AGEDCARESTEPS

27 February 2017

Ms Sabina Wynn
The Executive Director
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

Email: elder_abuse@alrc.gov.au

Dear Ms Wynn

Elder abuse review

Aged Care Steps appreciates the opportunity to provide a submission into the Australian Law Reform Commission's review on Elder Abuse. This is a very important consideration for Australia's ageing population.

Aged Care Steps works with financial advice professionals and other service providers within the aged care industry and we commonly encounter issues and concerns from clients, their families and service providers in relation to the financial abuse of elders and those who have lost mental capacity. We have used this experience to formulate our responses in this submission.

We welcome the opportunity to provide further information and discussion on the issues raised in our submission. Please feel free to contact me on 02 8252 5574 or edgar.dadisho@agedcaresteps.com.au.

Regards

Edgar Dadisho
Legal & Policy Research Manager

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Elder Abuse

Submission by Aged Care Steps to Australian Law Reform Commissioner

27 February 2017

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1. Who is Aged Care Steps

Aged Care Steps is an independently owned finance consulting firm. It is the leader in aged care advice support to advice professionals within the financial services and aged care industries.

We deliver support through the provision of education, strategy support and advice delivery tools to enable advice professionals to help clients to understand aged care – both options available and funding mechanisms.

Our services are used by major advice groups within the financial services industry spanning leading industry wealth management groups, banks, accounting-based groups, industry super funds and smaller advice businesses. Established in 2012, we have had over 1,000 attendees attend our aged care training including approximately 700 advisers who have completed our accreditation program. More than 300 professionals subscribe to our ongoing support services and around 150 advisers use our aged care paraplanning services.

We have a number of alliances and memberships within the industry including Bupa Aged Care, the Association of Superannuation Funds of Australia (ASFA) and the Aged Care Financing Authority (which includes Louise Biti, a director of Aged Care Steps, as a recently appointed member).

Our services include:

- Specialist training: Training modules including the Accredited Aged Care Professional™ program for advisers and other professionals
- Business Toolkit™ provides practical tools to help professionals attract business and give advice
- Advice Generator™: Unique modelling software enables the professional to take control of the advice strategy development
- Aged care paraplanning support: Professionals can outsource the development of advice documents.

The aged care advice industry is reasonably new and is perpetually changing. Only recently are clients becoming more attuned to the importance of accessing financial advice and are more likely to have conversations with their financial advisers. Ensuring appropriate training, skills and support within the advice sector may help to minimises the chances of elder abuse by family, estate representatives and friends.

2. Role of financial advisers and education

We welcome the *Discussion Paper 83* by the Australian Law Reform Commission as a tool and conversation piece to highlight the presence of elder abuses in our society.

The portion of society deemed elderly has been an integral part of the ever-changing landscape of Australia; its people, culture and economy. The protection of this group is an inherent human right that "[does] not diminish with age, to live dignified, self-determined lives, free from exploitation, violence and abuse"[1]

Elder abuse is a prevalent and a neglected topic in society, especially in the area of financial health. While it is not merely limited to the elderly, unfortunately this group is more susceptible to experience this abuse and be the worst affected victims in a family unit.

One of our main recommendations to help prevent and minimise the incidence of financial abuse is to raise the importance and inclusion of advice professionals in the aged care planning and decision process for older Australians and their families. This includes the need to educate advisers so they are capable of identifying, managing, reporting and guiding their clients in the space of elderly abuse. The ageing demographics has seen the increasing trend in people seeking financial advice, not only for themselves but for their parents or grandparents.

Financial advisers are an integral part of managing the finances of individuals and families and may be exposed to information or knowledge which may arouse the suspicion of elderly abuse. However, advisers are often not adequately skilled or educated on identifying the warning signs or red flags that may trigger a reaction of reporting or notification to the appropriate authority.

Educating professionals and the general public must be addressed immediately to help raise awareness and combat this abuse, which is often inadvertent abuse and not intentionally malicious. It may merely stem from a person's inability to separate conflicts of interest.

We believe the first step is to create greater awareness and provide educational opportunities without enforcing further administrative requirements or 'red tape'.

Without the discussion and reformation of this area, elderly abuse may continue to be a frequent issue in society, with one of the most fragile groups being taken advantage of for the personal gain or neglect of others. Elderly people need to feel safe when entering such an uncertain time of their life. They need to feel sure that their aged care needs are being taken care of and that family dynamics do not deteriorate with conflict and legal action.

[1] Senator the Hon George Brandis QC, Attorney General of Australia

Aged Care Steps supports the need for a greater national approach and set of rules rather than state-based differences. There needs to be a system of oversight, uniform education and correction in time of disputes with penalties being a last resort.

Our responses to the discussion paper are based on the financial perspective of Aged Care Steps, from our team's experiences when dealing with clients and financial planners and what we believe should be considered in any reforms or determinations on the issue of elderly abuse.

3. Powers of investigation

Proposal 3–1 State and territory public advocates or public guardians should be given the power to investigate elder abuse where they have a reasonable cause to suspect that an older person: (a) has care and support needs; (b) is, or is at risk of, being abused or neglected; and (c) is unable to protect themselves from the abuse or neglect, or the risk of it because of care and support needs. Public advocates or public guardians should be able to exercise this power on receipt of a complaint or referral or on their own motion.

While it is important to have advocates or public guardians protecting the elderly with the right to investigate any reasonable cases of financial abuse or risks associated with being neglected, we believe that there should be a limitation to this power. Simply investigating someone who has care and support needs (a), may raise issues of privacy, confidentiality and capacity.

We agree with part (b) and (c) where there is a genuine concern or need for an investigation into a possible case of abuse or neglect of an elderly person. Elderly persons who have a health need or impairment must be protected with more care and scrutiny if there is a presence or suspected presence of abuse in any form. Investigative powers should be conferred on the appropriate state and territory authorities who may need to make reference to other areas of elder law that apply specifically to that particular state or territory.

However, prevention is always better than rectification. So we believe a first step should also include greater education and awareness to financial advisers, who are often in the front line of identifying potential cases of financial abuse. This would include education of warning signs, red flags, how to report, who to report to and how to manage suspicious cases.

Proposal 3–2 Public advocates or public guardians should be guided by the following principles: (a) older people experiencing abuse or neglect have the right to refuse support, assistance or protection; (b) the need to protect someone from abuse or neglect must be balanced with respect

for the person's right to make their own decisions about their care; and (c) the will, preferences and rights of the older person must be respected.

We agree that the rights of the individual to make their own decisions about how to deal with issues of abuse are paramount. However, as many of these people face an imbalance in power or may not be in a position to exert these right, there needs to be guidelines in place that balance the need for an investigation while respecting the privacy and peace of mind of the elderly person.

Any unnecessary stress and anxiety could act as a detriment to the person's health. There have also been studies to show that a main reason for not reporting abuse is embarrassment or the desire to avoid family conflict. Therefore, reforms need to include measures that encourage elderly people to raise concerns and be protected from negative repercussions if such abuse is reported. This will maintain the dignity and self-autonomy – as no one should be coerced and forced to report such incidents if they have the mental capacity to manage the risk and decide to resolve the issue themselves.

Education of the general public and advice professionals is of upmost importance to understand what are the warning signs of elder abuse and when reporting is required. We would discourage compulsory reporting requirements for financial advisers as this may create greater problems and lead to red-tape and over-reporting which in turn, may deter professionals and other representatives from reporting such incidents.

Education principles should also extend to aged care service providers, health care groups or any other services that deal with and support the elderly. Guidelines are needed to identify reporting obligations and what should be considered warning signs.

Proposal 3–3 Public advocates or public guardians should have the power to require that a person, other than the older person: (a) furnish information; (b) produce documents; or (c) participate in an interview relating to an investigation of the abuse or neglect of an older person

While it is important to ensure that full details of any situation are reviewed when determining issues of financial abuse it is important to ensure that this does not conflict with the legal requirements under the Privacy Act and Corporations Act with regard to the client and other people who may be involved.

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4. A national online register

Proposal *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.*

Proposal 5–2 The making or revocation of an enduring document should not be valid until registered. The making and registering of a subsequent enduring document should automatically revoke the previous document of the same type.

Aged Care Steps supports the concept of this register, but there may be feasibility issues with its creation. Before fully endorsing, we would need to question what is the need of the register, for what purpose it serves and in whose hands is this register to be used.

Of utmost importance is the need to ensure that any inclusion of such a register does not cause an increase in workload, red-tape barriers or administrative requirements unnecessarily. We would need further clarification of the above questions before being able to determine whether such a register would be beneficial or a hindrance.

We agree that the creation of a register where all EPOA documents (whether active or otherwise) are kept may reduce uncertainty around the genuineness of authorities. It will also reduce the presence of forgeries or unapproved changes.

This register would need a procedure for revoking an EPOA document. Such a procedure should be user-friendly and accessible to make the process quick and easy. We do not agree that a process should involve making appointments and having to travel to a registration office to make such a change. But this could be provided as an option for those who wish to make an amendment and cannot do so via other means.

If a register is established it should be made available to financial institutions and other professionals (lawyers, financial planners etc) who are required to manage an elderly person's affairs through their representative. Such use should be provided while being bound by privacy laws and confidentiality and should not extend to the ability to make changes or alterations to an existing register. Such changes, revocations or creations within the register should be completed only by a government body with the access and ability to do so.

Proposal 5–3 The implementation of the national online register should include transitional arrangements to ensure that existing enduring documents can be registered and that unregistered enduring documents remain valid for a prescribed period.

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Question 5–1 Who should be permitted to search the national online register without restriction?

The national register should not be accessible to the general members of the public unless permission is granted by the attorney. It is important to protect the privacy of those whose named on the enduring documents as well as the principal.

The attorney may grant permission to financial advisers, legal professionals, financial institutions or other organisations that need to verify the existence of such documents. Appropriate government authorities who are investigating situations of abuse or potential abuse should have the ability to access the register without first obtaining the attorney's permission. This ability to access would still need to meet any legislative restrictions or protocols to avoid overstepping appropriate authority.

Any existing enduring documents should be entered into this register within a prescribed time frame of the register being made official and obligatory. This should be a requirement for all authorities and enduring documents to be valid.

Registering existing documents may allow conflicts to surface and contribute to the potential creation of a representative instrument for the elderly and a discussion across Australia about the importance of estate planning and protection of the elderly. It may also help to create consistency and uniformity across this area – thereby acting as a limited prevention of elderly abuse.

Question 5–2 Should public advocates and public guardians have the power to conduct random checks of enduring attorneys' management of principals' financial affairs?

We do not support open access for random checks of enduring attorney documents or management of financial affairs. This may open up issues to privacy and confidentiality and lead to subjective reviews of what is appropriate.

The establishment of a national register should only be used to determine if a valid power exists where a transaction is to be undertaken.

Opening the register up to allow random checks will create questions about how decisions are made as to who is checked and the parameters that are used to being such random checks. This will become unfeasible and highly problematic.

We support the requirement for witnessing of enduring documents (or any other authority instrument) to become more stringent. There should always be a requirement for a registered and certified professional to witness a document and confirm the presence of the principal as well as their capacity and willingness to execute such a document.

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5. Education of non-professional guardians and financial administrators

Proposal 6–1 Newly-appointed non-professional guardians and financial administrators should be informed of the scope of their roles, responsibilities and obligations.

Question 6–1 Should information for newly-appointed guardians and financial administrators be provided in the form of: (a) compulsory training; (b) training ordered at the discretion of the tribunal; (c) information given by the tribunal to satisfy itself that the person has the competency required for the appointment; or (d) other ways?

We support proposals to increase the educational opportunities for anyone taking on the responsibilities of a power of attorney or financial management order.

However, while making these people aware of their obligations, roles and responsibilities is important we do not believe that compulsory training will be a feasible or necessary option. Rather, voluntary education through media and hard copy guides can be provided when a power commences.

In addition, there must be some form of acknowledgement that a newly-appointed guardian or administrator understands and accepts their authority and responsibilities.

In light of this, we do believe that where it is determined that a representative may be misusing powers that the relevant tribunal or government authority can require a person to undertake compulsory education or training on their responsibilities and how to best manage an elderly person's affairs. This can also be used if there are suspicions or minute cases of misappropriation or mishandling of a principle's affairs or finances which would not warrant harsh penalties.

In the same way, those who wish to volunteer to undertake the training should be given the opportunity to do so. It is more important to provide incentives than penalties to undertake training and to activity promote the benefits. This may be achieved through advertising through a variety of media sources. Examples can be taken from the provision of training to trustees of self-managed superannuation funds (SMSFs). Being a complex area to navigate, many trustees are voluntarily undertaking training to become comfortable and knowledgeable about their role and responsibilities in that trustee role. This training can be completed online or in person to ensure accessibility to everyone. Such training can also highlight the process for complaints being lodged, investigation procedures, requirement to provide evidence and penalties involved in a breach of the authority.

Proposal 6–2 Newly-appointed guardians and financial administrators should be required to sign an undertaking to comply with their responsibilities and obligations.

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Question 6–2 In what circumstances, if any, should financial administrators be required to purchase surety bonds?

Aged Care Steps welcomes this proposal in which newly-appointed guardians and financial administrators will sign an acknowledgement that they understand and accept their role with the attached responsibilities and obligations. Some form of written acknowledgement should be obligatory that they have been provided with the tools and knowledge necessary to allow them to fulfil their duties as a representative and financial administrator of the elderly person.

Surety bonds may provide a vulnerable person with some protection from mismanagement or abuse, but we do not support this as a compulsory requirement for all managed estates. Many estates are well managed or small in size and this becomes an unnecessary cost or burden. We believe it could be limited to situations such as very large estates or very complex financial affairs or where action has needed to be taken by relevant authorities to prevent abuses. Simple estates managed by a spouse should not be required to take out a surety bond.

Question 6–3 What is the best way to ensure that a person who is subject to a guardianship or financial administration application is included in this process?

The best way to ensure inclusion of a subject is to first assess their capacity to understand what the implications are for enforcing a financial administration or guardianship order. If they can comprehend what the effects of these devices are, they should be kept informed throughout every step of the process. There should be an education piece as to what authority and power is given to a guardian or administrator.

Financial advisers have an important role to play in the pre-planning before clients lose capacity.

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6. Banks and superannuation

Proposal *7–1 The Code of Banking Practice should provide that banks will take reasonable steps to prevent the financial abuse of older customers. The Code should give examples of such reasonable steps, including training for staff, using software to identify suspicious transactions and, in appropriate cases, reporting suspected abuse to the relevant authorities.*

The Financial Ombudsman Service (FOS) will be able to provide data on cases of elder abuse across the banking and financial services industry. A large number of bulletins have been released highlighting the variety of cases, warnings, recommendations that relate to the issue of elder abuse.

However, not all incidences are reported or captured. Guidelines need to be increased around detection of warning signs and when such incidents are obligatory to report. This should be extended across all face-to-face interactions as well as both telephone and internet banking to prevent cases of elder abuse and manipulation of funds.

We agree that banks should be implementing strict guidelines that will assist in preventing cases of elder abuse, such as with the withdrawal of funds from accounts, certifying and imposing a guardianship order on accounts and strict note-taking as to the withdrawal and use of funds. If a client's finances are being investigated all accounts and financial dealings should be placed on hold pending the resolution of such an investigation. Such guidelines and rules should be implemented within the *Banking Code of Practice* which will ensure the enforcement of such preventative measures to prevent and reduce the risk of financial elderly abuse.

Proposal 7–2 The Code of Banking Practice should increase the witnessing requirements for arrangements that allow people to authorise third parties to access their bank accounts. For example, at least two people should witness the customer sign the form giving authorisation, and customers should sign a declaration stating that they understand the scope of the authority and the additional risk of financial abuse.

We agree that third party authorities should be completed in an appropriate and legal way which will ensure that any authorised parties were given such authority correctly. Our recommendation would be to ensure that a suitable bank employee or Justice of the Peace (JP) has witnessed the signing of an authority, which can then be implemented and stored at the financial institution. This will ensure that the elderly subject, with full capacity and knowledge of what they are signing, is giving complete authority to a third party with the understanding of the authority being bestowed.

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Proposal 7–1 Should the Superannuation Industry (Supervision) Act 1993 (Cth) be amended to:
(a) require that all self-managed superannuation funds have a corporate trustee;
(b) prescribe certain arrangements for the management of self-managed superannuation funds in the event that a trustee loses capacity;
(c) impose additional compliance obligations on trustees and directors when they are not a member of the fund; and
(d) give the Superannuation Complaints Tribunal jurisdiction to resolve disputes involving self-managed superannuation funds?

The administration aspects of operating a self-managed fund are simplified if the fund has a corporate trustee and this should be promoted as industry best-practice but should not be a mandatory feature.

Instead, there should be incentives to encourage new funds to be set up with a corporate trustee. If existing funds have individual trustees, and membership changes, which necessitates a change to trustees, incentives could be applied to encourage the change to be switching to a corporate trustee.

Incentives could include:

- Cheaper annual registration costs
- Cheaper SMSF annual levies for funds with a corporate trustee.

A person who has assumed a trustee role using an enduring power of attorney has an equal ability to abuse these powers, resulting in elder financial abuse, whether they are a director of a corporate trustee or an individual trustee.

In fact, if the abuse is wilful, having a corporate trustee could increase the opportunity as a corporate trustee of a single member fund only needs one director to act. Perhaps one reform that could be considered is where a person is acting as trustee in place of the member that a corporate trustee requires two directors and a fund with individual trustees needs two separate individuals. This will not prevent those two people colluding, but may add an extra layer of protection.

We do support including guidelines and procedures in SIS Regulations or Guidelines for the management of an SMSF where a person loses mental capacity but these should only apply as an option where the SMSF trust deed does adequately outline the procedures. The trust deed should overrule these guidelines.

Disputes within an SMSF are generally family disputes. Currently if these disputes cannot be resolved the only recourse is through the courts. This can be expensive and prohibitive. We support allowing SMSFs to opt into the Superannuation Complaints Tribunal scheme, however do not support all SMSFs being charged a levy each year for coverage by the Tribunal. Instead, we would recommend a fee be charged to the fund if assistance is sought to resolve a dispute.

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7. Family Agreements

Proposal 8–1 State and territory tribunals should have jurisdiction to resolve family disputes involving residential property under an 'assets for care' arrangement.

Question 8–1 How should 'family' be defined for the purposes 'assets for care' matters?

Families are all unique in their structure and internal interactions. To prescribe how family agreements are entered into and the nature of such agreements is not feasible and would be too limiting.

We strongly encourage clients considering these arrangements to seek legal advice and document the arrangements, including exit clauses if the arrangements break down or a move into aged care is needed. We do not support any move to force clients to establish legal documents but we would support the requirement for clients to gain sign-off that they have understood the implications and are willingly entering into such arrangements. The practical implications may be quite difficult to implement this requirement.

If arrangements break down, it can leave the older person quite vulnerable and court actions to remedy the situation can be expensive and prohibitive. We support moves to allow an older person to take these complaints to a tribunal that reduces costs and resolution timeframes. However, more discussion is required around how this would work.

8. Wills and death benefit nominations

Proposal 9–1 The Law Council of Australia, together with state and territory law societies, should review the guidelines for legal practitioners in relation to the preparation and execution of wills and other advance planning documents to ensure they cover matters such as: (a) common risk factors associated with undue influence; (b) the importance of taking detailed instructions from the person alone; (c) the importance of ensuring that the person understands the nature of the document and knows and approves of its contents, particularly in circumstances where an unrelated person benefits; and (d) the need to keep detailed file notes and make inquiries regarding previous wills and advance planning documents.

Aged Care Steps agrees with the need for a review of the system in which Wills and superannuation death benefit nominations are made. While it is difficult to prove the exertion of undue influence over an elderly person in the creation or change in their instructions, there must be some guidelines and tests which may arise suspicion of elder or financial abuses. For example, any meetings between

a legal practitioner or financial planner with an elderly client who has not yet lost mental capacity, should be done so, in some portion, in private. In many legal studies and cases, it has been found that private meetings between an elderly person and their professional has aroused suspicions of financial and/or elder abuse in which decisions were being made with undue influence.

Any type of coercion into the creation or change of a Will should result in the document being voidable. Questions arise as to what is considered coercion or undue influence which should be explored. Is persuasion, influence or opportunity considered undue influence or should the elderly subject be free in all aspects to make a decision as to the outcome of a written instruction? How can this be proven? While we acknowledge the difficulty to establish this form of elderly abuse, there needs to be further clarification and guidelines on this subject as well as education in identifying such cautions or red flags. Made clear in *Succession Laws*[2], it is clear that elderly abuse in the creation or alteration of a Will is problematic and proving intention at the time of execution as well as no undue influence very difficult.

There needs to be a reformation of the laws and penalties regarding such actions. Legal practitioners and financial advisers constantly and understandably have grave concerns when managing and documenting the affairs of an elderly person who is surrounded or being guided by a family, friend or another representative.

Superannuation legislation already includes sufficient legislation and regulations around the creation of binding death benefit nominations for superannuation funds. So we do not believe this area requires reform. However, industry standards and guidelines are required around the ability of a legal representative to amend or vary an existing nomination.

9. Social Security

Proposal 10–1 The Department of Human Services (Cth) should develop an elder abuse strategy to prevent, identify and respond to the abuse of older persons in contact with Centrelink.

Proposal 10–2 Centrelink policies and practices should require that Centrelink staff speak directly with persons of Age Pension age who are entering into arrangements with others that concern social security payments.

Proposal 10–3 Centrelink communications should make clear the roles and responsibilities of all participants to arrangements with persons of Age Pension age that concern social security payments.

Proposal 10–4 Centrelink staff should be trained further to identify and respond to elder abuse.

[2] Victorian Law Reform Commission, *Succession Laws*, Report (2013) 15.

Education and guiding the elderly in understanding their rights in cases of abuse as well as identifying and speaking out about their own cases should be a priority in this space

One of the areas or industries that deal with a high volume of people from this group is Centrelink. However, we do not believe that the organisation is resourced or the staff sufficiently skilled to undertake discussions with clients who are granting financial powers to another person. It is more efficient and appropriate to encourage these clients to discuss their situation and seek advice from a suitably qualified and regulated financial adviser or legal professional.

It is important for the Department of Human Services to have clear and documented guidelines for how staff should deal with any cases of financial abuse that are uncovered. This could include reporting of large transfers of funds from a social security recipient to another person.

Aged Care Steps has seen evidence on many occasions where family members who are acting for an elderly person who has entered residential care, attempting to reduce the assets and income of parents to increase government entitlements (including greater subsidies for aged care) but which benefit themselves more than the parents. Encouraging financial advice and education of obligations may prevent these actions occurring.

The use of an appointed nominee to deal with Centrelink on behalf of an elderly person does not require arduous legal processes as this is a role that focusses more on the ability to update information rather than transact on the person's behalf.

10. Aged care

Proposal 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.

Proposal 11–2 The term 'reportable assault' in the Aged Care Act 1997 (Cth) should be replaced with 'reportable incident'. With respect to residential care, 'reportable incident' should mean: (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; (b) a sexual offence, an incident causing serious 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. 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.

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Proposal 11–3 The exemption to reporting provided by s 53 of the Accountability Principles 2014 (Cth), regarding alleged or suspected assaults committed by a care recipient with a pre-diagnosed cognitive impairment on another care recipient, should be removed.

Older people moving into residential aged care may be vulnerable and families often express concerns about the safety or quality of care in these services. The system needs to provide protection and safeguards to ensure appropriate practices.

Aged Care Steps encourages the freedom and rights of patients and family/friends of patients who seek to report or investigate any cause of concerns regarding elderly abuse. Whether by physical, sexual, emotional, financial or otherwise, there must be protection in place to make coming forward and reporting of such incidents an easier and smoother process.

We support a system of compulsory reporting for physical abuse, but do not agree with mandatory reporting of financial abuse by aged care workshops as this may be too difficult to assess and can be counterproductive. Education and voluntary rectification is a preferred approach.

We do acknowledge the difficulty in assessing and managing complaints regarding elderly abuse in a class that have a higher chance of suffering a mental disability or dementia. However, there must be careful considerations given and a set of guidelines in which to make such assessments in a fair way which does not place the reputation and employment of staff in jeopardy

Such assessments can only be brought about by discussions and participation from professionals in the workplace as well as doctors and government authorities on how to find a balance and addressing elderly abuse complaints.

Proposal 11–8 Aged care legislation should provide that agreements entered into between an approved provider and a care recipient cannot require that the care recipient has appointed a decision maker for lifestyle, personal or financial matters.

In principle, we agree with this proposal, however we do not agree that aged care recipients should be turned away or declined entry if they do not have a decision-maker appointed so do not support the recommendation.

Aged care residents should have a nominated person who can act as an emergency contact or a decision-maker for lifestyle and personal matter. With constant changes to legislation, fee structures and lifestyle decisions, there must be a representative that can assist in addressing any changes or concerns and assist in making decisions.

However, there should be education for those representatives (through hardcopy brochures/ discussions with facilities) as to the assistance and guidance that can be provided should they be called to provide their support. It is important to ensure they understand their limitation to their authority and support that they can provide and have the ability to seek guidance with other professionals as to the scope of the support they can provide.