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Responding to Elder Abuse

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Background

The Australian Law Reform Commission (the **ALRC**) is currently conducting an inquiry into elder abuse (the **Inquiry**). The Inquiry is tasked with identifying “best practice legal framework” for the prevention, mitigation and response to elder abuse.

For the purposes of the Inquiry, the following definition of ‘elder abuse’ is used:

...a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person. Elder abuse can take various forms such as physical, psychological or emotional, sexual and financial abuse. It can also be the result of intentional or unintentional neglect (The World Health Organisation in the *Toronto Declaration on the Global Prevention of Elder Abuse*).

In June the ALRC released an Issues Paper inviting submissions by 18 August. The submissions will inform a discussion paper to be released for comment in November 2016. This will be followed by a final report in May 2017.

Key Issues

The Inquiry provides an opportunity for aged care providers and health services to have input to systems and legal changes that may reduce the risk of elder abuse. The Inquiry also provides an opportunity for services to consider existing practices, staff training and models of care with the goal of recognising and reducing the risks of elder abuse or neglect.

The Issues Paper raises squarely the question of whether a more interventionist legal framework is required to prevent elder abuse. In this context, the Issues Paper flags for consideration mandatory reporting and civil penalties for breach of duty as an alternate decision maker. In addition, it considers whether current sanctions are sufficient.

The paper highlights the importance of supported decision-making and decision-making based upon a person’s values and rights rather than the traditional best interest test. This approach is in line with the Victorian Government’s position paper “*Simplifying Medical Treatment Decision Making and Advance*

Care Planning” which proposes to legally recognise advance directives and supported decision-making.

More information on the position paper is here:

<https://www2.health.vic.gov.au/hospitals-and-health-services/patient-care/end-of-life-care/advance-care-planning/simplifying-medical-treatment-decision-making>

We will keep you informed as the position paper passes through the legislative process.

Below we highlight some of the specific issues raised by the ALRC Issues Paper that are particularly relevant to health services and aged care providers.

Aged Care Providers

The Inquiry is interested in evidence or case studies of elder abuse in aged care, including residential, home and flexible care settings.

The Issues Paper identifies areas where safeguards against, and responses to, elder abuse may be improved. These include:

- The role of aged care assessment programs, the National Aged Care Advocacy Program and the community visitors scheme, in detecting and responding to instances of elder abuse
- The use of substitute decision making, through powers of attorney and guardianship and advance care directives
- Registration of advance care directives and regulation of substitute decision makers
- The place of uniform laws for substitute decision making
- Compulsory training for attorneys
- The role of criminal offences for dishonestly using or obtaining a power of attorney

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- Regulation of the use of restrictive practices, including physical and chemical restraint
- The potential role of individual remedies for breaches of the Charter of care recipients' rights and responsibilities
- The current reporting regime for allegations of assault, complaints procedures and sanctions for elder abuse.

Health Services

The Issues Paper recognises that health services and health professionals are often at the “front line” in identifying and responding to instances of suspected elder abuse.

The Inquiry has identified three focus areas to be examined for improvement opportunities in relation to health services. They are:

- The role of health professionals in detecting whether an older person is at risk of, or a victim of, elder abuse
- The value of health-justice partnerships in detecting and responding to elder abuse and whether there are any other health service models that should be developed to fulfil this function
- Whether there should be any changes made to confidentiality and privacy laws to allow health services to be more effective in detecting and responding to elder abuse.

The Issues Paper highlights the need for health services to provide appropriate training to health professionals to enable them to be confident in identifying and responding to at-risk adults. The paper recommends that the “*WHO Clinical and Policy Guidelines on Responding to Intimate Partner Violence and Sexual Violence Against Women*” (**WHO Guidelines**) be used as a base for targeting capability training.

The WHO guidelines are found here:

<http://www.who.int/reproductivehealth/publications/violence/9789241548595/en/>

The paper encourages organisations to require reporting of suspected abuse and to review their privacy obligations with the aim of removing barriers to reporting. The paper recommends the introduction of health service wide elder abuse policies.

One example is established at St Vincent's Hospital in Melbourne. This model includes:

- the establishment of a coordination and response group to review data relating to suspected cases of abuse
- supporting staff to identify pathways for intervention based on preferences of the patient
- notification of all suspected, confirmed or witnessed cases of elder abuse to the coordination and response group
- a training framework focused on addressing the different roles and responsibilities of staff.

The Victorian Royal Commission into Family Violence suggested that this framework be adapted for use in other hospitals and aged care facilities.

Best practice going forward

Health and aged care services should review policies for identifying people at risk of elder abuse including staff training, recognition of substitute care givers and management of families in conflict. Policies should include clear recognition of advance care plans and powers of attorney. In keeping with the current focus on advance directives, health and aged care services should develop a clear framework for the recognition of advance care plans based on individual value statements and incorporating supported decision-making. This will underpin further developments in this area in individual jurisdictions in 2017.

If you have any questions arising out of this article, please contact **Anne Howard** on (03) 9865 1311 or email anne.howard@healthlegal.com.au.