



# **Submission on the Productivity Commission's Draft Report on the Caring for Older Australians Inquiry**

*On behalf of:*

**Braemar Presbyterian Care (WA)**

**Dunbar Homes Inc (SA)**

**Kirkbrae Presbyterian Homes (Victoria)**

**Presbyterian Aged Care NSW & ACT**

**Presbyterian Care Tasmania Inc.**

**PresCare Queensland**

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## Introduction

The Presbyterian Church of Australia, through its state-based aged care organisations, provides over 1,840 residential aged care beds, over 550 community care packages and related community care services and seniors housing. The National Presbyterian Aged Care (NPAC) Network is a member of the Campaign for Care of Older Australians and the National Aged Care Alliance and we support the NACA submission. Our state-based aged care organisations are members of Aged & Community Services Australia and we also support ACSA's submission. We appreciate the notice taken of our original submission (no.110) by the Productivity Commission.

We strongly support the Productivity Commission's conclusion that wide ranging reform is necessary and welcome most of the recommendations in Draft Inquiry Report.<sup>1</sup> For the sake of brevity, we will comment in this submission only on recommendations where we have some alternative view or clarification to suggest. We will also address the specific areas on which the Commission sought feedback.

## 1. Recommendations

The NPAC Network supports the majority of the Draft Inquiry Report's recommendations. In particular, we support overall reform goals enunciated by the Commission whereby older Australians would:

- contact a simplified 'gateway' for: easily understood information; assessments of care needs; assessments of financial capacity to make co-contributions; entitlements to approved services; and care coordination — all at a regional level
- receive a flexible range of care and support services that meet their individual needs and that emphasise, where possible, restorative care and rehabilitation
- choose, where feasible and appropriate, to receive care at home or in a residential facility and choose their approved provider
- contribute in part to their cost of care (with a maximum lifetime limit) and meet their accommodation and living expenses (with safety nets for those with limited means)
- have access to a government sponsored equity release scheme to pay for their care and accommodation charges if they have assets but limited annual incomes
- choose between paying a daily charge or an equivalent bond for the accommodation costs of residential care — with both aligned to the real cost of accommodation
- retain their age pension when selling their home (and if paying a lower capital sum or a daily charge for their new accommodation) by purchasing an Australian Pensioners Bond
- choose whether to purchase additional services or a higher quality of accommodation if that is what they want and can afford to do so.<sup>2</sup>

We also strongly support the Commission's thrust to separate the cost components of aged care, establish a regulatory commission separate from the Department of Health & Ageing, reduce over-regulation of aged care providers, strengthen housing options for older people and improve integration of aged care with the health and disability services systems.

We do, however, wish to make comment on some of the draft recommendations.

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<sup>1</sup> Productivity Commission (2011) *Caring for Older Australians*, Draft Inquiry Report, Canberra.

<sup>2</sup> *Ibid* p.xx.

***Draft Recommendation 6.4***

While agreeing in principle with the idea of linking the levels of accommodation bonds and periodic charges so they reflect the cost of supply of aged care accommodation, it is important to clarify what components are to be included in establishing “the cost of supply”. For example, historically the Department of Health & Ageing has been very reluctant to include land costs as a legitimate consideration in discussions about the level of the accommodation charge, even though this is included in the definition of capital costs in the *Aged Care Act*. Also, it would seem reasonable to assume it is legitimate to achieve a return on investment for the aged care provider. The NPAC Network contends that all legitimate costs must be able to be included, including land, design, development approvals, construction, interest and return on investment.

It is unclear from the Draft Inquiry Report what, if any, entity is to monitor accommodation payment levels to ensure they reflect the cost of supply and how that would be done. The NPAC Network notes that setting of accommodation payments should ideally be a matter for negotiation between provider and prospective resident and the main requirement should be for fair trading and full disclosure. Involvement of the Department of Health & Ageing or the proposed Australian Aged Care Regulation Commission risks reverting to a situation where government artificially controls accommodation payment levels.

It is possible the net effect of this and recommendation 6.6 will be to reduce the total level of bonds held by aged care providers as more residents choose to pay by periodic payment. This could have a significant impact on aged care providers’ financial arrangements and may require some to refinance. The transition process must mitigate the impact of this to avoid unintended consequences such as a reluctance to invest in new residential care accommodation.

***Draft Recommendation 6.5***

The NPAC Network has some reservations about the concept of competitive tendering for provision of accommodation to supported residents. We note the Commission suggests this be considered in 5 years and understand the intent is that this would apply only in regions or for special needs groups where there are gaps in service provision. Investment in accommodation for financially disadvantaged people is a long-term (25+ years) commitment for organisations like ours. We are not sure it is appropriate or practical to make this an area where competitive tendering is utilised, especially for existing services.

***Draft Recommendation 6.7***

It is unclear why the Commission recommended that a two-bed room with ensuite should be the minimum standard of accommodation for supported residents. While this may make some sense in current high care facilities, the NPAC Network notes the standard for low care facilities is currently single-bed rooms. In many cases, the needs of residents require single bedroom accommodation, such as where a person with dementia has challenging behaviour which would disturb other residents, or where a resident is in a palliative phase. Possible alternatives would include funding supported residents at the current certification level of 1.5 residents per bedroom, or funding single rooms but shared ensuites. We support the concept that accommodation payments from the government should recognise regional variations in costs.

***Draft Recommendation 6.9***

It is unclear whether the family home is to be included in the revised assets test for accommodation payments when a spouse or other family member is to remain in the home. Under the current system, the home is excluded in such a case.

***Draft Recommendation 8.1***

While the concept of a single aged care assessment being applied across all settings is laudable, practically there are significant differences between provision of care in community and residential care settings which would be complex to capture in a single tool.

The report is somewhat unclear on the scope of the Australian Seniors Gateway Agency's role in reassessments of older people once they are in the aged care system. We understand the Commission anticipates that many reassessments would be conducted by service providers under authorisation from the Agency. The Agency's role is also to incorporate at least initial care coordination, but the report acknowledges the role of non-government organisations such as Community Options providers in care coordination and case management. The final report would benefit from clearer information on the extent of the Gateway Agency's role in these areas, while retaining and strengthening the capacity of non-government community care and residential care providers to undertake reassessments and care coordination.

There are also questions about how the Australian Seniors Gateway Agency would access specialist assessment skills, such as geriatricians and psychogeriatricians. We understand the Commission envisages that the Agency will employ some staff directly in all regions but may sub-contract with other organisations. Historically Aged Care Assessment Teams have struggled in some regions (especially rural and remote areas). The Gateway Agency may need to develop partnership arrangements with State / Territory Health Departments to address this. The Gateway Agency's links with Medicare Locals also need clarification.

***Draft Recommendation 8.3***

The NPAC Network supports the concept of extending health system casemix payments to aged care providers for palliative care. There is a case to extend such a model to sub-acute restorative care and transition care.

***Draft Recommendation 11.1***

We support the concept of developing a strong network of Carer Support Centres, but note that in chapter 8 the Draft Inquiry Report suggested Carelink and Carer Respite Centres would be absorbed into the Australian Seniors Gateway Agency. We believe there is a legitimate role for non-government providers in delivering carer support services and request clarification of this section of the report.

***Draft Recommendation 12.4***

While the NPAC Network agrees that the Australian Aged Care Regulatory Commission should have a broad range of penalties open to it to address non-compliance, we have significant reservations about it having criminal penalties open to it. Any criminal penalties should require investigation by Federal or State police forces and prosecutions should be taken under existing criminal provisions in Corporations legislation or Crimes Acts (in cases like elder abuse).

***Draft Recommendation 12.8***

We note that the reference in the Draft Inquiry Report (p.422) to the NPAC Network's view on missing persons reporting under the *Aged Care Act* is somewhat misleading. We are stated as opposing repeal of this provision: in fact we said we supported "Modification or removal of requirements for compulsory reporting of assaults and missing residents in residential aged care, as these seem to be of little benefit to older people and are burdensome on providers." Presbyterian Aged Care NSW & ACT participated in the Aged & Community Services (ACS) NSW & ACT Think Tank on this issue and supports its

conclusions.<sup>3</sup> To be clear, while we support the draft recommendation to extend the timeframe for reporting missing persons, we would prefer to see the provision repealed entirely. Also, if reports are to be made under the Draft Inquiry Report's new regulatory structures, there is a strong case that they should be made to the Australian Aged Care Regulatory Commission rather than the Department of Health & Ageing.

#### ***Draft Recommendation 14.1***

We support in general terms the proposed reform timetable. We note that involvement of industry, professional and consumer groups is essential and are somewhat concerned by the Commission's approach of recommending the Aged Care Implementation Taskforce is purely an internal government body.

We support the recommendation to provide a staged implementation that gives time for aged care providers to adjust to new financial imperatives (such as changes to the values of bed licences) and service models. We would support accelerating into stage 1 of the reform timetable moves to increase flexibility for transfer of aged care places between residential and community care and boosting the level of community care provision. We repeat the suggestion from our initial submission that the transition process should include a fund to support industry restructuring, ideally administered via the industry peak bodies. We note this is even more important if, as recommended by the Commission, all existing residents and clients are to be grandfathered on their existing (inadequate) payment levels.

## **2. Feedback Areas**

There are some specific areas on which the Commission sought feedback.

### ***p.176 – Accommodation subsidies for new and old facilities***

The Draft Inquiry Report suggests there may be a case for different accommodation subsidies for new and old buildings – higher for new and lower for old. However, this seems counter-intuitive as costs usually rise in older buildings and, while debt may have been repaid, the provider is also needing to prepare for potential refurbishment or replacement of the facility. The NPAC Network suggests subsidies should not alter based on the age of the building.

### ***p.191 – Achieving consistency in co-contributions and a proportionate approach***

We agree with the concept put forward in the Draft Inquiry Report that we should be aiming for consistency in co-contributions. We noted in our initial submission the fact that older people face different costs in their own homes, such as transport and rates, from those while living in residential care. The NPAC Network supports the concept of a service level threshold below which a simpler test (such as pension status) would apply.

### ***p.224 – Compulsory insurance scheme***

In our initial submission, we indicated there may be potential to introduce a social insurance scheme (similar to, or extended on Medicare) to cover some of the government costs. Similarly, there could be methods to harness long-term care insurance or contributions from superannuation to cover some of the personal costs, both for care and accommodation. We are not in a position to advise on the details of any such scheme.

### ***p.236 – Assessment system***

As indicated above, it is our view that while the concept of a single aged care assessment being applied across all settings is laudable, practically there are significant differences between provision of care in community and residential care settings which

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<sup>3</sup> Aged & Community Services Association of NSW & ACT (2010) *Police Checks and Compulsory Reporting*, Position Paper.

would be complex to capture in a single tool. The extent of the Gateway Agency's role in reassessments and care coordination / case management needs clarification. We recommend that the model developed by Applied Aged Care Solutions and detailed in Appendix B should be subject to a thorough development and consultation process before it is implemented.

**p.289 – Inclusion of Veterans in Gateway**

We believe there is merit to including access to Veterans Home Care and other Veterans aged care programs in the Gateway Agency.

**p.315 – Home modification standards**

We support development of building and home modification standards that are relevant to older people, not just younger people with physical disabilities.

**p.423 – Elder abuse compulsory reporting**

We note our initial submission supported "Modification or removal of requirements for compulsory reporting of assaults and missing residents in residential aged care, as these seem to be of little benefit to older people and are burdensome on providers." We support the contention of the ACS NSW & ACT Think Tank that there are significant problems with the compulsory reporting regime.<sup>4</sup> The National PAC Network believes a review of compulsory reporting of assaults is essential and overdue, and is of the view that consideration should be given to complete repeal of the legislation.

Paul Sadler, CEO of Presbyterian Aged Care NSW & ACT, undertook a survey of Aged & Community Services Australia members in 2009 to establish their views of the first 18 months operation of compulsory reporting of assaults.<sup>5</sup> A summary of the findings of that survey is attached as an Appendix. In the experience of NPAC members, its findings and suggestions for amendment or repeal of the compulsory reporting regime remain relevant.

**Conclusion**

The National Presbyterian Aged Care Network strongly supports the Draft Inquiry Report's call for a fundamental revamp of Australia's aged care system, including moves to unbundle accommodation and care payments, reduce over-regulation through relaxation of planning and allocation restrictions, and improve funding of the system.

We look forward to continuing engagement with the Productivity Commission as it undertakes this important inquiry and look forward to addressing our submission at the formal hearing in Sydney on 28 March 2011.

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<sup>4</sup> *Ibid.*

<sup>5</sup> P Sadler (2009) *Elder Abuse: one report too many. Results of ACSA online survey on compulsory reporting of assaults*, <http://www.agedcare.org.au/PUBLICATIONS-&-RESOURCES/General-pdfs-images/Elder%20Abuse%20Reporting%20survey%20report%20Oct09%20edits.pdf> (accessed 2 July 2010).

## APPENDIX

### **Elder Abuse: One Report Too Many? Paul Sadler, CEO, Presbyterian Aged Care NSW & ACT September 2009**

Among the string of Federal Government regulatory initiatives in residential aged care in recent years was the introduction of compulsory reporting of assaults of residents from July 2007. In 2006, ABC Lateline revealed an account of sexual assault of residents in a Victorian aged care home, mixed in with dubious allegations of poor practice from disaffected staff at another facility.

As the then Minister for Ageing said, compulsory reporting “was one element of the Howard Government’s \$100 million response to the small number of serious instances of abuse of the elderly which came to light early in 2006.” (*Senator Santoro, media release 5 January 2007*).

#### **Compulsory reporting for residential care**

Under changes to the *Aged Care Act*, physical or sexual assaults on residents by staff, residents or others were to be reported to the new Office of Aged Care Quality & Compliance established in the Australian Department of Health & Ageing (DoHA) to oversee the new Complaints Investigation Scheme. Originally this office was funded to the tune of \$90m for an additional 100 staff. As of June 2009, there were 156 staff working on the Complaints Investigation Scheme.

The new legislation required reporting of allegations or suspicions of unlawful sexual contact with a resident or unreasonable use of force with a resident to the police and DoHA within 24 hours. There is a discretion not to report alleged assaults perpetrated by residents with an assessed cognitive or mental impairment. The police investigate any criminal action, while DoHA investigates provider compliance with the *Aged Care Act*.

Providers have to require staff members to report suspicions or allegations of assaults, have an internal policy on abuse, provide training to staff and maintain records of assaults, resident assessments and behaviour plans.

Whistleblower protection provisions have been introduced for staff members or approved providers disclosing an assault in good faith. They protect a discloser from criminal or civil liability (unless they are the perpetrator), defamation, termination of employment or victimisation.

#### **Mandatory reporting internationally**

Mandatory reporting is not a common policy response to the serious issue of abuse of older people. It has only been widely adopted for elder abuse in North America (44 US States and 2 Canadian Provinces). There reports are made to special Adult Protective Services or Long Term Care Ombudsmen. Less than half of reported cases are substantiated.

Essentially it is a child protection model applied to elder abuse. In recent times, major problems with have emerged with this approach in child protection. For example, the NSW Wood Special Commission found “Too many reports are being made to DoCS [Department

of Community Services] which do not warrant the exercise of its considerable statutory powers.” The system is overloaded with false or less critical reports, so only 13% of reported cases received home visits.

Prior to the Howard Government’s moves, mandatory reporting had been rejected by Australian State and Federal government committees looking at elder abuse. A good summary of the arguments for and against mandatory reporting was made by Jan Mason (1997).

#### **MANDATORY REPORTING**

##### **Arguments for**

- Ensures cases come to public attention
- Puts issue on social agenda / may attract funding
- Provides clear procedures

##### **Arguments against**

- Removes autonomy of older people
- Most cases already known to service providers
- Most reports from non-mandated sources
- Problem is not finding cases, but doing something about them
- Administratively costly and bureaucratic

Mason J (1997) *Mandatory Reporting of Abuse of Older People*. Discussion Paper 4, NSW Advisory Committee on Abuse of Older People

Based on a review of the literature, it is possible to identify some success criteria to evaluate if a mandatory reporting system is to be adopted. These are that the system:

1. Accurately identifies most serious cases
2. Doesn’t result in reporting of non-cases
3. Respects the rights of older people and follows procedural fairness for all parties
4. Improves chances of obtaining criminal convictions
5. Assists in prevention of abuse.

#### **ACSA Survey**

Aged & Community Services Australia conducted a national online survey on elder abuse reporting during August 2009. Information was sought on cases in the two years from July 2007 to June 2009.

There were 243 responses from all states and the ACT, but with a majority (57%) coming from NSW (largely due to different promotion of the survey by the State Association via direct email to members). Other respondent characteristics:

- 55% were providers with only 1 aged care home
- 51% were operating in regional areas; 37% in large metropolitan areas; 30% in regional cities; 5% in remote areas
- Three quarters of responses were completed by facility management.

242 reports were made about reportable assaults (average of 1.65 per respondent). In total there were 682 reportable assaults:

- 87% physical; 5% sexual; 8% both
- Alleged perpetrator 75% resident; 20% staff; 5% visitor
- 23 alleged cases involved more than 1 victim.



The highest number of reports came from allegations from a staff member, followed by identification in resident records or incident reports. It was less common for reports to come from alleged victims or abusers, and rare for reports to come from other residents or visiting health professionals.

### **Analysis against the success criteria**

So how does the new Australian system measure up against the success criteria?

#### ***Success Criterion 1 - Accurately identifies most serious cases***

- Initial concern was to respond to serious assaults by staff.

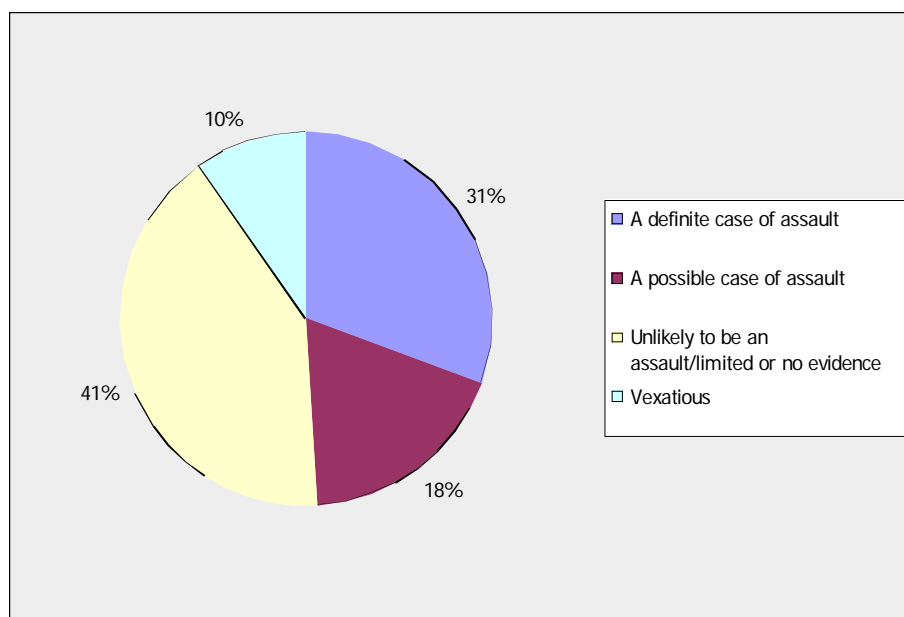
##### *Result*

- Three quarters of reportable assaults are resident-to-resident incidents. Behaviour management plans are the most common action taken by a provider (in nearly 50% of cases), suggesting the reporting system is primarily capturing dementia and mental health problems.

#### ***Success Criterion 2 - Doesn't result in reporting of non-cases***

##### *Result*

- Providers believe half of “reportable assaults” unlikely to actually be assaults or are vexatious.



#### ***Success Criterion 3 - Respects the rights of older people and follows procedural fairness for all parties***

##### *Result*

- Older people have been denied right to say “No” to police or DoHA involvement.
- Three quarters of breaches issued to providers were for missing the arbitrary 24 hour reporting deadline.
- No similar timeframe is applied to DoHA or police.
- A common outcome is suspension (40% of cases), dismissal (18%) or resignation (10%) of a staff member.

- Providers indicate major concerns with procedural fairness and balancing conflicting responsibilities (such as maintaining whistleblower protection and rights under industrial relations legislation to know the content of complaints against a staff member).

**Success Criterion 4 - Improves chances of obtaining criminal convictions**

*Result*

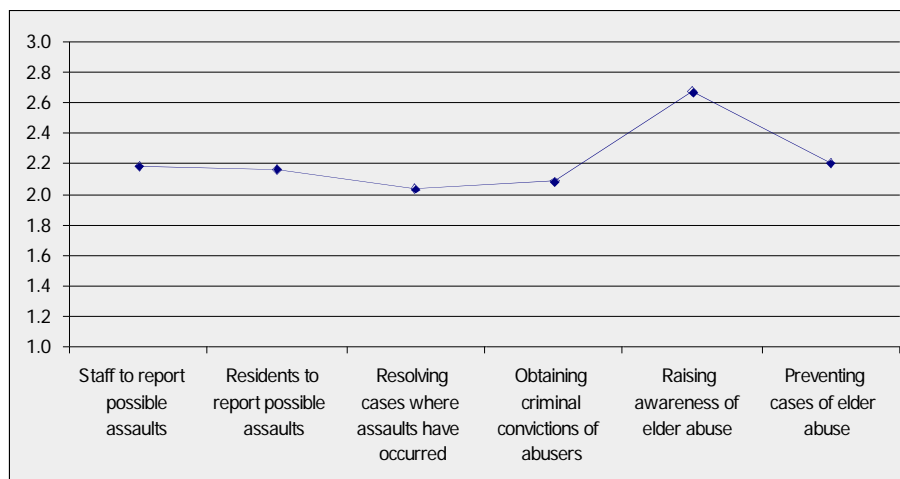
- Only 1 in 100 reports result in charges being laid (only 7 charges laid by police - 1% of reportable assaults); only 1 in 200 in criminal convictions (3 court convictions - 0.4% of reportable assaults).
- The reporting system is six times more likely to result in legal action (formal breaches under the Aged Care Act) against providers than the alleged abuser.

**Success Criterion 5 - Assists in prevention of abuse**

*Result*

- Providers confirm success in raising awareness of abuse and in implementing improvements to procedures for responding to abuse.
- However, a poor experience of fairness and effectiveness of investigation processes is discouraging reporting.

*Has legislation made it easier or more difficult?*



1 = made more difficult; 2 = no change; 3 = made easier

**Another success criterion?**

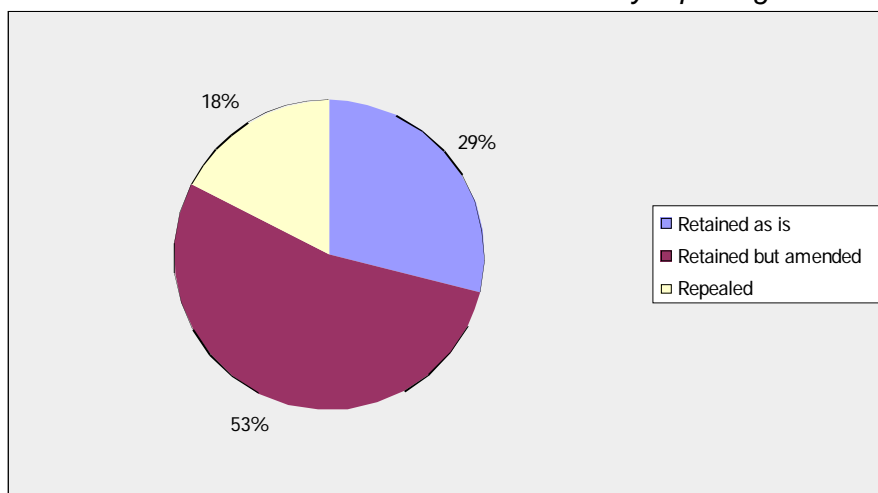
Of course it is possible the legislation actually had another purpose altogether – protecting the government of the day and the Department of Health & Ageing from bad media headlines. In this (surely cynical) view, the requirement to report to the Department within 24 hours makes sense, as it hopefully alerts the government to a possible bad news story before the media gets wind of it.

But is elder abuse really such a big media issue? In this survey, only four cases resulted in reports in media (0.6% of reportable assaults) and in two of them the aged care home was not identified. In only one case did a relative go to the media before reporting to facility management or the Department.

### Is there a better way?

When asked what they thought should happen to the mandatory reporting legislation, more than 7 in 10 respondents said it should be repealed outright or amended.

*What should the future be for mandatory reporting?*



Their conclusion reflects the failure of the new system against all but one of the success criteria for a mandatory reporting system. As has been found internationally, mandatory reporting will increase awareness of abuse and encourage better policies and procedures by service providers. But this comes at a cost of half of all reported cases being unsubstantiated, expensive additional bureaucracy and limited evidence of improvement in obtaining criminal convictions where real assaults have occurred.

It is notable that the international elder abuse mandatory reporting systems do differ in one important aspect from the Australian system – reports go to entities which actually investigate the case of abuse. In Australia, reports go to the police to investigate the incident of abuse and to DoHA to investigate the aged care provider.

The Australian reporting system could be amended to address some of the concerns highlighted by the survey. Options would include:

- Removing obligation to report resident-to-resident cases.
- Extending timeframe to report incidents to DoHA, so vexatious or unsubstantiated cases are excluded by preliminary investigations by police and approved provider.
- Requiring DoHA and the police to meet timeframe benchmarks for investigations.
- Resolving conflict between whistleblower protection and industrial relations due process.
- Establishing an additional aged care standard on protection of older residents from abuse and including review of systems to achieve this in the accreditation process, eliminating need for DoHA involvement entirely.

But at the end of the day, it remains questionable whether the new system has achieved any additional protection for older people. A proper review of the system would examine the perspectives of older people and their representatives, aged care staff and their unions, the police services and the aged care regulatory agencies alongside the perspectives of aged care providers reported here.

There is a better way to respond to elder abuse. Some of the steps identified by survey respondents and the international literature include:

- Commissioning research on the scope and nature of elder abuse in Australia.

- Funding training of aged care staff and police.
- Funding police checks and exploring proper staff vetting procedures.
- Making the Complaints Investigation Scheme fair.
- Recognising staff burnout is a major risk factor in residential care and therefore funding aged care adequately.
- Responding to abuse in domestic settings, where more older people are at risk.

### **Conclusion**

Elder abuse is real, and needs to be taken seriously. Sadly, it appears the compulsory reporting system was an over-reaction due to a media-fuelled moral panic. As one respondent said, “Usual sledgehammer to crack a nut!”

The compulsory reporting legislation **must** be repealed or significantly amended. Continuing the current system would fail our obligation to protect older people effectively and maintain yet one more unproductive over-regulation of aged care providers.