agreements. Such clarity is required to ensure the principle continues to be included in the decision making process under a representative agreement.

Proposal 5–12

Proposal 5–13

Carers NSW agrees that the will, preferences and rights of the principal should be the first consideration of any alternative decision making model but recommends that a ‘best interests’ model continues to remain as an option of last resort. Many carers already actively seek to represent the will, preferences and rights of the person they care for through supported decision making and Carers NSW offers training to carers on supported decision making. Through the training we offer we have observed that for some carers a supported decision making approach requires considerable training and practical support.

Carers report many benefits to supported decision making but also find that supported decision making requires additional time and effort to implement and can contribute to carer stress in some cases. Representatives may require more than just information and training in the basics of supported decision making to perform their role effectively and maintain their own wellbeing. Their need for ongoing personal development in the role of supporter should be recognised, with emotional and practical support encouraged and resourced as much as possible.

Proposal 6–1

Carers NSW recommends that training and support be made available to inform newly appointed guardians and financial administrators of the parameters of their role. Carers often ask for clarification, or are unaware of the difference between guardians, financial administrators and enduring agreements and further clarity would mitigate inadvertent misuse of these roles.

Question 6–1

Carers NSW believes there should be assurance that an appointed guardian or financial administrator possesses the capacity, understanding and willingness to carry out their role and that training and support should be accessible to those who require it. Options should also include training at the request of an appointee, and mandatory provision of plain language and translated information on the expectations, limitations and consequences of the role. Furthermore, access to a support line, mentoring program, support group and referral mechanisms to carer support services would further increase the likelihood of a successful arrangement and ensure ongoing support. Training should also identify abuse types and provide information regarding supports and services that are available to carers and appointees to mitigate risk of abuse.

Proposal 6–2

Question 6–2

Question 6–3

Proposal 7–1

Proposal 7–2

Question 7–1

Question 7–2

Proposal 8–1

Given the cost and emotional toll extended disputes over ‘assets for care’ arrangements can elicit, Carers NSW supports giving jurisdiction to state and territories to resolve family disputes involving residential property under an ‘assets for care’ arrangement. While minimising time and cost are clear benefits to all parties, Carers NSW holds some concerns that a tribunal decision could be more vulnerable to multiple, ongoing appeals than a court decision. We are aware of a number of carers in property disputes which have been subject to numerous appeals, extending the process and further depleting often limited financial resources of the older person and the carer. If a tribunal was to resolve ‘assets for care’ disputes, the tribunal’s decision would need to be adequately binding to minimise ongoing appeals.

In addition to tribunal jurisdiction to resolve family disputes involving residential property, awareness training to highlight the pitfalls of informal asset for care arrangements with a focus in risk mitigation should be implemented as a preventative measure. Carers NSW believes abuse prevention through education, awareness campaigns and access to affordable means of formalising arrangements should be a key consideration in minimising the abuse of assets for care arrangements. Emphasis should be on formalising arrangements and creating opportunities for individuals entering into such an arrangement to be educated on the risks and liabilities involved.

Question 8–1

Proposal 9–1

Proposal 9–2

Proposal 9–3

Proposal 10–1

Carers NSW believes a National Plan for the prevention of elder abuse should include the expectation that all government services who are in contact with older people have internal policies on preventing, identifying and responding to elder abuse. Furthermore the National Plan should include the development of a national interagency protocol on the prevention and response to elder abuse. This would outline the roles of Centrelink, state and federal agencies, non-government and private organisations, police and financial institutions in the response and prevention of elder abuse.

Proposal 10–2

Carers NSW wishes to stress that any checks and balances introduced should not further lengthen or complicate the application process for Carer Payment and Carer Allowance, which are already onerous for many carers. Further scrutiny should only be applied in cases where other risk factors have been identified.

Proposal 10–3

Proposal 10–4

Centrelink staff would likely benefit from further training in identifying signs of abuse exhibited by any vulnerable client, including older people. Care should be taken to ensure that training does not, as some training has in NSW, disproportionately focus on carers as perpetrators, but rather include carers as potential victims and encourage staff to consider preventative responses to risk of abuse, including support referrals.

Proposal 11–1

Proposal 11–2

Proposal 11–3

Proposal 11–4

Proposal 11–5

Question 11–1

Question 11–2

Question 11–3

Proposal 11–6

Proposal 11–7

Proposal 11–8

Proposal 11–9

Proposal 11–10

Proposal 11–11

File