

Australian College of Nursing: Online Submission to the Australian Law Reform Commission Inquiry on 'Protecting the Rights of Older Australians from Abuse'

August 2016

Aged Care

Question 11.

What evidence exists of elder abuse committed in aged care, including residential, home and flexible care settings?

While there are some data sources providing evidence of elder abuse committed in aged care settings, including mandatory reporting data held by the Australian Department of Health (DoH) as well as data available from various state and territory guardianship bodies, there is a lack of reliable consolidated national data providing evidence of the prevalence of elder abuse in Australia. Research does however highlight that available data indicates that two to five percent of older Australians aged over 65 experiences some form of elder abuse (Lacey 2014). Other research providing evidence of types of elder abuse in the community setting indicates an average prevalence rate in Western Australia (WA) of 4.6% (ranging between 3.1% and 6.0%) based on hospital derived figures (Clare et al 2011, Kurrie et al 2008). In New South Wales it is estimated that 1 in 20 people aged 65 and over have experienced some form of elder abuse, accounting to approximately 50,000 people (Clare et al 2011).

According to the literature, in Australia, elder abuse perpetrated in the community is a largely hidden concern (Cairns et al 2013, Lacey 2014, Weirs et al 2006). It is reported that the forms of abuse experienced include psychological, physical, sexual and financial abuse with financial and psychological abuse being the most prevalent (Clare et al 2011, Lacey 2014). Furthermore, women are twice as likely as men to experience abuse (Lacey 2014). While research reports up to 80% of perpetrators of elder abuse are family members with the largest majority being the victim's children (Lacey 2014), evidence relating to the use of excessive force or physical restraint in the delivery of care is an important consideration in the context of health and aged care. Alzheimer's Australia reports a high prevalence of physical restraint ranging from 12% to 49% in acute and residential aged care settings (Alzheimer's Australia 2014).

Current anecdotal feedback from ACN members who are registered and enrolled nurses experienced in aged care, supports the literature reporting a broad range of abuse is perpetrated in formal and informal aged care settings with neglect, financial and physical abuse, including the use of excessive force and physical restraints, being the most common forms. Members reported a culture of underreporting in some formal care settings as well as their concerns relating to significant underreporting in informal care settings. Ineffective mechanisms for addressing financial abuse were also raised. Members stressed concerns that current systems are too slow to address indicators of financial abuse as too often funds are already depleted by abusers by the time actions are taken.

Social isolation and a lack of visibility of older people in the community present constraints to the detection and reporting of elder abuse and, therefore the sourcing and accumulation of evidence, particularly in the home setting (Lacey 2014). Vulnerabilities associated with older age, such as declining physical and cognitive capacity, also compound the risks and

impacts of elder abuse. Members stressed, however, that elder abuse being perpetrated in the community by known relations may not be due to a person's older age but can be a continuation of family violence and other abuse that has occurred throughout the older person's life.

Limited community awareness of elder abuse and the lack of training for health professionals and care and community workers also constrain the identification and reporting of elder abuse (Lacey 2014, Joubert et al 2009, Sandmoe et al 2011). Current feedback from ACN members supports these observations and further highlights that the reluctance by older people to report abuse due to a fear of unwanted repercussions. Furthermore, a lack of knowledge of the available support services contributes to underreporting.

Alzheimer's Australia, 2014, 'The use of restraints and psychotropic medications in people with dementia'. A report for Alzheimer's Australia Paper 38 March 2014.

Cairns J & Vreugdenhil A 2013, 'Working at the frontline in cases of elder abuse: It keeps me awake at night', *Australasian Journal on Ageing*, vol. 33, no. 2, pp. 59-62.

Clare, M, Black Blundell, B, Clare, J 2011, Examination into the extent of elder abuse in Western Australia. A qualitative and quantitative investigation of existing data. University of Western Australia

Kurrie, S & Naughtin, G 2008, 'An overview of elder abuse and neglect in Australia', *Journal of Elder Abuse and Neglect*, vol.20, no. 2, pp. 108-125

Joubert L & Posenelli S. (2009) *Responding to a "window of opportunity" the detection and management of aged abuse in an acute and subacute health care setting. Social Work in Health Care*, 48: 702-704.

Lacey, W 2014, 'Neglect to the Point of Cruelty? Elder Abuse and the Rights of Older Persons in Australia' *Sydney Law Review*, vol. 36, no. 1, pp. 99-130.

Sandmoe, A, Kirkevold, M, & Ballantyne, A. (2011) *Challenges in handling elder abuse in community care: An exploration study among nurses and care coordinators. Journal of Clinical Nursing*, 20:3351-3363

Weirs, D, Chittick, M. (2006) *Case Study, Elder abuse – a hidden form of familial violence. ACCNS Journal for Community Nurses*, April 2006, vol 11, no 1

Question 12

What further role should aged care assessment programs play in identifying and responding to people at risk of elder abuse?

Constitutional arrangements mean that the responsibility for safeguarding vulnerable adults largely sits with state and territory governments while the Commonwealth has the responsibility for aged care (Lacey 2014). Consequently, to avoid systems fragmentation, Commonwealth and state and territory service mechanisms for elder abuse prevention, detection and reporting need to be integrated and collaborative. There may be opportunity for greater multiservice and multi-sector integration that includes Aged Care Assessment Teams (ACAT) and Regional Assessment Services (RAS) programs to better protect older Australians.

Aged care assessment programs are in the privileged role of going into people's homes and therefore may be in a valuable position for identifying some forms of elder abuse and should have relevant responsibilities to report and respond. The assessment process however is currently restricted to clinical and service requirements for the older person and can result in a referral to an appropriate provider. For assessments to include screening for 'elder abuse' activities, ACN is advised that the role of ACATs and RAS staff would need to be

expanded. Furthermore, close consideration would need to be given to the capacity of the services to undertake and complete additional assessment criteria to avoid overburdening the assessment process. It is noted that the programmes have no statutory authority to, for example, challenge legal guardianship orders. Therefore, further training as to the appropriate information assessors could provide a competent older person about their rights to report to the police should be considered.

ACN members have provided the following comments in relation to the role of aged care assessment programs in identifying and responding to people at risk of elder abuse:

- That an Enduring Powers of Attorney or an Advanced Health Directive (AHD) should be required for all residential aged care facilities (RACF).
- ACATs are in a good position to identify some of the more obvious forms of abuse such as physical abuse and make appropriate referrals to relevant authorities. Other forms of abuse such as financial, psychological or social abuse are more complex and ACAT teams are not always well positioned to identify and report these more insidious and often obscured forms of abuse.
- ACAT and RAS assessment processes could include scanning and surveillance methods for elder abuse identification and response in community or residential aged care settings. Regular mandatory and comprehensive education and training for assessment staff would be required to strengthen the capacity of programs to play an expanded role.
- Adult children using legal mechanisms, including guardianship and Powers of Attorney, are often the perpetrators of financial elder abuse. In such situations, vulnerable older people can view aged care assessment as a mechanism used by children to gain control of their parent's finances and property. Assessment programs can be feared and avoided by older persons who want to remain independent. Addressing these concerns through well-targeted information provision could improve trust and therefore access to assessment services. Ongoing professional education on the rights of the older person is essential to support and maximise an older person's autonomy in decision-making to protect their independence and to better safeguard against abuse.

[Lacey, W 2014, 'Neglect to the Point of Cruelty? Elder Abuse and the Rights of Older Persons in Australia' Sydney Law Review, vol. 36, no. 1, pp. 99-130.](#)

Question 13

What changes should be made to aged care laws and legal frameworks to improve safeguards against elder abuse arising from decisions made on behalf of a care recipient?

ACN is advised that in the context of residential and community aged care, familial conflict is often a source of tension that influences the decision making of older people in their interactions with aged care providers. While there are already many safeguards in place to support aged care providers in the prevention and protection against elder abuse such as requirements for key personnel, police checks, accreditation review of systems, community visitors scheme and health professional registration, there are fewer measures to address elder abuse arising from decisions made on behalf of a care recipient. The substantial matter is the role of family as decision makers for the non-competent person who has not formally appointed a guardian or when the appointed guardian is seen not to be acting in the best interests of the older person. The accountability of legally appointed guardians and the follow up of the relevant state authorities to evaluate the effectiveness of the formally appointed guardian is a key consideration.

ACN is aware that aged care providers, especially of home care, often find it difficult to address matters of abuse perpetrated by family and/or friends as the only means of addressing concerns on behalf of a *competent* older person is to encourage the older person to report to the police or to seek advocacy support. In the case of non-competent decision makers (e.g. people with dementia and other cognitive conditions), if there is an appointed guardian then that person has the responsibility to address concerns of abuse. If the guardian is not acting in the best interests of the person, then aged care providers can, with the support of a willing general practitioner (GP), report to the relevant statutory authority to review the circumstances. It seems the aspect to be strengthened is the accountability of legally appointed guardians and the follow up of the relevant state authorities to evaluate the effectiveness of the formally appointed guardian. At the moment, ACN is advised that, the default position is that the appointed guardian is acting appropriately.

Furthermore, ACN is also advised that, aged care providers can be significantly challenged by situations when an older person does not have advance care directives about the appointment of guardians and there is no suitable substitute decision maker to work with. These circumstances require medical statements however GPs can be reluctant to become involved in statutory processes particularly when cases involve family conflict. ACN members indicated that reluctance by GP to become involved can often occur when a GP is also treating a wider group of family members typically within small CALD or country communities.

The development of a coordinated national approach to streamline current protections and to address service gaps may improve elder abuse safeguards including those arising from decisions made on the behalf of care recipient. For example, there is currently no national approach to guardianship or financial management, including Powers of Attorney within aged care. This systems fragmentation can lead to uncertainty and confusion for those being guided by rulings creating opportunities for elder abuses to occur. A national framework for preventing, detecting and responding to elder abuse should be considered to facilitate more cohesive and stronger protections for older people across aged care settings. A national framework should aim to harmonise the relevant regulations, including Powers of Attorney, of other jurisdictions where these are considered to offer effective protection (Ryan 2015).

ACN members indicated the following changes could improve safeguards against elder abuse arising from the decisions made on the behalf of a care patient:

- More effective referral processes to the civil and administrative tribunals would support improvement.
- Regulatory requirements for two people to have Enduring Powers of Attorney with a mechanism for an independent assessment or review in certain circumstances should be considered to strengthen safeguards.
- Strengthening of regulatory arrangements relating to property consolidation could include triggers for independent assessment in concerning circumstances.

Ryan, S. (2015) *The Hon Susan Ryan AO, Age and Disability Discrimination Commissioner Elder Abuse Forum: A Human Rights Perspective*. TAFE NSW South Western Sydney Institute, Aged Care Rights Service (TARS) and Auburn City Council. Auburn Town Hall, 1 Susan Street, Auburn NSW 2144 Tuesday 13 October, 10am, available at <https://www.humanrights.gov.au/news/speeches/elder-abuse-forum-human-rights-perspective>

Question 14

What concerns arise in relation to the risk of elder abuse with consumer directed aged care models? How should safeguards against elder abuse be improved?

Consumer directed care (CDC) has only recently been implemented with limited scope through national aged care policy in Australia. Therefore its impacts are currently not known, particularly in the context of residential care where it is yet to be introduced. To inform its evaluation, modification and ongoing implementation, ACN supports a comprehensive review of the potential risks of CDC models to care and service recipients, including early lessons learnt from the introduction of CDC for home care packages. It is reported that CDC trials in the United Kingdom have not been initially successful in the residential aged care sector, therefore, a highly judicious approach is required in the Australian context (O'keeffe 2016).

While the impacts are currently unknown there are anticipated risks that need very close monitoring. The older person's capacity to make decisions for themselves is a significant factor. Providers and nurses see family members who do not support older people to top up individual budgets with personal funds due to matters of inheritance. This includes decisions to move into residential care at appropriate times relevant to care needs because of the asset tests and the need to pay for care.

ACN members have provided the following feedback in relation to consumer directed aged care models and how safeguards against elder abuse could be improved:

- The potential risks associated with consumer directed aged care models relate to the diminished advocacy role of case management. Having responsibility for the allocation of funds could put vulnerable older people at risk for example if perpetrators of abuse seek to manipulate the use and distribution of available funds. ACN members identified this as being a very significant risk in the context of the national introduction of CDC for home care packages. The risk relates to both the misuse of funds as well as funds not being directed to required care and services.
- That the expansion of CDC models within aged care coupled with the diminishing direct care role of registered nurse (RNs) in the community and the further movement away from case management, presents a considerable concern that the advocacy needs of vulnerable older people will not be adequately met moving forward.
- That the introduction of the CDC model for Home Care Packages puts much greater onus on hospitals and primary health care services to detect and report concerns about elder abuse. The observations suggest that there is significant reason to be concerned about the gaps in elder abuse surveillance in the community as, if used at all, hospital and primary health care interactions are episodic and identification of abuse may be less likely in short episodic interactions with the health system.
- ACN members point to the risk of exploitation by service providers and see mandatory reporting and its wide reaching promotion as an important safeguard against unscrupulous behaviour.
- A significant risk of CDC is an older person's lack of awareness or understanding of the range of services and service alternatives that are available to them. If a care and/or service recipient is not appropriately informed they may select service options that are not in their best interest or of greatest benefit to them. Regulated requirements stipulating minimum service choice information as well as triggers encouraging older people to contact service supports where there is confusion or inadequate information to guide their decision making should be considered in this context.
- ACN members also suggest service arrangements are required that ensure no other person or provider can direct service and care requirements except those with

Power of Attorney. This is seen as an important safeguard against provider exploitation to prevent care recipient being coerced to invest in services they do not need or desire.

O’Keeffe, D. 2016, “Challenges of CDC in residential emerge in UK pilots”, Australian Ageing Agenda, viewed at <http://www.australianageingagenda.com.au/2016/07/08/challenges-cdc-residential-emerge-uk-pilots/>

Question 15

What changes to the requirements concerning quality of care in aged care should be made to improve safeguards against elder abuse?

From ACN’s perspective, introducing minimum staffing requirements for RACFs would improve quality of care and consequently, improve safeguards against elder abuse, particularly in relation to neglect resulting from inappropriate care. ACN stresses that an appropriate nursing skill-mix is fundamentally linked to the delivery of appropriate care with research in acute sector demonstrating a direct correlation between nurse-to-patient ratios and patient mortality (ACN 2016). Similar scenarios should be researched in the aged care environment to identify the right skill-mix of staff to prevent decreases in quality of care in aged care settings including the neglect of care recipients (ACN 2016). In the interim, ACN believes that regulation of residential aged care facilities (RACFs) should at a minimum mandate a requirement that a RN (RN) be on-site and available at all times to promote safety and well-being for residents (ACN 2016). The availability of a RN at all times would provide in-house professional nursing expertise to facilitate, oversee and monitor the health and well-being needs of care recipients and provide the leadership required within the aged care context to effectively detect and response to elder abuse. ACN holds the view that:

“...that care delivered in RACFs must be led by RNs...The RN scope of practice enables the high level clinical assessment; clinical decision making; nursing surveillance and intervention; service coordination; and clinical and managerial leadership required to meet desired outcomes and to ensure the provision of high quality care. RNs provide frontline leadership in the delivery of nursing care and in the coordination, delegation and supervision of care provided by enrolled nurses (ENs) and unlicensed care workers (however titled). The continuous presence of RNs is essential to ensure timely access to effective nursing assessment and comprehensive nursing care, and to the evaluation of that care” (ACN 2016).

This is of particular importance when considering residents who experience symptoms of dementia and whose behavioural management requires this level of expertise. The inexpert management of residents with physical and cognitive decline, including dementia, exposes these residents to risks of abuse. Legislation requiring residential aged care to have a RN on duty and available at all times would be a key protection measure for frail older people living with resident within residential aged care.

ACN members also suggested that the lack of care staff in aged care settings with appropriate experience and/or training can present a risk to care quality of care including risk of neglect or abuse of older people. Care staff of all levels of training may require additional supervision and support to meet the requirements of the older people in their care. Neglect through the provision of inadequate or inappropriate care to vulnerable older people, particularly those who are unable to advocate for themselves, can result in poor and potentially catastrophic outcomes, representing a concerning form of elder abuse. It is suggested that the deployment of appropriately trained and supported care staff in all settings would significantly reduce this form of elder abuse.

ACN members have made the following proposals relating to quality of care in aged care to improve safeguards against elder abuse:

- That independent witnesses rather than employees of service providers be involved in the execution and signing of contracts and documents.
- Following a period of dependence, processes must facilitate and protect an older person's right to resume control in directing their care planning and resume independence in decision-making.
- As a form of protection, processes in informal and formal care settings must allow older people the opportunity and adequate time to discuss their care and service preferences and needs independently without family or carers present.
- Supporting multidisciplinary collaboration, appropriate information sharing and ongoing education opportunities is key to ensuring quality aged care and to promoting better safeguards against elder abuse. Increased use of quality of care feedback mechanisms that ask for the opinion of care recipient as well as increased use of modules such as short observational framework for inspection (SOFI) could be explored to provide greater protection (*see 1 below*).
- Within residential aged care, safeguards against elder abuse are directly linked to quality of care. One way that clinical governance obligations can be met is to introduce mandatory care quality benchmarking against a full set of quality indicators that would expand on the indicators developed by the Australian Government's voluntary National Aged Care Quality Indicator Programme. The member states that by comparison, the United States of America (USA) has a fully developed and validated set of clinical indicators used to accredit their aged care institutions.

1 – “An assessor observes a small group of residents in a communal setting for about half an hour. They observe the general mood of each resident, their level of engagement with staff and how staff interact with them. It gives assessors an insight into the wellbeing of the resident and the quality of care that is provided to them.”
<https://www.aacqa.gov.au/for-providers/education/the-standard/2014-issues/march-2014/quality-standard-march-2014>

Australian College of Nursing, 2016, *The role of registered nurses in residential aged care facilities Position statement July 2016*, viewed 25 July 2016,
https://www.acn.edu.au/sites/default/files/representation/position_statements/the_role_of_the_rn_in_residential_aged_care.pdf

Question 16

In what ways should the use of restrictive practices in aged care be regulated to improve safeguards against elder abuse?

ACN holds the view that restrictive practices in all circumstances must be practices of last resort. Restrictive practices should only be used under the strict supervision of appropriate professional staff, should not be used by unregulated aged care workers without the direct supervision of a RN and should not be used as a workload management practice. There are currently no legislated national or state standards for the use of restraints or other restrictive practices in aged care. The development and adoption of nationally and professionally endorsed mandatory guidelines on the use of restraints should be addressed as a matter of urgency. In the interim, the alternatives to restraint such as those listed in the 2012 *Behaviour management guide to good practice: managing behaviour and psychological symptoms* (Burns et al 2012) should be reviewed for education and promotion across the aged care sector. This is a complex legal area relating to intent, duty of care and the rights of

the older people and therefore appropriate training and education must accompany any application of restraint in the aged care sector.

ACN members provide the following feedback in relation to regulating the use of restrictive practices in aged care to improve safeguards against elder abuse:

- More education on behaviour management should be provided to assist staff in avoiding the use of restraint.
- Legal frameworks must ensure that service providers have detailed policy arrangements that ensure restrictive practices are practices of last resort. The unethical use of restrictive practices in the aged care setting can be subtle and go unnoticed, for example, the use of seclusion in one's room.
- The use of chemical restraint requires greater monitoring in aged care. Regular review of its use by skilled staff is required. The engagement and greater role of community pharmacy could support processes such as during medication review.
- Some ACN members report that authorised restrictive practices are currently less commonly used in the context of residential aged care. They report that restraint free environments are now fairly common and that restraints are mainly used in emergency situations to ensure the safety of workers. However, ACN hold the firm view that any use of restrictive practices whether chemical, mechanical, or physical must only be applied by appropriately qualified nursing and medical specialists and used as a practice of last resort.

[Burns, K Jayasinha, R, Tsang, R, Brodaty, H 2012, 'Behaviour management a guide to good practice: managing behaviour and psychological symptoms' DRC and DBMAS Commonwealth, Canberra.](#)

Question 17

What changes to the requirements for reporting assault in aged care settings should be made to improve responses to elder abuse?

ACN members made the following recommendations regarding the reporting of assault in aged care settings that may improve responses to elder abuse:

- As well as the current reporting of suspected assault, regulation should stipulate reporting evidence of suspected assault on admission or following hospital transfer to support ongoing surveillance.
- Workers must be comprehensively trained and supported to apply organisational policies relating to the reporting of assault and must be accountable for their actions including failure to report as required. Improved training, education and communication coupled with more stringent application of policy requirements and clear accountabilities should improve responses to elder abuse in aged care settings.
- There is member feedback suggesting while reporting mechanisms are sound, it is staff education and training that is lacking. It is argued that some staff, particularly unlicensed aged care workers, lack the skills, including English language skills, to effectively manage and respond to incidence of assault. ACN believes that there must be mandated training of aged care workers about elder abuse prevention, detection and response. This training should take into account the multicultural nature of Australian society.
- Training and education should place emphasis on risk assessment and sensitive investigation of any suspected or actual assault. Age care staff should be encouraged to report any suspicious behaviour and receive adequate support for doing so, with a clear direction of how the issue will be managed and/or elevated.

Question 18

What changes to aged care complaints mechanisms should be made to improve responses to elder abuse?

Complaints mechanisms are limited to complaints relating to aged care service recipients and do not currently deal with abuse notifications. Measures to expand the reach of elder abuse complaints mechanisms should be explored to offer protections for vulnerable adults outside the aged care context. Additionally, the implementation of national elder abuse prevalence data collection and analysis is required to inform and improve strategic responses to elder abuse. An expanded complaints mechanism may facilitate this need.

ACN members recommend that:

- The complaints mechanism be made more transparent to enable service providers to access information for quality improvement purposes. Used as a quality improvement system, complaints can be beneficial in identifying aspects of services that can be improved or strengthened, including elder abuse detection and response. Such a benefit can only occur if all complainants and the issues complained about are made known to the service providers and complainants invited to participate in redress processes. It is also an opportunity for full disclosure and apology to be part of the process or complaint resolution. Currently this is not a requirement.
- There should be no provisions allowing aged care services to determine if a complaint should be reported, processed and assessed. In some cases, this information could provide important background information and build evidence in support of future claims or potentially trigger action to mitigate risks. This could be a very important measure in the community context where, for reasons such as social isolation, suspected or “minor” incidents of elder abuse can easily go undetected and unreported.

Question 19

What changes to aged care sanctions regime should be made to improve responses to elder abuse?

To significantly improve responses to elder abuse, nationally consistent focus and emphasis should be on workforce education and training, improving service access, expanding service reach and providing comprehensive service supports to promote whole of system and whole of community strategies.

ACN members expressed the view that there should be continuation of spontaneous checks of residential aged care facilities and unannounced visits to facilities where there is concern to ensure compliance with all reporting requirements that potentially impact detection and reporting of elder abuse.

Question 20

What changes to the role of aged care advocacy services and the community visitors scheme should be made to improve the identification of responses to elder abuse?

ACN is of the strong view that strength-based initiatives such as elder care advocacy services must be easily accessible and broadly available to all older people in both residential aged care and the community. Such services can better equip and empower older persons to protect themselves against the risks of elder abuse. Services should include courses for older people to raise awareness about the measures they can adopt to protect themselves from

all forms abuse. Particular effort must be made for services to reach those who are isolated or at risk of isolation and/or experiencing physical and cognitive decline.

In the context of residential aged care, ACN is advised that aged care advocacy services tend to focus attention on the resident and could be expanded to provide more support to service providers and families. Community visitors schemes in the mental health and disability areas tend to have a clear advocacy role including identifying denial of rights and abuse, aged care programs could potentially be enhanced by adopting a similar approach.

ACN members also suggest that:

- Introducing greater accountabilities for advocacy services and the community visitors scheme that relate to the identification and reporting of elder abuse could strengthen safeguards for older people who may be vulnerable to abuse.
- In addition to providing support for individuals who are socially isolated or at risk of social isolation, the Community Visitors Scheme also brings a degree of transparency to the operations of Commonwealth subsidised aged care services. Volunteers often play a proactive role in identifying and reporting concerns about abuse. This role could be extended through additional training including in relation to promptly supporting individuals to process complaints.
- The role of aged care advocacy services could be improved by increasing their visibility in the community including on the My Aged Care website.
- Identification requirements for community visitors could be improved to promote and raise the profile of the volunteers for example, through the use of better identification badges and through service providers attending community groups to increase awareness of available services.

Question 21

What other changes should be made to aged care laws and legal framework to identify, provide safeguards against respond of elder abuse?

Within the Australian Government's funding regime only 7.8% of the of people aged 65 and over were in residential aged care (AIHW 2016) and therefore under the scope of protections contained within the Aged Care Act 1997. The vast number of older people are living independently in the community with varying degrees of support from family, friends and, for some, with privately sourced services that are not regulated as aged care services. There is another cohort of approximately 500,000 people (Australian Government 2016) that are supported for low level care via the Commonwealth Home Support Programme which, as a grant funded arrangement between government and providers, is not covered under the aged care act. This highlights the limitations of current legal frameworks and the need for other mandatory measures to offer greater protection to the broader ageing population.

ACN recommends the expansion of mandated reporting requirements to include aged care workers, health professionals and community workers working beyond the residential aged care sector be thoroughly examined. Mandatory reporting would better support the detection of and response to elder abuse where it is often less visible or where health and community works are not well supported to respond to perceived or witnessed elder abuse. Furthermore, mandatory reporting would provide a foundation for the development of clearer avenues for management process that support staff reporting

The Australian Age Discrimination Commissioner, The Hon. Susan Ryan AO acknowledged the widespread and complex nature of elder abuse and has stated that existing laws in Australia do not effectively protect against elder abuse (Ryan 2015). ACN supports the Commissioner's calls for a coordinated national response with the key purpose to "...streamline current protections and fill any gaps, particularly in relation to special groups" (Ryan 2015). Furthermore, all Australian governments should advocate, through appropriate bodies, for the development and adoption of an international convention on the rights of older people (Johnstone 2015). Such an international convention may contribute to the prevention of elder abuse, through articulating fundamental rights of the older person to drive the development of rights-based protections.

ACN members advise that the decreasing role of registered and enrolled nurses in the aged care sector is creating an advocacy gap by leaving fewer aged care professionals with appropriate training and education available to make elder abuse reports and referrals. In relation to legal frameworks governing residential aged care facilities, ACN's position is that the regulation of residential aged care facilities should at a minimum mandate a requirement that a RN be on-site and available at all times to promote resident safety and, effectively, to improve elder abuse detection and response. (ACN 2016).

Australian Institute of Health and Welfare 2016, *Aged Care*, viewed 10 August 2016
<http://www.aihw.gov.au/aged-care/>

Australian Government 2016, Help at home: how services are delivered, viewed 10 August 2016
<http://www.myagedcare.gov.au/help-home/help-home-how-services-are-delivered>

Johnstone, MJ. (2015). *Call for a convention on the rights of older people*, Australian Nursing and Midwifery Journal, March 2015: vol 22, no 8:30

Ryan, S. (2015) *The Hon Susan Ryan AO, Age and Disability Discrimination Commissioner Elder Abuse Forum: A Human Rights Perspective*. TAFE NSW South Western Sydney Institute, Aged Care Rights Service (TARS) and Auburn City Council. Auburn Town Hall, 1 Susan Street, Auburn NSW 2144 Tuesday 13 October, 10am, available at <https://www.humanrights.gov.au/news/speeches/elder-abuse-forum-human-rights-perspective>

Health Services

Question 35

How can the role that health professionals play in identifying and responding to elder abuse be improved?

Increasing professional awareness and skills development within the health workforce would enhance the capability of health professionals to play a more proactive role in identifying and responding to elder abuse (Joubert et al 2009). ACN believes that the availability of an appropriately skilled professional workforce is a foundational requirement for implementing initiatives to prevent and respond to the problems of elder abuse. Minimum training requirements for elder abuse prevention, detection and response across health service settings should be thoroughly examined as part of a broader impetus to improve community and industry understanding of elder abuse and its impacts.

ACN member feedback highlights that health services do not always provide adequate guidance to health professionals to respond to the complex variety of elder abuse that nurses and other health workers encounter. From ACN's perspective, health professionals who report concerns and incidents relating to elder abuse should be well supported by

service management and not left to individually carry the responsibility for addressing abuse. Health professionals are more likely to effectively respond to and elevate concerns about elder abuse if health services have sound processes and good supports in place to provide guidance and reassurance to its employees (Joubert et al 2009).

ACN members also recognised the need for health service systems to provide strong support to health professionals. It was reported that despite obligations relating to duty of care, some health professionals are anxious about becoming involved in cases of elder abuse if organisational support is lacking. Improved training and managerial support for health professionals would provide health professionals with greater confidence and skill to carry out their obligations in relation to elder abuse.

Strategic investment in nurse leadership capability is an important lever for ensuring quality improvement and effective service standards in elder abuse prevention and response across health care settings. In all health service settings, the formal and informal leadership and supervision by RNs is required to support the care, treatment and protection of older people, particularly the frail and vulnerable who are unable to advocate for themselves. It is the role of RNs to provide education and guidance to other categories of health workers. It is RNs who are educationally prepared to undertake holistic and comprehensive psycho-social health assessments and, if appropriately supported by their health services, are well placed to provide leadership in elder abuse detection and response. Their roles in this regard should be systematically supported through continuing professional development throughout the health and aged care system and their leadership potential actively fostered to drive improvements to elder abuse detection and response.

Joubert L & Posenelli S. (2009) *Responding to a "window of opportunity" the detection and management of aged abuse in an acute and subacute health care setting*. *Social Work in Health Care*, 48: 702-704.

Question 36

How should professional codes be improved to clarify the role of health professionals in identifying and responding to elder abuse?

The National Framework for Nursing Practice in Australia includes comprehensive rights-based professional codes. The codes however do not specifically or explicitly refer to elder abuse. Scope for improving the professional codes for nursing is a significant matter requiring consultation with the Nursing and Midwifery Board of Australia (NMBA).

There are several documents that together provide a national framework for responsible and accountable nursing practice for all areas of practice:

- *Code of Ethics for Nurses*
- *Code of Professional Conduct for Nurses in Australia*
- *National Competency Standards for the Registered Nurse*
- *National Competency Standards for the Enrolled Nurse*
- *National Competency Standards for the Nurse Practitioner*
- Practice standards.

A key document is the *Code of Ethics for Nurses in Australia* provides a robust rights-based ethical framework to:

- *identify the fundamental ethical standards and values to which the nursing profession is committed, and that are incorporated in other endorsed professional nursing guidelines and standards of conduct*

- provide nurses with a reference point from which to reflect on the conduct of themselves and others
- guide ethical decision-making and practice, and
- indicate to the community the human rights standards and ethical values it can expect nurses to uphold (NMBA 1:2008).

The code asserts that:

“...the profession recognises that accepting the principles and standards of human rights in health care domains involves recognising, respecting, actively promoting and safeguarding the right of all people to the highest attainable standard of health as a fundamental human right, and that ‘violations or lack of attention to human rights can have serious health consequences’ (NMBA 2:2008).

Nurses must also comply with the Australian Health Practitioners Regulation Agency (AHPRA) *Guidelines for mandatory notifications* that stipulate the requirements for registered health practitioners to make mandatory notifications under national law to prevent the public from being placed at risk. The guidelines for notifiable conduct are appropriately broad encompassing any conduct by a regulated health practitioner *“Placing the public at risk of harm because of practice that constitutes a significant departure from accepted professional standards” (NMBA 2013).*

While health professionals are aware of their professional codes, increasing the visibility of codes, and regular communications from professional boards with refresher content would support ongoing awareness of professional obligations, responsibilities and accountabilities. Tailoring communications to address elder abuse may be one future option.

Unregulated workforce

In terms of the unregulated workforce, ACN remains concerned that there are currently no nationally agreed minimum education requirements or competency standards supporting the regulation of the unlicensed workforce in health and aged care. The workforce forms the largest and fastest growing in the aged care sector (King et al. 2012) and therefore it is essential that it is regulated through nationally consistent minimum education and competency standards for unlicensed care workers. Minimum education requirements support and guide the workforce and would give greater effect to the Council of Australian Government’s (COAG) endorsed *National code of conduct for health workers*. Providing this group of workers with occupational standards for assessing safe and ethical practice would go some way toward better supporting elder abuse prevention, detection and response within aged care settings.

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http://apo.org.au/files/Resource/DepHealthAgeing_AgedCareWorkforce1012_2103.pdf

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<http://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Codes-Guidelines/Guidelines-for-mandatory-notifications.aspx>

Question 37

Are health-justice partnership is a useful model for identifying and responding to elder abuse? What other health service models should be developed to identify and respond to elder abuse?

As mentioned above, there is a general view within the ACN membership that the powers of the justice system to respond to matters of elder abuse are too limited. ACN members have indicated that health professionals and the aged care workers working in either health or aged care services require more effective support services to deal with the range of complex situations involving elder abuse. As many cases of elder abuse or suspected elder abuse are assessed by police forces as not requiring police involvement there is a need for alternative service models to provide appropriate supports. A single authority with powers to investigate and intervene on matters of elder abuse is required. This should be a high profile authority providing a one-stop portal for the public and professionals alike to access relevant services and advice. Any health service model seeking to address elder abuse must in principle seek to empower vulnerable older people to develop self-management strategies to mitigate and minimise their risks. Constraints to the underreporting of elder abuse will be more effectively addressed through increased of community awareness and individual empowerment to report concerns.

Question 38

What changes should be made laws and legal frameworks, such as privacy laws, to enable hospitals to better identify and respond to elder abuse?

As mentioned above, the Australian Age Discrimination Commissioner, The Hon Susan Ryan AO acknowledged that existing laws in Australia do not effectively protect against elder abuse (Ryan 2015). One example of this provided by an ACN member relates to privacy laws that make it difficult for relatives or significant others to speak with healthcare staff if they are not the enduring Power of Attorney (EPOA). The member states they have experienced incidences where an abuser is the EPOA and privacy laws prevent others from receiving any information to address concerns of elder abuse. ACN supports the Commissioner's calls for a coordinated national response with the key purpose to "...streamline current protections and fill any gaps, particularly in relation to special groups" (Ryan 2015). Addressing elder abuse requires integrated whole-of-system and multi-sectorial approaches. A national framework that harmonises the relevant regulations would support more effective service collaboration across health and aged care settings.

Also as noted above, Australian governments should advocate for an international convention on the rights of older people (Johnstone 2015). An international convention would articulate fundamental rights of the older person to drive the development of rights-based elder abuse protections and oblige its signatories to adopt supportive policy.

Johnstone, MJ. (2015). *Call for a convention on the rights of older people*, Australian Nursing and Midwifery Journal, March 2015: vol 22, no 8:30

Ryan, S. (2015) *The Hon Susan Ryan AO, Age and Disability Discrimination Commissioner Elder Abuse Forum: A Human Rights Perspective*. TAFE NSW South Western Sydney Institute, Aged Care Rights Service (TARS) and Auburn City Council. Auburn Town Hall, 1 Susan Street, Auburn NSW 2144 Tuesday 13 October, 10am, available at <https://www.humanrights.gov.au/news/speeches/elder-abuse-forum-human-rights-perspective>