

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

27 February 2017

Dear Ms Wynn

RE: Australian Law Reform Commission Discussion Paper on Elder Abuse

Alzheimer's Australia welcomes the opportunity to provide a submission in response to the Australian Law Reform Commission's (ALRC) Elder Abuse Discussion Paper.

ABOUT ALZHEIMER'S AUSTRALIA

Alzheimer's Australia is the peak body providing support and advocacy for people with dementia and their families and carers in Australia. Dementia is the second leading cause of death in Australia, and there is no cure.¹

Alzheimer's Australia represents and supports the more than 410,000 Australians living with dementia, and the more than one million family members and others involved in their care.² Our organisation advocates for the needs of people living with all types of dementia, and for their families and carers; and provides support services, education, and information. We are committed to achieving a dementia-friendly Australia where people with dementia are respected, supported, empowered, and engaged in community life.

PREFATORY REMARKS

As the peak body providing support and advocacy for people with dementia and their families and carers in Australia, Alzheimer's Australia is strongly supportive of new measures that will protect those vulnerable members of our community from elder abuse. Our submission to your Issues Paper in 2016 outlined a number of recommendations and it is pleasing to see that many of them (or the intent of many of them) are reflected in the proposals contained within your Discussion Paper. It is important that the scope of any measure includes both the residential care and community setting: the majority of people living with dementia live in the community and sadly, instances of elder abuse are largely enacted by family members or informal carers. Equally, however, our last submission outlined the ways in which abuse can occur in a residential care setting, so it is vital that the legislative and operational measures that are recommended can also be applied within this environment.

¹ Australian Bureau of Statistics (2015) *Causes of Death, Australia, 2013*: Cat no. 3303.0

² The National Centre for Social and Economic Modelling NATSEM (2016) *Economic Cost of Dementia in Australia 2016-2056*

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Alzheimer's Australia has consulted with consumers about the proposed measures contained within your Discussion Paper and we acknowledge that some are outside of their scope of expertise to comment on. This fact, combined with the comprehensive response we offered at the last stage of the Review, means that we do not, in this submission, offer comment on every measure but rather add consumer insights where we believe they will add value to the Inquiry process.

As with all Alzheimer's Australia submissions, our comments are prefaced by a more general statement that any legislative or systemic change must be clearly articulated for consumers, minimise duplication or confusion, and afford the appropriate level of protection and support for people living with dementia, their families and carers.

PROPOSALS AND QUESTIONS

Alzheimer's Australia is strongly supportive of **Proposals 2-1 and 2-2**, noting that both the National Plan and prevalence study should span both formal and informal care settings and be informed by a clear definition of elder abuse. Similarly, there should be a consistent approach to data collection.

Proposals 3-1 through 3-5, relating to powers of investigation, are broadly supported because they will provide surety to vulnerable consumers about the specific mechanisms to be triggered when suspected elder abuse occurs. Consideration should be given to the addition of the term 'exploited' to Item 3-1 (b), and the reference in (c) to 'care and support needs' may be better phrased 'vulnerable status'. The operationalisation of **Proposal 3-2**, and item (b) in particular, must encompass understanding of the complexity of an older person with a cognitive impairment and the ability to balance their right to safety and wellbeing with their ability to offer independent decisions about their care. Similarly, improved powers for public advocates or public guardians are vital but must also reflect the understanding that a person with a cognitive impairment may not be able to verbalise abuse and that evidence may be offered by the abusers themselves. In relation to **Proposal 3-4**, public advocates or public guardians should be trained to understand the intersection points of support in the aged care system that relate specifically to dementia and refer people living with dementia to organisations with expertise, where it is appropriate to do so. It may also be appropriate to involve police or emergency services in some extreme instances.

Alzheimer's Australia is supportive of the recommendations contained within section 5, relating to enduring powers of attorney and enduring guardianship, with some important caveats. **Proposal 5-1** would be a valuable addition to a more streamlined process for creating and registering enduring documents, but it must not create an administrative burden for consumers and should dovetail into clearly outlined processes for advance care planning. The question of who should be able to search the register must be informed by the relevant legislation around privacy and confidentiality, and ensure consistency of approach across aged care settings. Consideration may be given to the ability of financial institutions or aged care providers to have access to some level of information contained within the Register, in order to be able to confirm power of attorney arrangements, especially in instances relating to finances or assets. A more comprehensive access by public advocates or public guardians would be anticipated.

Proposal 5-2 should be informed by clear guidelines that include provisions for consumers who do not have current document filed, or who have current advance care plans that are not registered (**Proposal 5-3** is critical in this context). While Alzheimer's Australia is not adverse to increased powers for public advocates and public guardians to conduct random checks of enduring attorneys' management of financial affairs, the administrative and financial burden of these increased checks should not be passed on to the vulnerable consumers for whom the increased protections are intended.

Proposals 5-4 through 5-13 would offer more consistency and clarity for Australian consumers as well as their representatives, though careful consideration should be given to which elements of Proposal 5-8 sit within legislation and which sit within regulations in order to prevent duplication or legislative/administrative burden.

New non-professional guardians and financial administrators may benefit from compulsory training, as referenced in **Proposal 6-1**, but the financial and time impost of this step may be prohibitive. The provision of information to the tribunal may be sufficient, but a more precise definition of what that 'information' consists of must be provided. Similarly, any documentation signed by newly appointed guardians and financial administrators should be legally binding, with associated rights, responsibilities and judicial requirements outlined.

Streamlined processes such as **Proposals 7-1 and 7-2** relating to banks and superannuation are to be broadly supported, though Alzheimer's Australia is unable to comment on the specifics proposed. At one level, banks and other financial services should have policies and procedures in place to prevent financial abuse, mandatory reporting and information available to customers on financial abuse. The *Code of Banking Practice* should enforce this increased focus on financial powers of attorney and make provisions for changes to capacity, particularly in the context of self-managed superannuation funds (as outlined in option (b) of Question 7-1). Some banks have provided dementia training to their staff in order to facilitate better understanding and identification of abuse, and these types of measures are to be applauded and encouraged more broadly. A more consistent understanding of 'capacity' and 'lack of capacity' would also be beneficial.

Clarification around family agreements, as outlined in **Proposal 8-1**, is important, though Alzheimer's Australia notes that we are unable to comment on the preferred definition of 'family' in the context of 'assets for care'. We suggest that the Commission examine a cross-section of 'assets for care' matters to determine whether a definition of 'immediate blood relatives' would be sufficient.

The proposed consistency across the management of wills and social security, as outlined in **Proposals 9-1 through 9-3 and 10-1 through 10-4** are to be applauded, and streamlined linkages to systems such as Centrelink would offer far stronger consumer protections.

Alzheimer's Australia commented extensively on elder abuse in an aged care context in a previous submission and it is pleasing to see that the intent of **Proposals 11-1 through 11-11** provide stronger intersections with *The Aged Care Act 1997* and subordinate legislation as well as the practices of aged care providers.

On the whole, the proposals contained within the ALRC's Discussion Paper represent a robust and comprehensive review of elder abuse and the mechanisms designed to prevent, identify and support vulnerable consumers. Alzheimer's Australia looks forward to the final report issued to the Attorney General in May 2017 and the subsequent actions that follow, which we hope will include further consumer consultation. The Review is both timely and necessary in order to protect vulnerable Australians from abuse, especially the more than 400,000 people living with a cognitive impairment in this country.

Yours sincerely

Maree McCabe
CEO Alzheimer's Australia