LEADING AGE SERVICES
AUSTRALIA

The voice of aged care

AUSTRALIAN LAW REFORM COMMISSION: ELDER ABUSE DISCUSSION PAPER

March 2017

Leading Age Services Australia
P: 02 6230 1676 | **F:** 02 6230 7085 | **E:** info@lasa.asn.au

First Floor, Andrew Arcade, 42 Giles Street, Kingston ACT 2604
PO Box 4774, Kingston ACT 2604
ABN: 7115 6349 594

Leading Age Services Australia (LASA)

Leading Age Services Australia (LASA) is the national peak body representing Providers of age services across residential care, home care and retirement living. We represent our Members by advocating their views on issues of importance and we support our Members by providing information, services and events that improve their performance and sustainability.

Our vision is to create a high performing, respected, sustainable aged services industry delivering affordable, accessible, quality care and services for older Australians.

Thank you for the opportunity to comment on the Elder Abuse Discussion Paper. This submission will predominantly comment on Section 11 Aged Care and follows the numbering system used by the Australian Law Reform Commission (ALRC).

Should you have any questions regarding this submission, please do not hesitate to contact Ms Kay Richards, National Policy Manager, on 02 6230 1676.

Background and Context

In June 2016, the Hon George Brandis QC, Attorney-General of Australia referred the Australian Law Reform Commission (ALRC) to enquire and report the consideration of:

- existing Commonwealth laws and frameworks which seek to safeguard and protect older persons from misuse or abuse by formal and informal carers, supporters, representatives and others. These should include, but not be limited to, regulation of:
  - financial institutions
  - superannuation
  - social security
  - living and care arrangements, and
  - health
- the interaction and relationship of these laws with state and territory laws.

In undertaking the reference, the ALRC was to identify and model best-practice legal frameworks, including having regard to other inquiries and reviews that it considers relevant.

Relevant to the aged care industry, the ALRC is to specifically consider best practice laws, as well as legal frameworks including, but not limited to, the National Disability Insurance Scheme and the Aged Care framework, which:

- promote and support older people's ability to participate equally in their community and access services and advice
- protect against misuse or advantage taken of informal and formal supporter or representative roles, including:
  - formal appointment of supporters or representatives
  - informal appointment of support and representative roles (eg family members)
  - prevention of abuse
  - mitigation of abuse
  - reporting of abuse
  - remedies for abuse
  - penalties for abuse, and
  - provide specific protections against elder abuse.

The ALRC is to provide its report to the Attorney-General by May 2017.

In doing so, the ALRC invited comment on an Issues Paper released in June 2016 on which LASA provided advice on a range of areas specifically responding to those related to aged care. Following receipt of commentary from the community the ALRC has now released a Discussion Paper on Elder Abuse. LASA now presents the following comments to the ALRC for consideration.

Summary of Recommendations

LASA:

- Supports the protection of all older Australians against any form of elder abuse;
- Supports the development of a National Plan to address elder abuse;
- Proposes that as part of the National Plan, a national policy framework must be able to recommend means of implementation. Without implementation strategies, the plan will stay just that – a plan;
- Supports the commissioning of a national prevalence study of elder abuse;
- Suggests that duplication of any recommendation/s must be considered before any proposal is developed;
- Suggests that other avenues of prevention need to be investigated before further reporting requirements are imposed on the industry;
- Recommends that if a reportable incidents scheme is introduced it builds on the framework of the current system, rather than introducing new requirements;
- Supports the proposal of a national employment screening process for Australian Government funded aged care;
- Questions who would be responsible for the cost of such screening, and who would undertake the action;
- Continues to advocate for a workforce that has the right attitude and attributes to work with older people;
- Calls for a National Code of Conduct for aged care workers;
- Supports actions to reduce the use of both physical and chemical restraint; and
- Contends that before making broad recommendations about how restrictive practices should be used, all settings should be considered, not just in residential care.

2. National Plan

Proposal 2-1 A National Plan to address elder abuse should be developed.

LASA supports this proposal. A national policy framework could support government/s, industry and communities to address elder abuse, however a plan must contain mechanisms for its implementation given what we know of elder abuse not only in the care setting, but also in the community in general. Without implementation strategies, any Plan will stay just that – a plan.

Proposal 2-2 A national prevalence study of elder abuse should be commissioned.

LASA supports this proposal and agrees that there is very limited evidence in Australia that would support an understanding of the prevalence of elder abuse.

Later in this submission LASA rejects some of the recommendations, not because LASA supports (or does not supports) actions, rather because of a pragmatic view that particular proposals may not be able to be implemented to achieve the desired outcome.

As the ALRC Discussion Paper suggests, without an appropriate evidence base to guide best-practice models, there is the potential that strategies which lack a sound evidence base may not achieve desired results.

LASA is concerned that public discussion is often not informed by evidence and can provide a misconstrued perception of what elder abuse is, where it occurs and by whom.

Simply reporting elder abuse will not, in itself, protect a person from such abuse, and reporting from some settings (and not others) is not a reliable source of evidence of the type and prevalence of abuse.

As mentioned later, there are a range of legislative responsibilities residential services must undertake, however, these same responsibilities may not be mandated in other settings such as hospitals, alternative accommodation models or the private home. If elder abuse is to be seen as of national importance it is imperative we start with reliable evidence. LASA supports the suggestions made by the National Ageing Research Institute (NARI) and the Australian Association of Gerontology (AAG) as depicted in the ALFC Discussion Paper at 2.38.

3. Power 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.

LASA would not necessarily be against such a proposal, however, duplication in the aged care setting must be considered before such a proposal is planned.

Such a proposal may help fill the gap that currently exists, especially for aged care providers of the Commonwealth Home Support Program (CHSP) and the Home Care Package (HCP) Program. Care staff often report their frustration when they are unable to gain help and support when they suspect or witness abuse (in any form). Reporting to the Police will not necessarily deliver support to care staff and more importantly the older person.

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.

LASA supports this proposal.

Proposal 3-3 Public advocate 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.

LASA would not necessarily be against such a proposal, however, duplication in the aged care setting must be considered before such a proposal is implemented.

Proposal 3-4 In responding to the suspected abuse or neglect of an older person,

public advocates or public guardians may:

(a) refer the older person or the perpetrator to available health care, social, legal, accommodation or other services;

(b) assist the older person or perpetrator in obtaining those services;

(c) prepare, in consultation with the older person, a support and assistance plan that specifies any services needed by the older person; or

(d) decide to take no further action.

LASA would not necessarily be against such a proposal, however, duplication in the aged care setting must be considered before such a proposal is implemented.

Proposal 3-5 Any person who reports elder abuse to the public advocate or public guardian in good faith and based on a reasonable suspicion should not, as a consequence of their report, be:

(a) liable, civilly, criminally or under an administrative process;

(b) found to have departed from standards of professional conduct;

(c) dismissed or threatened in the course of their employment; or

(d) discriminated against with respect to employment or membership in a profession or trade union.

LASA agrees with the caveats outlined in Proposal 3-5, however reiterates that this should not duplicate what is currently applicable in the aged care setting.

5. Enduring Powers of Attorney and Enduring Guardianship

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.

LASA supports this proposal, and suggests that age service Providers have access to such documents. This is to support the person to obtain the care and services they want, rather than those prescribed by others.

Proposal 5-10 State and territory governments should introduce nationally consistent laws governing enduring powers of attorney (including financial, medical and personal), enduring guardianship and other substitute decision makers.

LASA has long called for such consistency[1] and has advocated for an improved alignment of State and Territory advance care planning terminology and regulation, for example, and transferability between jurisdictions.

9. Wills

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.

LASA agrees with this proposal and welcomes initiatives to ensure older people have their wishes respected and carried out.

10. 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.

LASA agrees with this proposal; however, it should not duplicate matters arising in the proposed National Plan.

11. 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.

A rigorous process of compulsory reporting is outlined in current legislation where:

- the Act requires, except in very specific and sensitive circumstances, all Approved Providers of residential aged care must report every allegation or suspicion of a reportable assault;
- reports must be made to both the Police and the Department of Health (DoH) within 24 hours of the allegation being made, or from the time the Approved Provider starts to suspect on reasonable grounds, that a reportable assault may have occurred;
- if a staff member makes a disclosure that qualifies for protection under the Act, the Approved Provider must protect the identity of the staff member and ensure that the staff member is not victimised;
- if an Approved Provider fails to meet compulsory reporting requirements the Department of Health (DoH) may take compliance action; and

- compliance with compulsory reporting requirements is monitored by the Australian Aged Care Quality Agency (AACQA).

These requirements only relate to:

- unlawful sexual contact with a resident of an aged care home, or
- unreasonable use of force on a resident of an aged care home.

There are no such requirements in the CHSP, and the HCP Program.

LASA is aware, from the 2015–16 Report on the Operation of the *Aged Care Act 1997* [2] in 2015–16 the DoH received 2,862 notifications of reportable assaults. Of those, 2,422 were recorded as alleged or suspected unreasonable use of force, 396 as alleged or suspected unlawful sexual contact, and 44 as both. With 234,931 people receiving permanent residential care in 2015–16, the incidence of reports of suspected or alleged assaults was 1.2 per cent.

As LASA articulated in the response to the ALRC's Elder Abuse Issues Paper in June 2016[3], what we do not know is the outcome of these reports, whether the allegations were found to have had substance, what local actions were put in place, and if any convictions occurred as a result of Police action.

LASA supports the protection of all older Australian against any form of elder abuse, and any new reportable incidents scheme would need to ensure not only the statistics of reporting incidents are publically available, but also the learnings from the investigations undertaken, the outcome of the reporting process and any subsequent convictions (or non-conviction).

LASA questions the veracity of the current system in *preventing* elder abuse and suggests, despite the rigorous reporting requirements required of the industry there has been little impact with very few convictions.

A reporting framework will not, in itself, prevent elder abuse. As the ALRC Discussion Paper indicates, it may increase accountability, transparency and organisational responses, but it will still not prevent elder abuse by those who are deliberate in inflicting a range of abuses. Other avenues of prevention need to be investigated before further reporting arrangements are required of the industry.

LASA has confidence that the Aged Care Complaints Commissioner could undertake the responsibilities outlined in the Discussion Paper, however, as stated, there is currently a gap between the current reportable assault scheme and the complaints scheme. To date the Commissioner has diligently worked to an early resolution handling process for complaints management. With approximately 89% of complaints being closed through early resolution, it would be disappointing, as a result of any new requirements, if this focus changed back to an investigative approach. The previous Complaints Investigation Scheme(CIS) was dramatically changed and positive results have occurred with the introduction of the role of Aged Care Complaints Commissioner. More work is required to support complaints and abuse; to introduce a new level of compliance through the Commissioner may not see the desired success.

LASA recommends that if a scheme is introduced, it builds on the framework of the current system, rather than introducing new requirements. The aged care industry, through the reform agenda over the last 5 years has 'change fatigue'. To introduce a completely new system, knowing that major changes in the industry are on the agenda in the very near future, may not elicit the support required to successfully introduce a completely new system

The Discussion Paper suggests that for a Provider to be compliant, they only need to make a report but are not required to take any action. LASA suggests this is not the case. When an investigation occurs at the local level the Departmental Officers often require a full report on what actions are taken, and their outcome. This can lead to involvement by the AACQA and or the Complaints Commissioner and compliance action by the DoH.

Providers take very seriously their responsibilities to both staff and the care recipient in investigating reports of assault. Many seek advice on the appropriate action that should be undertaken (especially when staff are involved) where procedural fairness (under the Fair Work Act) is followed. However, there remains a lack of public education on how an incident should be treated (and reported), how an investigation should be undertaken, and what actions are needed to ensure procedural fairness is respected and more importantly in ensuring the safety of the older person.

LASA is concerned even with a broader remit, a new reportable incidents scheme would still not include abuse that may be perpetrated by someone other than an age services employee. What protection is available for those care recipients, especially in home care where abuse may be perpetrated by others, and not employee?

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.

LASA is agnostic to the value of a change in terminology, however broadening the scope of a reportable incidents scheme would capture those incidents that are not reported under the current scheme. It seems there is a perception aged care staff are the only offenders of such incidents. This is not only wrong, but will again not capture those incidents that are undertaken by non-staff. LASA therefore questions why only Providers and their staff are held accountable? Under the current scheme, where Providers see incidents occurring by other members of the community, the Provider is powerless to take any action other than to report an allegation to the Police. There is no current process in how staff can protect the older person from family, friends and others.

It would appear from the definitions above, (and it simply may be the way the proposal is worded) the reporting of *allegations* and *suspected abuse* would no longer be required to be reported. The definition presumes that an incident has occurred, and this should not be a Provider's responsibility to decide, before they adhere to reporting requirements. Having said that, a major problem with the current scheme is that even a suspicion (or allegation of whatever veracity) is required to be reported. Where there is a lack of information on what staff might have been involved, on which resident, let alone any indication an incident did occur, the legislation still requires a notification to the DoH and the Police. There must be a compromise here that is acceptable to the community and to the Provider. A clearer explanation of what would need to be reported is required.

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.

LASA seeks to understand why this proposal has been made. LASA supports practices to assist Providers in preventing behaviours that negatively impact others, especially from those suffering severe behavioural and psychological symptoms of dementia (BPSD). The Quality Standards, specifically outcome 2.13 (Behavioural Management)[4], require the needs of care recipients with challenging behaviours are managed effectively. Increased reporting will again not prevent abuse, rather, in this instance, the management and use of supports such as the Severe Behaviour Response Teams (SBRT) should be encouraged to support the Provider and the staff to manage such behaviour.

Reporting these incidents may not improve care delivery, or diminish abuse to others. The number, and type of incidents should be recorded at the local level. As part of the accreditation / quality reporting processes the AACQA assessor has the power to seek such information, review the outcomes of any investigation and make recommendations for non-compliance where necessary. If 'done properly' this process would hold the Provider accountable for their actions and encourage (gently or through compliance action) quality improvement measures to better protect people and staff.

Proposal 11-4 There should be a national employment screening process for Australian Government funded aged care. The screening process should determine whether a clearance should be granted to work in aged care, based on an assessment of:

(a) a person's national criminal history;

(b) relevant reportable incidents under the proposed reportable incidents scheme; and

(c) relevant disciplinary proceedings or complaints.

LASA questions who would be responsible for the cost of, and who would undertake such screening? This should not be the responsibility of the Provider and would need significant resourcing to enable appropriate tracking to occur.

How would potential staff be protected to ensure procedural fairness is followed and discrimination does not occur? The Australian Health Practitioners Regulation Agency (AHPRA) processes for health professional may be worth reviewing.

Proposal 11-5 A national database should be established to record the outcome and status of employment clearances.

LASA supports this proposal and supports the criteria outlined in 11.72 and 11.73 of the Discussion Paper. The independent body which would undertake such processes (outlined in the criteria of 11.72) must maintain the emphasis of investigation and resolution, rather than punitive, as was the former Complaints Investigation Service (CIS). Where misconduct of staff is found, employment relations requirements should be followed, and processes of APHRA (and other bodies such as the NSW Health Care Complaints Commission) must be used where appropriate. Where criminal conduct is suspected, this must be dealt with by Police.

An important aspect of an independent body is the educative framework it should work under. Aged care Providers, want to be able to learn from the experience of others. In an environment of consolidation in residential care, an expected exponential growth in community care, where not all Providers will be 'Approved Providers', understanding how best to identify and/or prevent elder abuse is paramount.

Question 11-1 Where a person is the subject of an adverse finding in respect of a reportable incident, what sort of incident should automatically exclude the person from working in aged care?

LASA has advocated for a workforce that has the right attitude and attributes to work with older people. Long before an incident occurs, there needs to be a thorough recruitment process to attract people with the desired attitude and attributes, specified to ensure staff are equipped with the necessary skills required to undertake the role. This will go a long way to mitigating the risk of elder abuse.

However, where there is reliable evidence (or information based on probability) a staff member has been involved in a reportable incident, appropriate disciplinary action must be initiated. To automatically exclude a person from working in aged care, there are a range of actions that need to be undertaken to meet unfair dismissal legislation. This needs to be adhered to by the Provider. It should not be their responsibility to decide what happens to a person once they leave their employ.

Who would take the responsibility for excluding the person from working in aged care and how would this be administered?

Offences such as murder, sexual assault and assault resulting in a custodial sentence, automatically preclude a person from working in aged care and this would be in line with community expectations. However, taking fraud or assault as an example, there are a range of circumstances that surround these actions that may impact on whether the person should automatically be excluded from working in the industry. Making a list of offences that is definitive may also be discriminatory. Where a person has a spent conviction should they be discriminated against or excluded from working in aged care? The working with children arrangements could usefully inform options for the aged care setting.

There may be a place for a case-by-case consideration process.

Question 11-2 How long should an employment clearance remain valid?

Currently a National Criminal History Check (NCHC) involves identifying and releasing any relevant Criminal History Information (CHI) subject to any relevant spent convictions/non-disclosure legislation and/or information release policies. They are a point in time check and are current as of the date of issue[5]. There is no period of validity. Re-registration processes for health professionals (such as nursing) is an annual event and generally at the cost of the nurse. It would make reasonable sense that an employment clearance remains valid on an annual basis. However, some policy and procedures within the industry suggest three years, along with a requirement the employee is to disclose any reason that might impact on the outcome of an employment history/criminal history check.

Whatever the timeframe, there is a reliance on the worker to ensure they have provided an update to the employer if their circumstances have changed. Internal policies and procedures need to take this into consideration as part of any performance review.

Question 11-3 Are there further offences which should preclude a person from employment in aged care?

As mentioned above, there must be careful consideration as to discrimination before a list of offences is drafted. In some instances, there may be case-by-case circumstances that require consideration. In developing a list of further offences, should the question be "what would meet community expectations"?

Proposal 11-6 Unregistered aged care workers who provide direct care should be subject to the planned National Code of Conduct for Health Care Workers.

LASA can see merit in a well-designed National Code of Conduct for aged care workers, developed though meaningful engagement with Providers, that is supported and administered through a body such as the AHPRA[6]..

Proposal 11-7 The *Aged Care Act 1997* (Cth) should regulate the use of restrictive practices in residential aged care. The Act should provide that restrictive practices only be used:

(a) when necessary to prevent physical harm;

(b) to the extent necessary to prevent the harm;

(c) with the approval of an independent decision maker, such as a senior clinician, with statutory authority to make this decision; and

(d) as prescribed in a person's behaviour management plan.

LASA supports actions to reduce the use of both physical and chemical restraint. As mentioned in the LASA submission to the ALRC Elder Abuse Issues Paper, a *DECISION-MAKING TOOL: Supporting a Restraint Free Environment in Residential Care*[7] is available to support Residential Services. The Decision-Making Tool suggests the use of any restraint must always be the last resort after

exhausting all reasonable alternative management options and viewed as a temporary solution to any behaviour causing concern. The Decision-Making Tool also comments that the application of restraint, for any reason, is an imposition on an individual's rights and dignity and, in some cases, may subject the person to an increased risk of physical and/or psychological harm. The inappropriate use of restraint may constitute assault, battery, false imprisonment or negligence.

Given the importance of the use of restrictive practices, the ALRC might also want to take into account that these practices are not restricted to residential aged care services, but can occur in hospitals, other care settings and in a person's home.

Already, there are policies and practices that constrain the use of restrictive practices in the residential setting, such as restraint free policies and consent. The use of restrictive practices should be informed by a comprehensive clinical assessment and in consultation with the person (where possible), the medical practitioner and family and friends (where they have legal responsibility). When introduced, the use of restrictive practices must be regularly reviewed and initial and ongoing consent must be sought before the use continues.

In an emergency, where there is a necessity to act urgently to safeguard someone, some restrictive practices, prior to obtaining consent, may be defensible as action taken under the service Provider's duty of care. In all cases, the decision to restrict a person's voluntary movement or behaviour should only be made after weighing up the risks of using restraint against the risks of not using restraint.

LASA has been involved with the 'Reducing Use of Sedatives' (RedUSe) Project. Funded by the Australian Government Department of Social Services, the RedUSe Project aimed to promote the quality use of antipsychotics and benzodiazepine medications in residential settings. These medications are often used for sedative (chemical restraint) purposes. The project involved residential service staff, General Practitioners, the Pharmacist providing quality use of medicine services for the organisation and their supply pharmacy.

This project highlighted the importance of a multidisciplinary approach to support the person, their family and friends and the staff of services to have positive outcomes for the appropriate use of these medicines. It is projects like RedUSe that should be promoted rather than a blanket approach described in this proposal.

LASA reiterates (from our submission to the ALRC Issues Paper) the concern relating to the confusing information about the status of a guardianship order or an enduring power of attorney where they may cover a limited range of matters, not including decisions about restraint. In addition, legal requirements for consent to the use of restraint where the resident is not mentally competent may vary in different States and Territories. A family member who does not have a relevant guardianship order or enduring power of attorney may not have the legal capacity to consent on behalf of the resident to the use of restraint.

LASA agrees, as identified in the *Decision-Making Tool*, it is the responsibility of all individual care staff (e.g. nurses, personal care assistants, medical practitioners and allied health professionals), to ensure a restraint free environment in residential settings, however there seems to be varying requirements (or care practices) in other settings, such as a person's home or in a hospital.

LASA contends that before making broad recommendations about how restrictive practices should be used, all settings should be considered, not just in residential care.

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.

LASA fully agrees with this proposal. However, processes for supporting a person to either make decisions or enable those who are making decisions for a person who cannot speak for themselves must be streamlined. Providers who seek a guardianship order often report the difficulty in doing so, even when the person receiving care is at risk of inaction.

There is a range of evidence suggesting a person's wishes are often not carried out despite those wishes being commonly known. For example, when a person wants to stay at home (be it their own home or a residential setting) and the family insists the person is transferred to hospital. Or where, best practice dictates the reduction of sedatives and the family will not support such action.

Many people simply do not want to enter into a conversation about lifestyle, personal or financial matter, let alone document such discussions. People must have the right to not appoint a decision maker even if that places the person at risk.

However, it is often left to the Approved Provider and clinical decision making processes that impact on what does occur in the absence of an appointed decision maker. The question here is what support is available for Approved Providers and clinicians to assist in making such decisions. A community education programme should be initiated to identify the importance of ensuring an appointed decision maker is identified in the case a person cannot speak for themselves.

Proposal 11-9 The Department of Health (Cth) should develop national guidelines for the community visitors scheme that:

(a) provide policies and procedures for community visitors to follow if they have concerns about abuse or neglect of care recipients;

(b) provide policies and procedures for community visitors to refer care recipients to advocacy services or complaints mechanisms where this may assist them; and

(c) require training of community visitors in these policies and procedures.

LASA supports proposal 11-9 in relation to the current Community Visitors Scheme (rather than that outlined in Proposal 11.10), and would suggest for those who cannot speak for themselves, other avenues are also available where the Community Visitor is concerned. For example, it would be of questionable value referring a care recipient who is cognitively impaired to an advocacy service if they cannot speak for themselves and the family/friend are the perpetrator of the abuse and or neglect. The Aged Care Complaints Commissioner can only act upon those areas 'in scope' and where the family/friends are involved, this would be an out-of-scope referral.

By default, this proposal infers the staff of the aged care Provider is the perpetrator; what avenues do the community have (apart from referral to the Police) when it is family and friends? This proposal does not consider this example and would not change current practice.

Proposal 11-10 The *Aged Care Act 1997* (Cth) should provide for an 'official visitors' scheme for residential aged care. Official visitors' functions should be to inquire into and report on:

(a) whether the rights of care recipients are being upheld;

(b) the adequacy of information provided to care recipients about their rights, including the availability of advocacy services and complaints mechanisms; and

(c) concerns relating to abuse and neglect of care recipients.

LASA does not support this proposal, again, not because LASA is against the possible outcomes of such a scheme, but rather because there is already sufficient scrutiny by the AACQA, Commonwealth Nursing Officers, the DoH and the Aged Care Complaints Commissioner. This proposal also ignores the community care setting, where the AACQA, the DoH and the Aged Care Complaints Commissioner have jurisdiction.

Proposal 11-11 Official visitors should be empowered to:

(a) enter and inspect a residential aged care service;

(b) confer alone with residents and staff of a residential aged care service; and

(c) make complaints or reports about suspected abuse or neglect of care recipients to appropriate persons or entities.

As above, LASA does not support this proposal.

---

[11] LASA Position Statement 8: Planning Ahead, (2016) Leading Age Services Australia (LASA), Canberra

[2] 2015–16 Report on the Operation of the Aged Care Act 1997 https://agedcare.health.gov.au/publications-and-articles/reports/report-on-the-operation-of-the-aged-care-act-1997 (sited February 17)

[3] Leading Age Services Australia (2016) LASA Response the Australian Law Reform Commission's Elder Abuse Issues Paper Leading Age Services Australia (LASA), Canberra

[4] Australian Aged Care Quality Agency, Accreditation Standards https://www.aacqa.gov.au/providers/residential-aged-care/resources/brocah0011accreditationstandardsfactsheetenglishv14.1.pdf

[5] www.nationalcrimecheck.com.au (sited February 2017)

[6] LASA Position Statement 16: Workforce, (2016) Leading Age Services Australia (LASA), Canberra

[7] *DECISION-MAKING TOOL: Supporting a Restraint Free Environment in Residential Care* https://agedcare.health.gov.au/ageing-and-aged-care-publications-and-articles-training-and-learning-resources-decision-making-tool-supporting/decision-making-tool-handbook-supporting-a-restraint-free-environment-in-residential-aged-care (sited February 2017)