



## Australian Government

### Australian Law Reform Commission

Ms Jeanette Radcliffe  
Committee Secretary  
Senate Standing Committees on Community Affairs  
By Email: [community.affairs.sen@aph.gov.au](mailto:community.affairs.sen@aph.gov.au)

20 July 2017

Dear Ms Radcliffe,

The Australian Law Reform Commission (ALRC) welcomes the opportunity to make a submission to the Senate Community Affairs References Committee's inquiry into the: *Effectiveness of the Aged Care Quality Assessment and accreditation framework for protecting residents from abuse and poor practices, and ensuring proper clinical and medical care standards are maintained and practised* (the Senate Inquiry).

The Senate Inquiry was established following various incidents at the Oakden Older Persons Mental Health Service in South Australia and, in light of these incidents, will examine the current aged care quality assessment and accreditation framework more broadly.

The ALRC recently completed an inquiry into elder abuse on 31 May 2017: *Elder Abuse—A National Legal Response* (ALRC Report 131). As part of the Elder Abuse Inquiry, the ALRC recommended:

- establishing a serious incident response scheme in aged care legislation (Recommendations 4–1 to 4–6);
- reforms relating to the staffing in aged care (Recommendations 4–7 to 4–9);
- regulating the use of restrictive practices in aged care (Recommendations 4–10 to 4–11); and
- national guidelines for the community visitors scheme regarding abuse and neglect of care recipients (Recommendation 4–12).

As with the prevalence of elder abuse in the community, there is limited research about the rates of abuse of those receiving aged care. Nevertheless, the ALRC received submissions which included reports of many instances of abuse of people receiving aged care. These included reports of abuse by paid care workers and other residents of care homes, as well as by family members and/or appointed decision makers of care recipients. The ALRC also received reports of other forms of abuse, including sexual and financial abuse. Restrictions on movement and visitation were also reported. Many submissions also identified neglect of care recipients.

#### Responses to serious incidents of abuse and neglect

The existing requirements for reporting allegations of abuse were criticised by most submitters to the ALRC on the basis that the requirements are ineffective in preventing assaults and that they focus too much on reporting abuse rather than responding to, and addressing, incidents of abuse. Accordingly, the ALRC recommended a new approach that focuses on requiring an investigation and response to serious incidents of abuse and neglect by aged care providers. This investigation and response should be monitored by an independent oversight body. The recommended design of the scheme is informed by the 'disability reportable incidents scheme' (DRIS) for disability services in NSW—overseen by the NSW Ombudsman—and the serious incident reporting scheme planned for the National Disability Insurance Scheme (NDIS).

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The recommendations extend the nature of the incidents required to be reported under the current regime. The effect of the recommendations is to:

- require home care providers to report and respond to serious incidents, when committed by staff;
- extend the types of incidents to be reported to include financial abuse—and, in residential care, seriously inappropriate, improper, inhumane or cruel treatment, as well as unexplained serious injury and neglect; and
- require the reporting of instances of resident-on-resident violence in residential aged care, where they reach a higher threshold of seriousness.

The ALRC also recommended that acts or omissions causing harm that is trivial or negligible not be considered ‘serious incidents’, to respond to concerns that time and resources would be unduly used to respond to and oversee the management of non-serious matters, if a reporting regime applied to them.

### **The aged care workforce**

A safe, qualified aged care workforce, in sufficient numbers, is an essential safeguard against elder abuse in aged care. Significant concerns were raised in the ALRC’s Inquiry that current staffing practices in residential aged care involve staffing levels that are so inadequate as to result in neglect of care recipients. The ALRC recommended that the Department of Health (Cth) should commission an independent evaluation of research on optimal staffing models and levels in aged care. The results of this evaluation should be made public and used to assess the adequacy of staffing in residential aged care against legislative standards.

The ALRC recommended that unregistered aged care workers, who provide personal care, should be subject to state and territory legislation giving effect to the National Code of Conduct for Health Care Workers. The National Code of Conduct will set national standards against which disciplinary action can be taken and, if necessary, a prohibition order issued, in circumstances where a health care worker’s continued practice presents a serious risk to public health and safety.

The ALRC also recommended that people wishing to work or volunteer in Commonwealth-regulated aged care should be required to undergo employment screening by a screening agency. The employment screening process should assess a person’s criminal history, any adverse findings made about the applicant that resulted from the reporting of a serious incident, as well as any findings from disciplinary or complaint action taken by registration or complaint handling bodies.

Stakeholders raised a range of other issues relating to staffing in aged care, including: the quality of training of aged care workers; their pay and conditions; and the challenges presented by an expanding need for care workers. Many of these issues extended beyond the issue of elder abuse and as such, these were not matters on which the ALRC made specific recommendations.

### **Restrictive practices**

There was widespread concern in submissions to the ALRC that restrictive practices, and especially chemical restraint, are inappropriately used in aged care. The ALRC recommended that the use of these practices in residential aged care facilities be regulated in the *Aged Care Act* to discourage the use of restrictive practices and set a clear and high standard, so that the practices are subject to proper safeguards and only used when strictly necessary. In addition, the ALRC recommended that restrictive practices be used only to prevent *serious* physical harm. This would mean that restrictive practices are used less frequently and only when appropriate. The ALRC also recommended the consideration of further safeguards including:

- establishing an independent Senior Practitioner for aged care, to provide expert leadership on and oversight of the use of restrictive practices;
- requiring aged care providers to record and report the use of restrictive practices in residential aged care; and
- consistently regulating the use of restrictive practices in aged care and the National Disability Insurance Scheme.

## **Community visitors**

The ‘community visitors scheme’ (CVS) is a scheme in which recipients of both residential and home care, who are socially isolated or at risk of social isolation, are matched with volunteer visitors. Volunteers are coordinated by organisations funded by the Australian Government (auspices). Community visitors are not advocates, and are directed to report any concerns they have about care to their auspicing organisation. The ALRC did not recommend any change to the community visitors’ primary function—providing companionship. However, it did recommend that national guidelines applying to the CVS be developed, with standardised policies and procedures for visitors to follow where they become aware of abuse or neglect.

We trust this submission is of assistance. If you require any further information, please do not hesitate to contact the ALRC.

Yours sincerely,

**Matt Corrigan**  
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**Australian Law Reform Commission**