

Australian Democrats Additional Comments

Aged Care Amendment (Security and Protection) Bill 2007

The Australian Democrats welcome the committee's inquiry into the Aged Care Amendment (Security and Protection) Bill 2007. Given Australia's ageing population and the potential increases in the number of older people who may be vulnerable to abuse, it is timely that we consider the adequacy of responses to elder abuse.

The Democrats support efforts to ensure the safety of vulnerable older people and to provide ongoing protection from violence and abuse and consequently support the general tenor of the main Committee report and its recommendations.

However it is disappointing that the Government has failed to develop a consistent national policy framework to the prevention and alleviation of elder abuse in all its forms and locations. This will continue to be a major failing in effective responses to protecting senior Australians.

While the issues in relation to prevention, detection, intervention and response to elder abuse in community settings are different to those in residential aged care facilities, they warrant equal attention. Indeed given that the vast majority of perpetrators of elder abuse have been identified as family members, often living with the older person and doing so with Government support for them to remain at home, there is a risk of violence, abuse, neglect and exploitation that goes unnoticed because of lack of scrutiny. The Democrats favour a more comprehensive response that would protect the aged, regardless of where their care takes place.

Similarly the Government's narrow focus on physical and sexual abuse ignores the other types of abuse, such as psychological, financial and neglect, which older people are equally vulnerable to – whether in residential aged care, community care or even a hospital setting. The Government has a responsibility to respond effectively to all types of abuse and to implement strategies that will reduce the incidence of all forms of abuse. Additionally staff members that raise concerns about incidences of abuse should be afforded legal protection, regardless of the nature of that abuse.

Recommendation

That the Government develop a comprehensive approach to elder abuse which includes strategies to protect older people from all forms of abuse in residential and community settings.

That the legislation be amended to provide whistleblower protections to people who report, on reasonable grounds, any form of abuse or neglect.

The Australian Democrats also have reservations about the exclusive focus on mandatory reporting as the Government's response to what is a complex and multifaceted problem. In particular the Democrats argue that prevention rather than post-abuse legal responses is a preferable approach. Available overseas evidence indicates that mandatory reporting in itself will not guarantee improved safety. A more effective strategy would prioritise a strong education focus which informs older

people of their rights and supports the carers of older people. Mandatory reporting should form part of a range of initiatives, rather than a solitary response. It is disappointing that the Government has failed to provide substantial investment in information and education on elder abuse, or to provide more resources for adequate community support services, including respite care.

Recommendation

That the Government fund a comprehensive education campaign for professionals, older people, their families and carers and the broader community.

That more resources are provided for community support and respite.

The Australian Democrats also share the concerns raised in many of the submissions to the Inquiry that this legislation undermines the autonomy and privacy of older individuals. In other circumstances the law assumes that competent adults can make their own decisions about whether or not to do anything about the abuse they experience. This legislation explicitly denies older individuals with decision making capacity this choice.

Interventions relating to abuse should be victim focused, with the interests of the victim taking precedence over those of the care provider or the Government. Individuals should be provided with all necessary information and relevant options and then encouraged and supported to make their own decisions, including the option to refuse to have the matter reported. Denying individuals this right based on their location of residence would seem to be a breach of their rights to determine who receives personal information about them. There is also the potential that such an approach will have negative consequences, including discouraging older people from seeking assistance if they believe their conversations will not be confidential.

Recommendation

That the legislation be amended to recognise the right of any competent older person to request confidentiality and privacy in relation to the reporting of abuse.

Given the lack of evidence concerning the effectiveness of mandatory reporting and the considerable resource implications for service providers, it would seem important to evaluate if this approach is an effective response to elder abuse.

Recommendation

That an independent review of the operation, effectiveness and implications of this legislation be made two years after the commencement of the Act.

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