

1 March 2017

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

Dear Ms Wynn

Re: Elder Abuse Discussion Paper

In this short submission I would like highlight our responses to selected proposals contained in the discussion paper from a carer perspective. Carers Victoria makes this submission with the understanding there will be many other individuals and organisations better placed to provide specific responses to many of the 43 proposals. Carers Victoria's submission focuses on its position on those proposals which are considered most pertinent to people in care relationships.

Care relationships

Care relationships are multifaceted and dynamic. Carers advocate for the health, safety, wellbeing, dignity and inclusion of the person they share a care relationship with. There are 239,100 primary carers in Victoria:

- 41 per cent care for their partner
- 29 per cent care for their child (including adult children)
- 21 per cent care for their parent
- 9 per cent care for another relative or friend, and
- 37 per cent report having a disability themselves.¹

The importance of care relationships

As identified in the discussion paper, care relationships are a key factor in maintaining older people at home within their communities and preventing premature entry to residential aged care. Given the significance of care relationships in people's lives, it is disappointing to see the discussion paper takes a very instrumental view of carers and the personalised care provided by family and friends.

The Australian *Carer Recognition Act 2010* defines a carer as a person who provides personal care, support and assistance to a person who has care needs because they have a disability; a medical condition (including a terminal or chronic illness); a mental illness; or is frail and aged. The Act further specifies that this excludes people providing paid care or care as a volunteer or student and that the mere fact of being a relative of or residing with a person who needs care does not mean a person may be considered to be a carer.

This is consistent with a similar definition enshrined in the Victorian *Carer Recognition Act 2012*. The Victorian Act also includes a set of principles about the significance of care relationships, and specifies obligations for state government agencies, local councils, and other organisations interacting with people in care relationships.

Recommendation One:

Carers Victoria recommends avoidance of the terms 'non-professional', 'unprofessional' or 'informal' in relation to care provided by family and friends. Carers Victoria recommends use of the terms 'paid care workers' and 'family and friend carers', where it is necessary to differentiate between paid and unpaid care roles.

Currently there is very little data on the prevalence of abuse in care relationships as most data does not differentiate between elder abuse arising in the context of family relationships and abuse where a person has care needs related to ageing. However, the evidence does show:

- Carer stress is not the primary cause of elder abuse. While the majority of carers experience stress, the majority of them do not perpetrate abuse.²
- Some carers have their own physical and mental health conditions which result in their capacity to provide adequate care being impaired.³
- Some elder abuse is due to intergenerational cycles of abuse and intimate partner violence experienced over many years. Older women are significantly more likely to experience mistreatment than older men.^{4,5}
- A victim/perpetrator dichotomy is at odds with the complex family and social circumstances in which elder abuse takes place. For example, roles can be reversed where a former perpetrator experiences abuse at the hand of the former victim.⁶
- Older carers frequently experience abuse from people receiving care who have a severe mental or cognitive impairment.^{7,8,9}
- Older people prioritise family preservation and harm reduction over more intrusive interventions.¹⁰

Section 2: A National Plan and prevalence study

Although Carers Victoria supports the need for a national prevalence study, this must not occur in the absence of addressing the definitional issues raised in the introduction to the discussion paper. A necessary precursor to a prevalence study is the development of a robust national framework and plan that reflects the human rights and other principles outlined in the introduction, along with the growing body of evidence from overseas. For example, evidence from a large pilot study in Canada on defining and measuring elder abuse and neglect, as a precursor to the first national prevalence study, found a childhood history of abuse had a deciding influence on later mistreatment, over and above what happens later in life.¹¹ Carers Victoria supports the National Ageing Research Institute (NARI) and Australian Association of Gerontology's (AAG) recommendations about issues in establishing prevalence; in particular any prevalence study should seek to collect as much information about perpetrators or potential perpetrators as possible. This is particularly important in differentiating abuse within the wide range of family relationships from abuse within the context of a care relationship.

Recommendation Two:

Carers Victoria recommends a national study to define and measure the experience of abuse and mistreatment throughout the life course, and a robust national framework for prevention and response be developed prior to undertaking a national prevalence study.

Sections 5 and 6: Enduring Powers of Attorney, Guardianship and Financial Administration Orders

Carers Victoria supports proposals in relation to preventing intentional and non-intentional misuse of Powers of Attorney, Guardianship and Financial Administration Orders. There is a need to better recognise the risks for individuals and families associated with severe financial stress and lack of financial literacy. Carers Victoria supports improved access to information, education and support for people appointed as an Attorney, Guardian or Administrator to know what is required of them and to fulfil their fiduciary and other duties. It is noted this guidance should extend to dealings with banks and other financial institutions and instruments.

Section 8: Family Agreements

Carers Victoria supports the proposal that tribunals consider the care and support provided by parties to each other. This would help to address the concerns of carers that concrete assets are more easily established and measured than less tangible care provision in 'assets for care' arrangements. Law, in relation to family agreements, should focus on both financial contributions towards the purchase of property or renovations and on the non-financial contribution of care and support provided, including opportunity costs borne by carers such as lost income and employment opportunities. Carers Victoria supports a broad definition of family and considers it is more important to recognise the nature of the care relationship at the heart of an 'assets for care' arrangement.

Section 10: Social Security

Carers Victoria supports Welfare Rights Centre's expression of caution about not creating false community perceptions about the incidence of carer abuse. It is important any proposals to change Centrelink procedures in relation to nominee arrangements and Carer Payment do not act to create unnecessary barriers and deterrents to a carer acting on behalf of the person they care for and/or claiming income support they are entitled to. As identified in the discussion paper, Carer Payment is not payment for care but rather income support provided to a person unable to financially support themselves due to their care responsibilities.

Carers Victoria does not support the proposal for Centrelink staff to speak with the person 'under care' to confirm the person is seeking the arrangement before authorising Carer Payment. Given many carers are supporting people with significant communication and cognitive impairments, it would be preferable if the treating health professional who helped to complete the application for Carer Payment was contacted to confirm the care relationship. This would avoid unnecessary distress and possible denial of income support to carers of people who cannot communicate easily or who lack insight into their own care needs.

Recommendation Three:

Carers Victoria recommends any proposed changes to Centrelink procedures are subject to consultation with consumer and carer representatives to ensure their experience is considered and inform any changes, as they are the end users.

Section 11: Aged Care

The risk of abuse for vulnerable older residents of aged care facilities is a key concern for Carers Victoria's members and a contributing factor in reluctance to seek placement for the person receiving care. This is especially important where the person receiving care has a communication or cognitive disability. The advocacy and safeguarding role of carers in these care relationships is therefore critical. Carers play a vital role in raising concerns and reporting complaints; however carers are not always supported in this role. Carers Victoria supports proposals to improve reporting of abuse of residents and recipients of home care and to increase formal safeguards, as long as this is accompanied by improved support for family and carers as natural safeguards.

Recommendation Four:

Carers Victoria recommends carers are recognised and supported in their role as supporters and advocates for people using aged care services under the Aged Care Act 1997.

Section 12: Other Issues

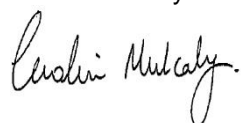
Carers Victoria's view is that health professionals are well placed to have a vital role in identifying risk and responding to concerns about elder abuse and mistreatment. Carers Victoria acknowledges health professionals often work as part of multidisciplinary teams and health-justice partnerships have a role to play, especially for individuals and families with complex needs. However, as identified above, health professionals, particularly GPs, are often called upon to assess older people and their carers for a range of government-funded services and supports. GPs are also more likely to have an ongoing relationship with older patients and their families.

Recommendation Five:

Carers Victoria recommends MBS Health Assessment Items 701, 703, 705, 707 and 715 conducted with people aged 75 and over should include prompts to assist GPs to assess risk factors for elder abuse.

If you would like to discuss this matter further, please contact Senior Policy Advisor, Anne Muldowney, on 0447 990 078 or Anne.Muldowney@carersvictoria.org.au

Yours sincerely



Caroline Mulcahy
Chief Executive Officer

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- ¹ ABS, (2015), Disability, Ageing and Carers, Australia, Victoria, Catalogue # 4430.0
- ² Gainey, R. R., & Payne, B. K. (2006). Caregiver burden, elder abuse and Alzheimer's disease: Testing the relationship. *Journal of Health and Human Services Administration*, 245-259.
- ³ Brandl, B., & Raymond, J. (2012). Policy implications of recognizing that caregiver stress is not the primary cause of elder abuse. *Generations*, 36(3), 32-39.
- ⁴ Biggs, S., Manthorpe, J., Tinker, A., Doyle, M., & Erens, B. (2009). Mistreatment of older people in the United Kingdom: Findings from the first national prevalence study. *Journal of Elder Abuse & Neglect*, 21(1), 1-14.
- ⁵ Killick, C., Taylor, B. J., Begley, E., Carter Anand, J., & O'Brien, M. (2015). Older People's Conceptualization of Abuse: A Systematic Review. *Journal of elder abuse & neglect*, 27(2), 100-120.
- ⁶ Kosberg, J. I. (1998). The abuse of elderly men. *Journal of Elder Abuse & Neglect*, 9(3), 69-88.
- ⁷ Ayres, M. M., & Woodtli, A. (2001). Concept analysis: abuse of ageing caregivers by elderly care recipients. *Journal of advanced nursing*, 35(3), 326-334.
- ⁸ Cooper, C., Selwood, A., Blanchard, M., & Livingston, G. (2010). Abusive behaviour experienced by family carers from people with dementia: The CARD (caring for relatives with dementia) study. *Journal of Neurology, Neurosurgery & Psychiatry*, 81(6), 592-596.
- ⁹ Vaddadi, K. S., Gilleard, C., & Fryer, H. (2002). Abuse of carers by relatives with severe mental illness. *International Journal of Social Psychiatry*, 48(2), 149-155.
- ¹⁰ Killick, C., Taylor, B. J., Begley, E., Carter Anand, J., & O'Brien, M. (2015). Older People's Conceptualization of Abuse: A Systematic Review. *Journal of elder abuse & neglect*, 27(2), 100-120.
- ¹¹ McDonald, L., & Thomas, C. (2013). Elder abuse through a life course lens. *International Psychogeriatrics*, 25(08), 1235-1243.