



AUSTRALIAN LAW REFORM COMMISSION INTO ELDER ABUSE

DISCUSSION PAPER 83 SUBMISSION BY: AGED RIGHTS ADVOCACY SERVICE INC.

FEBRUARY 2017

The Aged Right Advocacy Service Inc (ARAS)¹ welcomes the opportunity to provide a submission in response to the Discussion Paper 83 published by the Australian Law Reform Commission (ALRC) inquiry into elder abuse. This paper follows ARAS submission to the Issues Paper in December 2016.

ARAS is generally supportive of the proposals as set out in the Discussion Paper.

ARAS believes the following actions are required to support action on elder abuse:

- 1. Funding of a national body, representing service providers, older people and advocates to:**
 - Participate in the development and implementation of the National Plan to better protect the rights of older people to live free from exploitation and abuse;
 - Coordinate independent research and evidence based policy development;
 - Promote and coordinate best practice in elder abuse prevention; intervention and remediation measures;
 - Must be multi-jurisdictional, multidisciplinary and also include not for profit non-governmental organisations.

- 2. Advocacy Services' role should be strengthened within the Aged Care Act with consideration of having general powers as set out in Proposals 11-10 & 11.11.**

- 3. ARAS believes there is a need to ensure that older people living in residential care have access to an independent representative/advocate to support them when a 'reportable incident' occurs.**

Issue Example: Female resident in Metropolitan Aged Care Facility had alleged sexual assault from female staff member during the process of personal care. Incident was reported under compulsory reporting requirements however prior to the resident being interviewed by police she reported being subjected to bullying, coercion and intimidation from site manager. As a result of the reported intimidation the resident decided to retract her statement and elected to not pursue the matter further as result of fear of reprisal and retribution from staff. This case was reported to the Department of Health however the Resident reported that at no point was she spoken to as part of any investigation process. The alleged perpetrator was reported to have continued to work at the facility.

¹ Aged Rights Advocacy Service Inc: <http://www.sa.agedrights.asn.au/>

- 4. ARAS remains concerned that older people are reporting they are not always being interviewed by the Police after incidents are being reported. ARAS believes that the current compulsory reporting system is inadequate. ARAS would like to see further information about 'compulsory reporting' in addition to the current reports in residential aged care including the result of the outcome of such a report, the number of older people interviewed by the relevant police jurisdiction and annual data of people over 65 years (or over 50 years for Aboriginal People) who have been a victim of crime.**

Issue Example: Female resident reported alleged sexual assault by male care worker and although this was apparently reported to the police and the Department of Health at no point was the resident interviewed by police in respect to a statement. This resident was offered no follow up trauma counseling or psychological support and no action was taken against the aged care facility.

- 5. ARAS is supportive of older people being free of restrictive practices, as is their fundamental human right, however the below example identifies the need to ensure that the rights of an older person to participate in their own decision making and also take a risk should not be overridden.**

Issue Example: Male resident who was repeatedly falling out of bed was denied access to bed rails as they were deemed to be 'restraint'. Resident was considered to have capacity and had specifically requested bed rails for his own comfort and security. Resident continued to fall out of bed and despite sustaining injuries continued to be denied access to bed rails. Residents GP supported use of bed rails. Eventually residents bed was lowered to ground with mattresses placed around it. After continuing to roll out of bed onto the mattress on the floor the resident ended up sleeping permanently on the floor until he passed away several weeks later.

- 6. ARAS believes that the current exception to 'compulsory reporting' is failing to shine a light on complex issues that need to be considered. Residents are entitled to feel safe where they are living and should not be subjected to being assaulted by fellow residents. Also residents who are perpetrating such acts need to receive appropriate support to manage behaviour or be subject to the law as is any other person who was to assault another human being.**

Issue Example: Residents subjected to multiple physical assaults from male resident with dementia related behavioural problems. Resident with dementia was continually admitted to hospital however would then be subsequently returned when behaviour was considered to stable. Resident would then continue to repeatedly assault residents and staff. Facility wanted to discharge resident however no other suitable facility available. Residents described living every day in fear.

- 7. Consideration should be given to strengthening the resident's contractual rights as part of their residential care agreement including specific provisions to enable a resident or their representative to install or request a camera to be utilised for their protection. Please see attachment 1 for a Position Statement on Cameras in Residential aged care.**

Issue Example: A Resident who has advanced dementia has been abused and their representative is now requesting ongoing camera surveillance. Request has been denied by owners of facility citing owner's property rights and staff right to privacy as a reason for refusal.

ARAS acknowledges this is a complex area that needs careful consideration balancing the older person's right to privacy, self- determination and the right to live free from abuse. ARAS is concerned to ensure that each situation and strategy is based on the individual circumstances and needs of the older person.

ARAS is concerned that simple strategies for prevention of elder abuse such as being attended by two workers at all times does not address the potential for abuse by more than one person. ARAS has experienced reports of abuse by more than one worker. ARAS also is concerned that another strategy

used may be to suggest that the older person is never to be alone in their room. Consideration of the older person's need for 'quiet time' and being alone needs to be considered and a camera may be less intrusive to the older person than having to sit in a common area or corridor all day.

8. ARAS is concerned about financial abuse of older people where their Enduring Power of Attorney has 'stripped' the person of assets or given themselves a 'loan' which impacts on the older person's choices for aged care.

Issue Example: ARAS is aware of reports that older people who have been financially abused do not have the funds to allow for them to choose the type or form of accommodation they would have had had they not been financially abused.

Issue Example: An Enduring Power of Attorney talked his mother into selling her home saying that she was not coping living at home and suggested that she could live with him and his family. He said he would build an extension to accommodate her. Subsequently the son's marriage had fallen apart and the home was sold. He had organized a placement for her in residential aged care. She contacted ARAS in regards to her rights. ARAS supported her with a legal service appointment and assisted her to provide suitable accommodation as an alternative to aged care.

Issue Example: An older woman's son who was her Enduring Power of Attorney presented himself at his mother's bank at regular intervals, withdrawing large amounts of money. Withdrawing large amounts of money was not the norm. As she was vision impaired and consequently unable to read her bank account statements, she didn't discover her EPOA's actions until a neighbour assisted her to read her statements. The mother's balance was greatly reduced by \$60,000.

Issue Example: Service Provider contacted ARAS concerned that an unnamed resident doesn't have funds to pay accounts. They identified that the Power of Attorney had given themselves a loan impacting the older person's ability to pay their accounts. The older person was reportedly not concerned that they were incurring significant debt to the organization nor willing to address the issue.

9. ARAS believes consideration should be given to including psychological testing of aged care workers².

10. ARAS recommends that specialised advocacy programs are required to support Aboriginal Elders.³

ARAS has a long partnership with the Council of Aboriginal Elders SA and recognizes the unique complex issues in terms of elder abuse.⁴

Issue Example: Frail Aboriginal woman with dementia, living in a remote community, is brought to Adelaide by her grandson 'for a holiday'. The holiday lasts 2 years. The grandson refuses to return her to her community, obtains a Centrelink carer payment for 'looking after' his grandmother, controls her age pension and neglects her care as his drug and alcohol dependence increases.

Family members in the remote community are unable to persuade the grandson to return the elder back to her country. As the physical condition of the elder deteriorates and she is hospitalised, the family request ARAS' assistance to bring her back home. ARAS advocates to the Chief Social Worker at the hospital to have the elder assessed – she has never been assessed before by ACAT.

² See: <http://www.adelaidenow.com.au/news/south-australia/child-protection-workers-to-undergo-strict-er-psychological-testing-to-ensure-suitability-to-look-after-vulnerable-children-in-state-care/news-story/cf7c1b5ce0063300d085a7cda293df97>

³ Aged Rights Advocacy Service, Aboriginal Advocacy Program: http://www.sa.agedrights.asn.au/aboriginal_advocacy

⁴ Kaspiew, R, Carsen, R, Rhoades H, Elder Abuse in Australia, *Australian Institute of Family Studies, Family Matters* 2016 no 98. P 70.

ARAS works with the family supporting and connecting family with the Office of the Public Advocate. The elder is appointed a Guardian and when she is well enough to leave hospital, she is flown back to her community by the Royal Flying Doctor Service.

11. CALD Communities

The importance of understanding the nuances, perspectives and language associated with elder abuse is extremely important when providing support to CALD communities. ARAS report about Accessing Aged Rights Advocacy Service to Prevent Elder Abuse: A Conversation with Members of two Culturally and Linguistically Diverse Communities, November 2013 provides important insight and further research suggestions.⁵

Issue Example: An older gentleman from CALD community was admitted to hospital due to being physically and verbally abused by his son. He broke down speaking to the Social Worker when he was told that he could be discharged to go home. The elderly gentleman was also concerned about his wife who was also living with the son. He did not want to go back home. Social Worker contacted ARAS and an Advocate visited the gentleman in the hospital with a professional interpreter and spoke about his rights and options and alternative accommodation, such as independent living. Safety strategies that included an Intervention Order were also discussed. The Advocate spoke about social support networks for him and his wife that are culturally appropriate.

12. Opportunity for Intergenerational Learning.

ARAS experience with the Aboriginal Mentoring Camp suggests that opportunities for connection between generations should be fostered to combat ageism and encourage respect for older people. ARAS's view is a similar program to Our Watch 'the line' could be developed to combat ageism and abuse.⁶ ARAS has developed a number of resources in recent times that support positive messages about ageing but also how to prevent abuse as older people age.⁷

13. Ongoing Funding

ARAS welcomes the opportunity to be part of the solutions in addressing elder abuse however, it would be remiss of ARAS not to identify concerns for ongoing funding of the ARAS Abuse Prevention Program currently funded under Commonwealth Home Support Program, Specialised Advocacy which will cease on 30 June 2017.

A new Advocacy program will be put in place from 1 July 2017 however that program appears to exclude funding for 'elder abuse'. ARAS remains concerned about a potential service delivery gap should we not be able to continue to support older people who are at risk or, or who are being abused. In 2015/2016 ARAS supported 717 older people living in the community and 47 people living in residential aged care who sought our assistance for advocacy support. We also provided 228 older people directly with information about elder abuse. We also undertook 92 education sessions with 3391 participants as well as participating in 13 promotional displays of ARAS publications.

Conclusion

ARAS is of the view that Elder Abuse presents a range of complex legal, jurisdictional, policy, professional and structural challenges which requires a cross sectorial approach between government agencies, private banking sector, advocacy services and non- government organizations providing services to older people.⁸ It also requires a multidisciplinary approach that is not limited simply to a

⁵ Accessing Aged Rights Advocacy Service to Prevent Elder Abuse: A Conversation with Members of two Culturally and Linguistically Diverse Communities, November 2013: http://www.sa.agedrights.asn.au/files/232_accessing_aras_report.pdf

⁶ Our Watch: <https://www.ourwatch.org.au/What-We-Do/The-Line>

⁷ Aged Rights Advocacy Service, Living Positive Lives: <https://www.youtube.com/watch?v=VtduelBGY-k>

⁸ Kaspiew, R., Carsen, R., Rhoades, H. (2016). *Elder Abuse: Understanding Issues, frameworks and responses*. Melbourne: Australian Institute of Family Studies.

legal approach.⁹ ARAS welcomes the opportunity to be part of the solution noting our long standing practical expertise.

For further information or clarification on any part of this submission please contact:

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⁹ Kaspiew, R, Carsen, R, Rhoades H, Elder Abuse in Australia, *Australian Institute of Family Studies, Family Matters 2016 no 98*. P 64.