



Submission to Australian Law Reform Commission Consultation on Issues Paper Elder Abuse

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*The industrial and
professional organisation
for Nurses, Midwives and
Assistants in Nursing
in Australia*

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Background

*Older people have the right to be treated with respect and dignity, whether they are being cared for in their own homes or in residential aged care.*¹

The Australian Nursing and Midwifery Federation (ANMF) welcomes the opportunity to make submission to the Australian Law Reform Commission (ALRC) issues paper: *Elder Abuse*. Nurses and assistants in nursing form the bulk of the aged care workforce, across residential, community and home settings. With approximately 30,000 of our members currently employed in the aged care sector, the ANMF has a particular interest in legislation, regulation and facility-based policies ensuring a safe working and care environment for health workers and recipients of their care.

Established in 1924, the ANMF is the largest professional and industrial organisation in Australia for nurses, midwives and assistants in nursing, with Branches in each State and Territory of Australia. The core business of the ANMF is the professional and industrial representation of our members and the professions of nursing and midwifery.

With a membership which now stands at over 249,000 nurses, midwives and assistants in nursing, our members are employed across all urban, rural and remote locations, in both the public and private health and aged care sectors.

The ANMF takes a leadership role for the nursing and midwifery professions by participating in the development of policy relating to: nursing and midwifery practice, professionalism, regulation, education, training, workforce, and socio-economic welfare; health and aged care, community services, veterans' affairs, workplace health and safety, industrial relations, social justice, human rights, immigration, foreign affairs and law reform.

¹ Australian Nursing and Midwifery Federation. 2014. Position Statement: *Compulsory reporting of abuse in aged care settings for nurses and assistants in nursing*. Available from: <http://anmf.org.au/pages/anmf-policies>

Preamble

ANMF members work across all settings in which aged care is delivered, including residential, community and in-home care. Being at the fore-front of aged care, and caring for elderly people over the twenty-four hour period in acute care and residential facilities, our members are in a prime position to witness elder abuse, where it occurs. Elder abuse can occur in all socio-economic spheres, and can be perpetrated by family/friends, carers, health professionals, aged care providers, or elderly people themselves.

In this submission we confine our comments to questions raised in the sections of the ALRC issues paper: Elder Abuse relating to 'Aged care' and 'Health services'. While abuse of elderly people takes many forms (as mentioned under Question 11 below) the ANMF submission particularly highlights elder abuse perpetrated through neglect.

A survey of members working in aged care, undertaken by the ANMF in June of this year², supplied concerning information on the inadequacy of staffing levels and staffing skill mixes to provide necessary care to elderly people. In short, what our members were describing was elder abuse by neglect, essentially through insufficient staffing or material resources to meet care required. One registered nurse member expressed her frustrations as follows:

On my last shift before quitting I was the RN in charge for 120 residents, a pill load, a schedule 8 round across three buildings and not enough staff to manage the secure unit. At the same time I had two very serious falls and one inexperienced new graduate RN...

I left after being routinely stuck with dangerous staffing levels shift after shift. It was downright reckless and shameful as I knew residents were at risk due to poor staffing. The residents stay in faeces longer than is acceptable, had delayed assessments and sat on toilets waiting for help inhumane lengths of time night after night. I couldn't be part of that

² Australian Nursing and Midwifery Federation. 2016. *ANMF National Aged Care Survey*. Available at: http://www.anmf.org.au/documents/ANMF_National_Aged_Care_Survey_Report.pdf.

*anymore. I lost sleep over it and felt my soul was being destroyed by being part of such an industry.*³

Registered nurses are educationally prepared to assess and instigate or delegate appropriate care, and to monitor for, and identify, where abuse might be occurring. However, current staffing conditions, in terms of staffing numbers and levels of qualified staff, are undermining their role as clinical leaders within aged care.

The ANMF contends low staff to care recipient ratios, and the gradual reduction of registered nurses in aged care, has led to an increased risk of elder abuse due to neglect. In order to ensure the delivery of safe, competent care to older people across aged care settings, it is the position of the ANMF investment must be made by the Australian Government and aged care providers, in:

- retaining registered nurses as clinical leads,
- implementing minimum staffing to care recipient ratios, and,
- regulating assistants in nursing under the same professional practice framework as are registered nurses and enrolled nurses – this framework includes:
 - minimum standard of education
 - minimum standard of qualification
 - requirement for continuing professional development
 - code of ethics, code of conduct, and professional boundaries guidelines
 - scope of practice
 - registration (with publicly available register)
 - mandatory reporting of other health professionals
 - notifications of unprofessional practice or health impairments affecting practice

³ Ibid. p.25.

Aged care

Question 11: What evidence exists of elder abuse committed in aged care, including in residential, home and flexible care settings?

The *National Elder Abuse Annual Report 2014-2015*⁴, outlines various forms of elder abuse, namely: financial, social, physical, sexual, psychological (emotional, verbal, non-verbal), or neglect, and, provides evidence of the existence of this abuse. The data for this report by Advocare, taken from Elder Abuse Helplines across the country, draws attention to financial and psychological abuse as the commonest cases of abuse amongst the cohort of elderly people studied.

The National Ageing Research Institute refers to elder abuse as an ‘an emerging field of research’⁵. In their report *The Older Person’s Experience: Outcomes of Interventions into Elder Abuse* released in July 2016, the researchers focus on abuse in the community. Again, they found psychological and financial abuse as the commonest types of abuse perpetrated on the elderly people in their study.

What the ANMF submission particularly wishes to bring to the attention of the ALRC is elder abuse perpetrated through neglect.

The consequence of inadequate funding to aged care providers by the Coalition Government, through current arrangements and impending changes to the Aged Care Funding Instrument (ACFI), has resulted in residential aged care providers cutting assessed care hours to residents, and the reduction in employment of qualified nursing staff to provide residential aged care. When an elderly person in residential care cannot access any paid staff to assist them with their assessed care needs at the time they require this care, this is surely elder abuse by neglect.

⁴ Advocare Incorporated. *National Elder Abuse Annual Report 2014-2015*. Retrieved from Advocare Inc website on 15 August 2016 at: http://www.advocare.org.au/uploaded/files/client_added/NEA%20Annual%20Report%202014-2015.pdf

⁵ The National Ageing Research Institute. 2016. “*The Older Person’s Experience – Outcomes of Interventions into Elder Abuse*”. Retrieved from the NARI website on 15 August 2016 at: <http://nari.net.au/research/current-projects/elder-abuse>

The New South Wales Nurses and Midwives Association (NSWNMA), the NSW Branch of the ANMF, released a report in 2015 titled *Who will keep me safe? Elder Abuse in Residential Aged Care*.⁶ This survey of members regarding elder abuse “highlights areas of good practice, but it also raises concerns about the prevalence and management of elder abuse in residential aged care settings”.⁷

The NSWNMA survey results showed staff skill mix with high numbers of low skilled staff and low numbers of registered nurses, were a common factor in situations where resident to resident abuse occurred, and, that inadequate staff numbers overall were a precursor to elder abuse.⁸ In highlighting elderly resident to resident abuse in residential aged care facilities (most often persons with dementia), the report referred to members who considered inadequate staffing (both in terms of numbers and qualification level) meant residents couldn’t be appropriately supervised and monitored. In addition, staff were often not qualified to de-escalate aggressive situations.⁹

As the NSWNMA has made a separate submission to the ALRC Inquiry into Elder Abuse, and included the contents of their 2015 member survey as evidence, the ANMF will not duplicate their evidence of the existence of elder abuse in our submission. Likewise, our Queensland branch - the Queensland Nursing Union (QNU), has forwarded a separate submission. Our intention is to publicly support the NSWNMA and the QNU submissions and to urge the ALRC to take careful note of the information provided in their documents, given by those intimately acquainted with the aged care sector. Essentially, their submissions give stark evidence from members of neglect due to inadequate staffing arrangements.

Television documentaries and media reports have showcased elder abuse in nursing homes in Australia over the past decade, despite so-called safe guards in place by the

⁶ New South Wales Nurses and Midwives Association (NSWNMA). 2015. Report: *Who will keep me safe? Elder Abuse in Residential Aged Care*. Available from: <http://www.nswnma.asn.au/wp-content/uploads/2016/02/Elder-Abuse-in-Residential-Aged-Care-FINAL.pdf>

⁷ Ibid. p.3.

⁸ Ibid. p.7-8.

⁹ Ibid. p.11.

Australian Government, which funds and regulates residential and community aged care services. These too, provide examples of how understaffing is a form of elder abuse, through the subsequent neglect to basic care needs.¹⁰

More recently, the ANMF conducted a national survey involving both a phone-in day and an on-line survey, which received feedback from 1,724 aged care nurses and care workers and 699 community members, mostly relatives of people in aged care.¹¹ The survey explored how the Australian Government funding cuts are, or will continue to, impact the delivery of care in residential care facilities across Australia. The following extract from the Executive Summary points to our argument of elder abuse by neglect:

The overwhelming theme to emerge from both the aged care worker and community group responses to the ANMF's aged care survey was the participants' belief that the elderly deserve much better care than they are currently receiving. This belief related to care in every aspect: personal care, physical care, medical care, psychological care, and emotional and social care.

The picture of residential aged care painted by the stories and comments of participants is one approaching despair. Participants state that resources in facilities, both human and otherwise, are becoming so scarce that on many occasions it is just not possible for residents to be cared for safely or, as reported by many participants, even humanely.

Their accounts describe a situation of widespread substandard care which offers little or no dignity to the elderly at the end of their lives. A situation which shows no recognition or regard for the contribution the elderly have made to Australian society and which, they believe, represents a profound

¹⁰ Lateline - Margot O'Neill. Aged care workers cite abuse and neglect of nursing home patients. Retrieved from ABC website on 2 August 2016 at: <http://www.abc.net.au/news/2013-08-13/aged-care-understaffed-as-nursing-home-patient-numbers-rise/4884056>

¹¹ Australian Nursing and Midwifery Federation. 2016. *ANMF National Aged Care Survey*. Available at: http://www.anmf.org.au/documents/ANMF_National_Aged_Care_Survey_Report.pdf .

lack of respect for Australia's elderly. They believe the elderly are not treated as individuals, not treated as real people or, on occasion, not even as human beings.

The findings of the ANMF's National Aged Care Survey outline an appalling lack of regard from Australian governments and politicians for our elderly. The findings describe a systemic failure to ensure safe and adequate care to all aged care residents and suggest governments and providers are forsaking the elderly the dignity they deserve at the end of their lives.

The survey's participants, and ANMF members more broadly, questioned the kind of society that Australia has become to condone such disrespectful treatment of our elderly. They were firmly of the view that such a society is not a moral and compassionate one.

However, this is what they would like to see, a moral and compassionate approach to care for our elderly, which would ensure them safe, dignified and respectful care at the end of their lives.

The survey's participants believe that this will require:

- Adequate Government funding;*
- Appropriate mechanisms to ensure that funding is directed to care for residents;*
- Appropriate mechanisms to ensure that funding is directed to ensuring safe staffing levels;*
- Mechanisms that ensure genuine accountability and transparency from aged care providers;*
- A mandated requirement for minimum training and regulation of all staff, including a sufficient supply of registered nurses and nursing staff specialised in the delivery of aged care; and,*
- A commitment from governments, providers and the community to improving care for the elderly.*

Question 12: What further role should aged care assessment programs play in identifying and responding to people at risk of elder abuse?

Unfortunately there is no legal requirement anywhere in Australia to report cases of elder abuse.¹² As the Aged Rights Advocacy Service information points out “the law assumes adults can make their own decisions, about whether or not to do anything about the abuse that they experience”.¹³ Elderly people, many of whom are no longer capable of making their own decisions, may have no one to advocate on their behalf, may fear reprisal, or worse, removal from the facility, are then in the vulnerable position of not being able to make a complaint about instances of abuse – in whatever form it takes. As procedures such as mandatory reporting on abuse of adults in non-residential aged care settings do not apply, these elderly people fall through the net as they are generally not supported or assisted to report abuse.

With the expansion of funding for more community aged care packages, the Australian Aged Care Quality Agency (AACQA) should be responsible for assessing both community and residential aged care providers under the AACQA accreditation standards. For example, Standard 4: *Physical Environment and Safety Standards*, should include a new sub-standard on Elder Abuse.

Where the AACQA identifies or suspects elder abuse is occurring, the agency must be given the authority through regulation and/or legislation, to notify the police so that the perpetrator/s of the abuse can be dealt with under the relevant State or Territory law.

There should also be awareness campaigns on elder abuse, targeted to vulnerable older people, with distinct support services available for them to seek assistance/support/guidance where elder abuse is suspected or actualised.

Of critical importance in the identification of people at risk of elder abuse is that aged care assessment programs should have standards which specify that at least one

¹² Aged Rights Advocacy Service Inc. Elder Abuse and the Law - Mandatory Reporting. Retrieved from the ARAS website on 19 August 2016 at:

http://www.sa.agedrights.asn.au/residential_care/preventing_elder_abuse/elder_abuse_and_the_law/mandatory_reporting

¹³ Ibid.

registered nurse be present on every shift over a seven day cycle. Registered nurses are the ones qualified to make assessments of care needs and to identify and respond to people at risk of elder abuse. When given the appropriate staffing numbers and levels of qualification of staff, registered nurses can mitigate the risk of elder abuse due to neglect.

Training programs relating to aged care assessment should include a component for unqualified aged care workers, to assist them to recognise the vulnerable status of many elderly people and the special protection they may require if they appear to be at risk of abuse.

Aged care assessment programs should require aged care providers to have policies, protocols and reporting guidelines in place for reporting elderly people at risk of abuse or neglect.

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?

The *Aged Care Act 1997* and the *Aged Care Principles* need to be amended to reflect the current context within aged care which recognises the risk of, and occurrence of, elder abuse. The Act and the Principles need to provide safeguards against elder abuse arising from decisions made on behalf of a recipient of aged care.

The ANMF argues that in order to protect vulnerable elderly people, both those who are capable of decision-making, and those who are not, there needs to be legally sanctioned frameworks around who can make decisions on their behalf. At present there is a variety of approaches across jurisdictions. A national approach to this, such as the formalisation of a medical and/or financial power of attorney, would provide for consistency across the country, beneficial to both health professionals working in aged care and elderly people and their families/carers.

Likewise, the ANMF argues for mandatory reporting of elder abuse, to be applied across all sectors of aged care delivery. Implementation of such change to aged care legislation would require extensive roll out of education programs for all health professionals working in aged care and elderly people (where cognitive capacity dictated), their families/carers, and the general public.

An important change required to legal frameworks relating to aged care is removal of the recently agreed and implemented negative licensing for assistants in nursing, which just 'shuts the gate after the horse has bolted'. The ANMF has argued and continues to lobby for the regulation for these aged care workers, just as the practice of registered nurses and enrolled nurses is regulated, to protect the public. The mandatory reporting we have proposed above is especially pertinent in the absence of regulation of assistants of nursing working in aged care.

Also warranted in relation to aged care legal frameworks is more advertising of the availability of resource materials, whether print-based or through websites, to assist older people to understand their rights and responsibilities in relation to abuse. Using the *Guide to Aged Care Law* website, for example, is a good reference point¹⁴ that could also provide additional information about assisting older Australians with reporting elder abuse.

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?

Concerns arising in relation to the risk of elder abuse with consumer directed aged care models, stem from the increase in care providers and their workers. The ANMF is particularly concerned there should be inclusions in the regulations regarding the aged care workers who are eligible to provide care under these models. Of particular concern is where the aged care worker entering a person's home to provide care is an assistant in nursing. This level of worker, as outlined previously, is not governed by a

¹⁴ Australian Government. 2016. *Guide to Aged Care Law*. Retrieved from MyAgedCare website on 19 August 2016 at: <http://www.myagedcare.gov.au/news/guide-aged-care-law-now-available>

risk mitigation professional practice framework¹⁵, as is a registered nurse or an enrolled nurse. This framework provides safeguards for recipients of care provided by registered nurses and enrolled nurses. Regardless of whether the unregulated worker has undertaken some form of VET sector qualification, they are not equipped to perform the necessary assessment required for in-home care of the elderly.

Other concerns relate to registered nurses, enrolled nurses or assistants in nursing who enter the homes of care recipients under the consumer directed aged care models and suspect or witness evidence of elder abuse. These workers must be governed by clear workplace (employer) policies on how to deal with any risk to a person from elder abuse and how to escalate any evidence of, or suspected, elder abuse to the responsible authority. As Consumer Directed Care (CDC) packages are expected to increase from about 75,000 now to over 100,000 by 2017¹⁶ there is an increased likelihood of more examples of elder abuse being noticed and reported. Therefore, improved reporting systems and regulatory safeguards must be developed to counter any additional risk associated with consumer directed aged care models. It is not appropriate to simply rely on policies of employing bodies to deal with this matter.

Consumers of aged care services are able to access Australian Government funded advocacy services under the National Aged Care Advocacy Program.¹⁷ These services provide free, confidential and independent information to consumers about their rights and responsibilities when accessing aged care services. However, although the National Aged Care Advocacy Line is a freecall [1800 700 600] line, it is not widely known by those elderly people or their families/carers. Improved awareness of this service would be one way of improving and safeguarding against elder abuse.

¹⁵ See page 4 for inclusions of a Professional Practice Framework.

¹⁶ Australian Government. 2016. Department of Ageing and Aged Care. *Consumer Directed Care. Home Care Packages and Consumer Directed Care (CDC)*. Available from Ageing and Aged Care website at: <https://agedcare.govcms.gov.au/programs-services/home-care/home-care-packages-programme-resources>

¹⁷ Commonwealth Department of Health and Ageing. National Aged Care Advocacy Program. Aged Care Advocacy. Available from the NACAP website at: http://www.era.asn.au/pdf%20files/nan%20leaflet/english_advocacy.pdf

Question 15: What changes to the requirements concerning quality of care in aged care should be made to improve safeguards against elder abuse?

First and foremost the Australian Aged Care Quality Agency (AACQA) Standards need to be amended to require that at least one registered nurse position be installed on each shift over the seven-day cycle, to provide care leadership in residential aged care. Similarly, that a registered nurse be responsible for the initial and on-going assessment and delegation of care for each elderly person in community care arrangements.

Secondly, that the AACQA standards mandate the requirement for minimum numbers of staff and skills mix to be able to provide safe, competent care to mitigate the risk of elder abuse by neglect, in both residential and community care. The NSWNMA report¹⁸ clearly indicated that an increase in the number of staff on each shift would improve their ability to provide for care needs, and, to provide adequate supervision of residents thereby enabling potentially aggressive situations to be witnessed, managed and diffused.

Thirdly, that there is a clear definition of elder abuse in the AACQA standards, and requirements for education programs for aged care workers.

The ANMF is alarmed when we receive reports from our members employed in the aged care sector that they have been reported to the police and/or the aged care complaints scheme for apparent 'elder abuse' issues which, when investigated, can be traced back to a mis-communication over aspects of the care plan or changes to the plan (for example, this has occurred when a nurse has cut a resident's fingernails). Any change to the requirements concerning quality of care in aged care must safeguard all health practitioners involved in care of the elderly, inclusive of registered nurses, enrolled nurses, assistants in nursing, as well as the recipient of aged care.

Question 16: In what ways should the use of restrictive practices in aged care be regulated to improve safeguards against elder abuse?

¹⁸ Loc cit. 2015. p.11.

The ANMF recommends there be a national approach to the regulation of restrictive practices, such as chemical and physical restraints, across aged care settings, including disability services for older people, as there is in acute care facilities. This is particularly important given that older people with disability may be subjected to restrictive practices in a variety of contexts, including: supported accommodation and group homes; residential aged care facilities; mental health facilities; hospitals; or prisons. A nationally consistent approach that is applicable to both the residential and community aged care settings, consistent with the guidelines produced by the Australian Commission on Safety and Quality in Health Care, may go some way to addressing one of the key shortcomings of current approaches to restrictive practices.

Concerns about restrictive practices in aged care have been highlighted by the ANMF over a number of decades, for example, the use of physical restraints or over-medication for behavioural issues.

The Australian Aged Care Quality Agency (AACQA) *Results and processes guide*¹⁹ provides practical guidance to interpret legislative compliance within the residential aged care sector. This document specifies that, although a last resort, in some circumstances the use of physical or chemical restraint would *not* be considered an area of non-compliance. Surprisingly, this section omits the lack of staff availability as a possible contributory factor for ineffective behaviour management which may predispose the use of chemical and physical restraint. Research shows that if root causes for undesired behaviours are determined and corrected, the need for restraints can be ameliorated and alternatives can be implemented²⁰.

The AACQA guide recommends that: *Homes should be able to demonstrate all other options and alternatives for managing a resident's behaviour have been exhausted before any form of restraint is employed*²¹. It would naturally follow that exploration of

¹⁹ Australian Aged Care Quality Agency (AACQA). 2014. Results and processes guide. Available at: http://www.aacqa.gov.au/assessors/copy_of_RPguideJan2015.pdf

²⁰ Agens, J.E. 2010. Chemical and physical restraint use in the older person. *British Journal of Medical Practitioners* 3(1). Available at: <http://www.bjmp.org/content/chemical-and-physical-restraint-use-older-person>

²¹ Loc cit. AACQA. 2014. p.57.

staffing ratios would occur. However, despite the NSWNMA 2015 survey highlighting high levels of challenging behaviours in residential aged care facilities, ANMF members regularly cite staffing ratios of one registered nurse to 100 residents. It is not surprising, therefore, that our members are unable to provide the necessary oversight to safeguard residents in some facilities. While the provision of safe staffing remains unchallenged by the AACQA, the ANMF considers the use of physical and chemical restraints to control challenging behaviour is likely to continue.

Chemical restraint is widely considered counter-productive and at worst, life threatening^{22,23}, and is not approved for use in the behavioural manifestations of dementia in some countries²⁴. As a protective document the *Results and processes guide* appears lacking in an evidence base or safe practice guidance and as such, the ANMF considers it does not afford sufficient protection against abuse.

The ANMF recognises significant issues created by a lack of clarity in relation to environmental restraint. Although current accreditation audits suggest providers sufficiently meet their obligations under the *Aged Care Act 1997*, the ANMF asserts there is strong emerging evidence that indicates there are significant deficiencies in the delivery of care and outcomes of care in many aged care facilities. In particular we would argue that providers are not meeting their responsibility to ensure provision of adequate numbers of appropriately skilled staff to meet the care and service needs of the residents.

This is particularly relevant in the context of our response as we believe variable interpretations of words in the *Aged Care Act 1997* (such as an 'adequate' number of 'appropriately skilled' staff to ensure care needs of care recipients are met), has meant wide variation between aged care providers in the application of best practice when minimising the use of restrictive practices for residents who display challenging

²² Wang PS, Schneeweiss S, and Avorn J, et al. 2005. Risk of death in elderly users of conventional vs. atypical antipsychotic medications. *New England Journal of Medicine*. 353(22) pp. 2335-2341.

²³ Jusic N, and Lader M. 1994. Post-mortem antipsychotic drug concentrations and unexplained deaths. *British Journal of Psychiatry*, 165(6) pp.787-791.

²⁴ Friedman JH. 2006. Atypical antipsychotics in the elderly with Parkinson disease and the "black box" warning. *Neurology*.67(4) pp.564-566.

behaviours. Best practice guidelines which support the management and care of residents with dementia, the minimisation of restrictive practices and alternative approaches to restraint, and, the management of residents with delirium and or challenging behaviours, should be mandated nationally.

Analysis of a number of the available guidelines on the subject of restrictive practices, managing delirium and challenging behaviours, shows a common element of recommending consent needs to be obtained. The issue of how to obtain consent for persons whose decision making ability is impaired, is consistently the missing element, however. This may mean that the registered nurse is placed in the position of being expected to provide consent, which is totally unrealistic. This also contravenes the approaches to consent referenced in best practice guidelines which call for the multidisciplinary team to communicate and establish clear consent pathways on admission to a facility or service, for all care needs, including restrictive practices.

If clear pathways of obtaining consent are established, accounting for different scenarios faced by clinicians on the frontline, no single health practitioner should be exempt or have discretion to order treatment, if no consent pathway exists. These pathways should be applied as a mandatory component in the admission process to any residential aged care facility or community aged care service. There are tools and documentation resources already available within best practice guidelines particularly relating to aged care clients that could inform the development of multidisciplinary consent pathways.

In this instance the multidisciplinary consultation needs to expand from the traditional health professional participants to include regulators and law makers. This will result in shared accountability for practice decisions at all levels instead of accountability remaining with those in the frontline.

The ANMF also recommends the AACQA standards include requirements for monitoring and auditing, and reporting of use of restraints. The standards should also include requirements for education programs for staff around de-escalation of incidents

and appropriate behavioural management strategies, to obviate use of restrictive practices.

Question 17: What changes to the requirements for reporting assaults in aged care settings should be made to improve responses to elder abuse?

The Australian Government, Department of Health and Ageing, has guideline documents for compulsory reporting for approved providers of residential aged care.²⁵ Such documents need to be reviewed and amended to incorporate compulsory reporting to extend to incorporate approved providers of community-based aged and disability care services; and, to include the implementation of the National Disability Insurance Scheme (NDIS) and the expansion of consumer directed aged care packages.

Within the compulsory reporting guidelines, there must be an amendment to define what is considered an '*unreasonable use of force*' to avoid the charge of elder abuse being associated with nurses providing any element of assessed (nursing or personal) care to a recipient of aged care service (reference the previous mention of cutting fingernails). Additionally, the guidelines need to clearly articulate what constitutes a reportable assault, in terms of elder abuse.

As stated in the ANMF position statement *Compulsory reporting of abuse in aged care settings for nurses and assistants in nursing*,²⁶ compulsory reporting, on its own, will not prevent the abuse of older people. There must be clear policies and protocols developed for the workplace, outlining the process to be followed by a person making a report on any alleged abuse, in order for compulsory reporting to be effective. While it is preferable for nurses and assistants in nursing to report instances of an alleged elder abuse to their employer first, the mechanism should exist for them to be able to report directly to the police or the relevant Australian Government department, for

²⁵ Australian Government. Department of Health and Ageing. *Compulsory reporting for approved providers*. Available at: <https://agedcare.health.gov.au/ensuring-quality/aged-care-quality-and-compliance/compulsory-reporting-for-approved-providers>

²⁶ Australian Nursing and Midwifery Federation. 2014. Position statement: *Compulsory reporting of abuse in aged care settings for nurses and assistants in nursing*. Available from the ANMF website at: <http://anmf.org.au/pages/anmf-policies>

investigation. This would ensure that those nurses and assistants in nursing concerned with the serious risk of reprisal from their employer, would still have a mechanism to report, or can escalate a report, when no action has been taken.

Question 18: What changes to aged care complaints mechanisms should be made to improve responses to elder abuse?

Communication is the key element. Clear and concise information is essential about how to make a complaint of an alleged elder abuse incident, and the process that follows once a complaint has been lodged. All parties involved need to be kept informed of progress in investigating the complaint, with transparency of mechanisms at each stage of the complaint process.

Question 19: What changes to the aged care sanctions regime should be made to improve responses to elder abuse?

The aged care sanctions regime must be broadened to include community aged care providers and providers of elderly care under the NDIS. The naming of any sanctioned providers within community aged care or NDIS should occur in the same way as it currently does for residential aged care providers.

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 and responses to elder abuse?

The funding to these types of organisations is usually limited and therefore the depth and breath of service provision is bound by a tight budgetary allocation. Aged care advocacy services do a remarkable job with seriously limited resources and would service the community much better if their resource base was significantly improved. They would be well positioned to identify ‘hots spots’, areas of increased reports of elder abuse, and then provide meaningful response, where allegations are substantiated. This data could then feed into elder abuse risk mitigation strategies.

Question 21: What other changes should be made to aged care laws and legal frameworks to identify, provide safeguards against and respond to elder abuse?

A required change is the identification of the responsible person and lines of accountability for aged care providers to respond to allegations of elder abuse. To have a mechanism whereby vexatious and punitive reports can be established/identified with no further action then being taken against the vindicated alleged perpetrator.

Summary:

The ANMF argues that evidence provided by our members working in aged care, and highlighted in other studies in the sector, clearly points to the following mechanisms as being the strongest levers for mitigating the risk of elder abuse across aged care settings:

- Improved legislative and funding frameworks to mandate:
 - the provision of a registered nurse on every shift over a seven-day cycle, to lead the delivery of quality care,
 - adequate numbers of nursing and assistant in nursing staff to meet the needs of the elderly recipients of care, and, to have capacity to monitor and supervise their activities,
 - appropriate skills mix of nursing and assistants in nursing staff to ensure safe and competent care.
- Improved regulatory frameworks for assistants in nursing to:
 - Protect the public, in this case the recipients of aged care, through the same mechanisms as the statutory regulation of registered nurses and enrolled nurses,
 - Ensure a mandatory minimum, and universally known, level of education, to safeguard recipients of care and fellow care workers,
 - Provide a means of accountability to elderly people and their families/carers through a publically available register of names, qualifications, and any notifications or conditions on practice.
 - Include a commitment to a code of ethics (which includes human rights and ethical values), and a code of professional conduct (which includes respect for the dignity of people receiving their care).
- Mandatory continuing education standards for all staff involved in aspects of nursing care – at present this exists for registered nurses and enrolled nurses

within their regulatory framework, but not for the growing body of assistants in nursing working in the aged care sector.

Health Services

Question 35: How can the role that health professionals play in identifying and responding to elder abuse be improved?

The role health professionals can play in identifying and responding to elder abuse can be improved by the following basic steps:

- Mandating minimum staffing levels for every shift, in every sector of health services, so that there are adequate numbers of nursing staff to meet the needs of the elderly recipients of care, and, for the nursing staff to have sufficient capacity to monitor the activities of these elderly people, so that early identification of potential abuse can lead to appropriate and timely interventions to mitigate risk of abuse,
- Appropriate skills mix of nursing staff to ensure safe and competent care,
- Ensuring inclusion in preparatory education programs and continuing professional development which includes learnings on abuse, strategies for identifying and responding to potential and actual abuse, and legislative obligations concerning abuse situations, and,
- Instituting statutory regulation of assistants in nursing, whose numbers are growing in health care services, through national registration.

Question 36: How should professional codes be improved to clarify the role of health professionals in identifying and responding to elder abuse?

The ANMF considers the existing professional codes for nurses: the *Code of Ethics for Nurses in Australia* and the *Code of Professional Conduct for Nurses in Australia*,²⁷ already adequately outline professional responsibilities. The Code of Ethics is framed on a human rights base:

²⁷ Nursing and Midwifery Board of Australia (NMBA). 2005. Professional codes: *Code of Ethics for Nurses in Australia* and the *Code of Professional Conduct for Nurses in Australia*. Available from the NMBA website at: <http://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Professional-standards.aspx>

*The nursing profession recognises the universal human rights of people and the moral responsibility to safeguard the inherent dignity and equal worth of everyone.*²⁸

As noted in the *Code of Professional Conduct for Nurses in Australia*²⁹ these Codes are

...not intended to give detailed professional advice on specific issues and areas of practice. In keeping with national competency standards [now 'standards for practice'] nurses have a responsibility to ensure their knowledge and understanding of professional conduct [and ethical] issues is up to date.

Under regulation then, registered nurses and enrolled nurses not only commit to their code of ethics and professional conduct, they also commit to remaining abreast of current issues relating to health and aged care, and legislative and regulatory changes. This includes elder abuse, in all its forms.

That said, the professional codes for registered nurses and enrolled nurses are currently being reviewed so it is timely for those undertaking this review process to consider if amendments are required to improve clarity of guidance provided in the documents as it relates specifically to elder abuse.

Question 37: Are health-justice partnerships 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?

²⁸ NMBA, Australian Nursing Federation, and Australian College of Nursing. 2005. *Code of Ethics for Nurses in Australia*. Available from the NMBA website at: <http://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Professional-standards.aspx> p.4.

²⁹ Nursing and Midwifery Board of Australia (NMBA). 2005. *Code of Professional Conduct for Nurses in Australia*. Available from the NMBA website at: <http://www.nursingmidwiferyboard.gov.au/Codes-Guidelines-Statements/Professional-standards.aspx> p.3.

Health-justice partnerships³⁰ are a useful model for identifying and responding to elder abuse. Through the incorporation of a lawyer in a health care team, “the partners aim to improve legal and health outcomes for older clients by: minimising the incidence and impact of elder abuse, and, articulating and demonstrating a HJP model of practice.”³¹

Health professionals, especially nurses as front-line health care workers, are generally best-placed to identify and respond to elder abuse. They are also in the ideal position to monitor for, and identify, instances of elder abuse. Therefore, it is important to ensure health professionals receive education on how they can most effectively work with, and be supported by, justice system partners to mitigate the risks of elder abuse in their health care work settings. This information is also critical to them being able to support and inform elderly people and their families/carers on relevant aspects of elder abuse.

Working together, health professionals and justice system professionals can use their considerable collective force and evidence-based knowledge to push for necessary reforms and systemic change to practices where it is required, to effectively identify and/or respond to elder abuse.

A national hotline to report elder abuse and/or from which older people could obtain advice, may be of great benefit to many who have not known where to go to for information and assistance.

The ANMF notes that Canada has a Pan Canadian project³² which has extensive information about elder abuse. To see Australia develop a similar resource guide would be of great value. The ANMF also suggests there are a number of health service elder

³⁰ Justice Connect. *Working together: a health justice partnership to address elder abuse*. Available from Justice connect website at:

http://www.justiceconnect.org.au/sites/default/files/HJP_first%20year%20impact%20report_IFA2016_1.pdf

³¹ Ibid.

³² Information on Canadian model is available at:

http://www.esdc.gc.ca/eng/seniors/funding/pancanadian/elder_abuse.shtml

abuse models implemented in other countries that may be worth investigating, which are listed on the website of the Australian Institute of Family Studies.³³

Question 38: What changes should be made to laws and legal frameworks, such as privacy laws, to enable hospitals to better identify and respond to elder abuse?

The Commonwealth Privacy Laws were last amended in 2012. There should be a regular cycle of review and continuous updating to ensure they remain relevant and contemporary to societal issues.

Summary:

Registered nurses and enrolled nurses are best placed to monitor for, and identify elder abuse. However, as in aged care settings, the adequacy of numbers of nurses and skills mix in health care environments will dictate their ability for early identification of warning signs and implement early interventions to mitigate the risk of elder abuse. This is particularly pertinent to elder abuse perpetrated by neglect, in the presence of inadequate numbers and skills mix of nursing staff to provide quality care.

In concluding, the sentiments of ANMF members responding to surveys on aged care eloquently describe the frustrations of nurses working in the sector:

The training provided deals mostly with mandatory reportable incidents and although it may name other forms of abuse, does little about recognising and what to do about reporting things like neglect and psychological abuse.³⁴

Basically the whole situation shows very poor form. Our frail and elderly citizens should be shown respect and supported in their twilight years.

³³ Australian Institute of Family Studies. Website: <https://aifs.gov.au/publications/elder-abuse/8-what-can-we-learn-international-approaches>

³⁴ New South Wales Nurses and Midwives Association (NSWNMA). 2015. Report: *Who will keep me safe? Elder Abuse in Residential Aged Care*. Available on the NSWNMA website at: <http://www.nswnma.asn.au/wp-content/uploads/2016/02/Elder-Abuse-in-Residential-Aged-Care-FINAL.pdf>

They have worked hard and paid taxes, fought for their country (in many cases) and now they are an easy target.³⁵

I think it is disgusting that people of this country who have contributed so much during their working life can be treated in this way in their old age.³⁶

Not good enough, our frail aged deserve much better. They deserve respect, dignified care, and mostly, professional care.³⁷

Having to rush frail, anxious, vulnerable, perhaps demented, persons in order to attend to their most basic requirements instead of maximising their remaining abilities, hearing their concerns and honouring who they are, or - at worst - allowing the cover-up of cruelties & neglect, is a disgrace and poor reflection on the society that ignores or fails to address such issues.³⁸

³⁵ Australian Nursing and Midwifery Federation. 2016. ANMF National Aged Care Survey. Available at: http://www.anmf.org.au/documents/ANMF_National_Aged_Care_Survey_Report.pdf.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid. p.17.