

Submission by the New South Wales Nurses and
Midwives' Association

Inquiry into elder abuse in New South Wales

November 2015

The New South Wales Nurses and Midwives' Association (NSWNMA) is the registered union for all nurses and midwives in New South Wales. The membership of the NSWNMA comprises all those who perform nursing and midwifery work. This includes Assistants in Nursing (who are unregulated), Enrolled Nurses, Registered Nurses and Midwives at all levels including management and education.

The NSWNMA has approximately 62,500 members and is affiliated to Unions NSW and the Australian Council of Trade Unions (ACTU). Eligible members of the NSWNMA are also deemed to be members of the New South Wales Branch of the Australian Nursing and Midwifery Federation.

Our role is to protect and advance the interests of nurses and midwives and the nursing and midwifery professions. We are also committed to improving standards of patient care and the quality of services in health and aged care services.

We welcome the opportunity to provide a response to this important inquiry and the opportunity for wider discussion that this provides.

We currently have over 10,000 members who work in aged care. We consult with them in matters that are specific to their practice. We wish to acknowledge the contributions made by our members in preparing our comments.

This response is authorised by the elected officers of the New South Wales Nurses and Midwives' Association

Contact details

NSW Nurses and Midwives' Association
50 O'Dea Avenue
Waterloo, NSW 2017

(02) 8595 1234 (METRO)
1300 367 962 (RURAL)
gensec@nswnma.asn.au

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It is projected that the number of Australians aged 65 years and over will more than double by 2054-55; with 1 in 1000 people projected to be over 100 years.¹ However, living longer does not always equate to living better and longevity can also increase chronic illness, fragility and vulnerability to abuse.² Elder abuse is a global public health problem which affects all levels of society³ and figures suggest that as many as one in ten older people have experienced elder abuse.⁴

A recent global review of research studies showed that elder abuse is common in community-dwelling older adults and particularly prevalent among minority ethnic groups³. The review highlighted lack of consistent definition, poor knowledge about the issue and a lack of preventative strategies as key areas for improvement.

In Australia, the health sector has acknowledged elder abuse as a public health issue for some time.² However there is a lack of research about elder abuse⁵ and where statistics have been examined these indicate that only a minority of cases are being detected and reported.^{2,5,6,7} It is a serious, complex and increasing problem due to a failure to recognise abuse, under reporting and lack of a comprehensive and consistent approach at both Federal and State level.

To increase the body of knowledge about elder abuse and establish the depth of the issue for our members we conducted a short survey via SurveyMonkey® in preparation for our submission. We received 280 replies mostly from residential aged care workers and have summarised the relevant data within this submission, including short statements from members highlighting specific issues.

We recognise that the majority of our aged care members work in residential aged care which is currently exempted from NSW elder abuse protocols. However, we consider that any attempts to improve elder abuse strategies must account for issues that span both Federal and State level to be truly effective.

We would welcome the opportunity to engage further regarding this important issue.

Brett Holmes
General Secretary

Summary of Terms of Reference

1. The prevalence of abuse (including but not limited to financial abuse, physical abuse, sexual abuse, psychological abuse and neglect) experienced by persons aged 50 years or older in New South Wales
2. The most common forms of abuse experienced by older persons and the most common relationships or settings in which abuse occurs
3. The types of government and/or community support services sought by, or on behalf of, victims of elder abuse and the nature of service received from those agencies and organisations
4. The adequacy of the powers of the NSW Police Force to respond to allegations of elder abuse.
5. Identifying any constraints to elder abuse being reported and best practice strategies to address such constraints
6. Identifying any strength based initiatives which empower older persons to better protect themselves from risks of abuse as they age
7. The effectiveness of NSW laws, policies, services and strategies, including the 2014 Interagency Policy *Preventing and Responding to Abuse of Older People*, in safeguarding older persons from abuse
8. The possible development of long-term systems and proactive measures to respond to the increasing numbers of older persons, including consideration of cultural diversity among older persons, so as to prevent abuse
9. The consideration of new proposals or initiatives which may enhance existing strategies for safeguarding older persons who may be vulnerable to abuse, and
10. Any other related matter.

Summary of Recommendations

1. The NSW Government should:
 - retain the requirement in section 104(1)(a) of the *Public Health Act 2010* for registered nurses to be on duty in nursing homes at all times, and
 - amend the definition of 'nursing home' under the Act to read:
nursing home means a facility at which residential care (within the meaning of the *Aged Care Act 1997* of the Commonwealth) is provided, being:
 - (a) a facility at which that care is provided in relation to an allocated place (within the meaning of that Act) to a care recipient whose classification level:
 - (i) includes the following domain categories or combinations of domain categories:
 - (1) a high Activities of Daily Living (ADL) domain category; or
 - (2) a high Complex Health Care (CHC) domain category; or
 - (3) a domain category of medium or high in at least two of the three domain categories; or
 - (4) a high behaviour domain category and either an ADL domain category other than nil or a CHC domain category other than nil; or
 - (ii) is a high level resident respite care.
 - (b) a facility that belongs to a class of facilities prescribed by the regulations.
2. The NSW Government, through the Council of Australian Governments should urge the Commonwealth Government to establish minimum staffing ratios in aged care facilities.
3. NSW Legislation should be extended to include a requirement for a minimum standard of qualification for Assistants in Nursing, regardless of setting. This should be linked to the Australian Qualifications Framework and include a requirement for a recognised level of training to at least certificate III level within specified timescales upon induction to the aged care workplace.

4. The NSW Government, through the Council of Australian Governments should urge the Commonwealth Government to establish a system that requires aged care providers both in residential and community settings to perform checks on staff (including volunteers) prior to appointment, similar to the Service Check Register which is in operation within the NSW Public Health system.
5. The NSW Government, through the Council of Australian Governments should urge the Commonwealth Government to monitor the effectiveness of the Australian Aged Care Quality Agency in relation to its obligations to ensure accredited aged care providers manage incidents of abuse, particularly those involving people with cognitive impairment.
6. The NSW Government, through the Council of Australian Governments should urge the Commonwealth Government to review the exemption to report incidents of abuse involving cognitively impaired residents and to consider whether a failure to safeguard residents and staff through inaction in this regard constitutes a criminal offence.
7. The NSW Government, through the Council of Australian Governments should urge the Commonwealth Government to require all staff employed in aged care, volunteers and peripatetic services staff to have training on elder abuse and mental capacity as part of their induction and receive annual updates thereafter. And to include adult/elder abuse as part of a mandatory curriculum within healthcare education.
8. The NSW Government, through the Council of Australian Governments should urge the Commonwealth Government to create a single comprehensive adult/elder abuse strategy which includes (but is not restricted to): An extended definition of abuse; risk factors that might precipitate abusive actions; captures the full range of abusive practices that might be encountered by older people; provides clear actions for staff and protections against reprisals for both staff and those disclosing abuse.

9. A community wide educational framework should be developed and implemented that provides a clear definition of abuse and which raises awareness of the risks of abuse associated with ageism and stigma of reporting abuse as a barrier to disclosure. And which explicitly outlines the potential for power imbalance between care giver and care recipient.
10. Any Government and/or community support services should consider the protection of victims and reporters to be a key issue when identifying any improvement strategies.
11. The NSW Government should explore the applicability in aged care of strength-based initiatives in operation which seek to empower people who have been affected by domestic violence.
12. The development of long-term systems and proactive measures to respond to the increasing numbers of older persons should reflect a contemporary Australian society, be culturally appropriate and culturally responsive, and should seek to recognise and address gender specific issues.
13. The NSW Government, through the Council of Australian Governments should urge the Commonwealth Government to commission research in order to establish the nature and extent of elder abuse in aged care.
14. The NSW Government should commission further research to: Explore models in operation within other countries that seek to capture risk factors for elder abuse and which seek to develop opportunistic assessment tools to detect abuse; identify prevention and intervention strategies which will inform any initiatives developed by agencies to empower older people to protect themselves against the risk of abuse as they age.
15. The NSW Government, through the Council of Australian Governments should urge the Commonwealth Government to require aged care facilities to make information about the services they provide, including staffing and any additional charges for goods, publicly available.

The prevalence of abuse (including but not limited to financial abuse, physical abuse, sexual abuse, psychological abuse and neglect) experienced by persons aged 50 years or older in New South Wales

Australian research studies show that financial abuse is the most prevalent form of reported or suspected elder abuse and that this is most commonly perpetrated by the persons' immediate family.^{8,9,10,11} With an increasing emphasis on community based care services which are predominantly provided by unregistered care workers such as Assistants in Nursing (AiN's), community networks and volunteers there is a need for a community wide approach to any preventative strategies to reduce the potential for abuse.

Although most of the AiN's who work in aged care have qualifications through the Australian Qualifications Framework to at least certificate III level In NSW, there are no specific requirements in relation to minimum standards of qualification on entry to the workforce. Without adequate training and the oversight of Registered Nurses there is a risk that this important section of the workforce may not have the skills to identify financial abuse within the community setting.

The NSWNMA does not monitor the prevalence of abuse as an organisation. However, Around 67% of our surveyed members considered elder abuse to be a significant issue in aged care within NSW. This figure is unsurprising since respondents told us they had witnessed some form of physical or verbal abuse at least monthly; and up to 8% witnessing this every shift.

It should be acknowledged that our survey captured a limited number of aged care workers and their focus was around residential aged care. Therefore figures relating to incidence of abuse in community settings cannot be assumed in relation to these. However, given that the latest figures from the Australian Institute of Health and Welfare showed that NSW has the highest number of residential aged care facilities (RACF's) (884) across all States accommodating 59, 252 people¹² it is reasonable to assume that elder abuse in NSW RACF's could affect a significant number of our older population.

“I worry about elderly abuse at night rather than the day shifts”

Assistant in Nursing – Aged Care

Recommendations

NSW Legislation should be extended to include a requirement for a minimum standard of qualification for Assistants in Nursing, regardless of setting.

Minimum standards of qualification for Assistants in Nursing should be linked to the Australian Qualifications Framework and include a requirement for a recognised level of training to at least certificate III level within specified timescales upon induction to the aged care workplace.

The NSW Government, through the Council of Australian Governments should urge the Commonwealth Government to commission research in order to establish the nature and extent of elder abuse in aged care.

The most common forms of abuse experienced by older persons and the most common relationships or settings in which abuse occurs

Our survey showed that the most common form of physical and verbal abuse our members see in RACF's occurs between residents, with almost 46% saying they had witnessed this. 76% of respondents considered insufficient numbers of staff increased the risk of abuse in their workplace. They suggest that increasing the number of staff on each shift would improve their ability to provide adequate supervision of residents and to enable them to diffuse potentially aggressive situations.

It is acknowledged that workload burden can contribute to elder abuse and that overwhelmed caregivers are one of the main reasons that abuse occurs.^{3,13} The provision of additional staffing is suggested as one way that abuse can be prevented, particularly where it negates the need for physical or chemical restraint.¹⁴ Our communities allies and members tell us that it is not uncommon to find residents over-sedated, and this can be as a result of poorly managed behaviour and staff shortages.

“With a degree of dementia added in, there is an even greater risk of psychological abuse, as people who can still understand and relate to others, can feel like they are being deliberately kept away from family. Often a dementia resident will become agitated because they want to get home to their parent, spouse or children. They don’t understand that they are old, they don’t understand why they are being kept away, why the staff are being so cruel – and the staffing levels are too low, staff are too busy, to be able to spend time with them, reassuring, diverting and finding a way around the anxiety. So, all too often, the resident is given sedation”.

Registered Nurse – Aged Care

Evidence suggests that minimum staffing ratios in residential aged care facilities would significantly reduce the incidence of resident to resident elder abuse, which we consider to be unreported due to a caveat within prescribed compulsory reporting procedures which excludes the requirement to report assaults where a person has a cognitive impairment.¹⁵

“Staff take shortcuts and skip care duties to get duties completed within a certain timeframe. There are not enough staff to deliver quality care. In my facility I fear it’s only a matter of time before a resident dies from staff taking short cuts”.

Assistant in Nursing – Aged Care

“Many facilities have bare minimum staff rostered at any given time. When people are on holidays, or off sick, staff are all too often not replaced”.

Registered Nurse – Aged Care

“With the focus on tasks, and getting residents up and dressed for the day in the morning, and changed and to bed in the afternoon, residents are treated like objects in a production line. They have to wait their turn for attention. This leads to psychological abuse with the resident feeling worthless and useless. It also leads to an increase in incontinence, a decrease in ability to undertake ADLs and mobility- signs of neglect”.

Registered Nurse – Aged Care

Approximately 48% of members identified that not having the right skill mix within the staff group was also a risk factor for abuse, suggesting that Registered Nurses with specialist skills in behaviour management have an important role to play in reducing the incidence of elder abuse in RACF’s. Indeed, it could also be argued that failure to provide a registered nurse on duty at all times for a person who is assessed and funded as having high care needs could be classed as neglect, due to failure to provide necessary care.¹⁶

We believe that retaining the section of the *NSW Public Health Act 2010 (NSW)* which requires RACF's to provide a Registered Nurse on site at all times where people are assessed and funded as having a high level of care needs (including dementia type illnesses) would significantly reduce the incidence of elder abuse.

“I believe there is a great deal of elder abuse going on in residential aged care facilities. Understaffing and poor skill mix would be the biggest causes of the abuse – leading to forms of neglect and psychological/social abuse.”

Registered Nurse – Aged Care

Research suggests that financial abuse is the most prevalent form of reported or suspected elder abuse in Australia.^{8,9,10,11} Financial abuse is also becoming an increasing issue for people living in residential aged care, but is not well reported. Indeed, contrary to expectations, participants failed to identify care workers or residential aged care providers as potential financial abusers in recent research undertaken by Alzheimer's Australia NSW¹⁷ despite the obvious vulnerability of older people in RACF's. The misuse or abuse of power and control are rarely mentioned in definitions and discussions of abuse of older people, which is of major concern²² since there is clearly the potential for power imbalance between care giver and care recipient.

“...Some residents are at a disadvantage because they have got no families so they are victims of theft or abuse. Residents rely and trust staff yet some staff take advantage and steal money and belongings this is not easy to be identified as most of the residents are cognitively impaired and do not remember their things”

Registered Nurse – Aged Care

Our members also tell us there is great potential for people living in RACF's to be charged for goods or services that should be provided free. We hear from members and our community allies of circumstances where approved aged care providers are rationing continence aids or charging residents for extra equipment or services that are either not provided, or which the approved provider is required to provide as a condition of their accreditation¹⁸ all factors which could constitute financial abuse.¹⁶ An example of this was highlighted in a recent NSW Inquiry into Registered Nurses in NSW nursing homes. The Inquiry found that people paying high care fees in RACF's were not always provided with on-site access to Registered Nurses at all times. The Inquiry recommended that aged care providers be required to publicise their staffing arrangements to ensure transparency and so people purchasing aged care services are clear about whether the charges include the provision of Registered Nurses at all times.¹⁹

“(In our facility) residents were being charged for things that should be provided by the facility This makes me wonder about other facilities and other cases of financial abuse”.

Registered Nurse – Aged Care

“There is a huge financial abuse potential for embezzlement by smaller concerns and mis-spending and profiting by large ones. What safe-guards are there on how the money coming into an aged care facility is spent? Very poor quality care can pass the current accreditation standards”.

Registered Nurse – Aged Care

The Aged Care Act (1997) clearly puts the responsibility for decisions about financial matters to remain with the person receiving care, and places an expectation on staff to support this.²⁰ However, there are a rising number of people living with dementia type illnesses in residential aged care facilities and it is recognised that failing cognitive capacity increases vulnerability to financial abuse.¹⁷ Evidence suggests that aged care staff struggle with making decisions about whether or not a person

has the mental capacity to be able to make informed financial decisions due to a lack of guidance in this area.²¹ Care workers are also the most likely people to identify where financial abuse has potentially occurred.¹⁷ We suggest that this could be addressed by: Mandating a minimum level of qualification for AiN's; better monitoring of training in elder abuse in residential aged care facilities and the development of Federal legislation and associated guidance to inform this area.

Recommendations

The NSW Government, through the Council of Australian Governments should urge the Commonwealth Government to establish minimum staffing ratios in aged care facilities.

The NSW Government should:

- retain the requirement in section 104(1)(a) of the *Public Health Act 2010* for registered nurses to be on duty in nursing homes at all times, and
- amend the definition of 'nursing home' under the Act to read:
nursing home means a facility at which residential care (within the meaning of the *Aged Care Act 1997* of the Commonwealth) is provided, being:
 - (a) a facility at which that care is provided in relation to an allocated place (within the meaning of that Act) to a care recipient whose classification level:
 - (i) includes the following domain categories or combinations of domain categories:
 - (1) a high Activities of Daily Living (ADL) domain category; or
 - (2) a high Complex Health Care (CHC) domain category; or
 - (3) a domain category of medium or high in at least two of the three domain categories; or
 - (4) a high behaviour domain category and either an ADL domain category other than nil or a CHC domain category other than nil; or
 - (ii) is a high level resident respite care.
 - (b) a facility that belongs to a class of facilities prescribed by the regulations.

The NSW Government, through the Council of Australian Governments should urge the Commonwealth Government to require aged care facilities to make information about the services they provide, including staffing and any additional charges for goods publicly available.

The NSW Government, through the Council of Australian Governments should urge the Commonwealth Government to require all staff employed in aged care,

volunteers and peripatetic services staff to have training on elder abuse and mental capacity as part of their induction and receive annual updates thereafter.

Any definitions of abuse that are designed to inform aged care staff and volunteers should explicitly outline the potential for power imbalance between care giver and care recipient

The types of government and/or community support services sought by, or on behalf of, victims of elder abuse and the nature of service received from those agencies and organisations

We are unable to provide informed comment in relation to this term of reference as the NSWNMA does not provide direct care services. However almost 62% of our survey respondents told us that fear of repercussions increased the risk of abuse within their workplace. Of concern was that almost half of the respondents considered that older people themselves also feared repercussions within their RACF if they reported abuse.

Federal legislation requires approved aged care providers to have internal systems in place to ensure staff are trained and familiar with reporting procedures and also to create a culture which eliminates fear of reprisal for the reporter.²⁰ Whilst we know that many providers create a culture of openness, with almost 80% of respondents stating their establishment managed incidents well. A small number of our members told us this is not the reality of day to day operations in their workplace.

“(named provider) educates Staff continually. If a Resident expressed fear of a Staff Member it would be Reported.”

Registered Nurse – Aged Care

“I can only speak positively about the Care Staff & management of the facility I presently work.”

Registered Nurse – Aged Care

“I have witnessed elder abuse first hand and have reported it only to have myself victimised by management and the whole incident covered up which left both myself disillusioned and the resident fearful”.

Assistant in Nursing – Aged Care

“I have reported abuse in the past week; it will be interesting to see if I still have a job!”

Registered Nurse – Aged Care

It is recognised that fear of alienation, fear of reprisal, stigma and shame and poor staff training are main barriers to reporting elder abuse.²³ A small scale study of community health and social care practitioners in Tasmania also showed that physical intimidation of workers by clients and family members was prevalent in the sample group, but none had reported this.²⁴ Therefore Government and/or community support services should consider the protection of victims and reporters to be a key issue when identifying any improvement strategies.

Recommendations

Any Government and/or community support services should consider the protection of victims and reporters to be a key issue when identifying any improvement strategies.

The adequacy of the powers of the NSW Police Force to respond to allegations of elder abuse

The NSWNMA considers that the NSW Police Force would have greater powers to intervene in cases of elder abuse within RACF's if the Legislative Framework did not differentiate between RACF's and the general community in terms of how elder abuse cases should be responded to. Also that the definition of what constitutes a criminal and reportable offence within any legislation and guidelines for RACF's be extended to capture the full range of abusive practices that might be encountered by older people.

The underpinning legislation^{18,25} that approved residential aged care providers are expected to comply with relies on use of the term 'reportable assault'. The term assault is too narrow; it suggests that other forms of abuse such as psychological abuse and financial abuse may be exempt from compulsory reporting requirements.¹⁵ It also fails to capture institutional abuse or the effects of neglect.

The compulsory reporting guidelines¹⁵ that followed amendments to the Aged Care Act in 2007 offer little to address this, and continue to promote the use of the term reportable assault which is a term typically associated with elder abuse crimes.² Yet we know that the scope of elder abuse is far reaching and often hidden. It is suggested that ambiguity around what constituted abuse and lack of direction in how to pursue this are contributory to failing to deal effectively with cases of abuse²⁴ and there is a need to strengthen elder abuse policies.

“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.”

Registered Nurse – Aged Care

28% of surveyed members told us that their RACF had unclear policy and reporting procedures. Given the lack of Federal guidance this figure is unsurprising as it offers aged care providers little in terms of defining abuse or abusive practices to inform their local policies. Evidence suggests that failure to offer a comprehensive definition

of abuse obstructs attempts to measure prevalence²⁶ and protective legislation which clearly defines abuse and mandates its reporting is seen as a key priority for aged care staff.²

“Some Staff are unable to recognise how they speak to residents as abuse.”

Assistant in Nursing – Aged Care

“Is 'rough handling' abuse? I think it is, but management too often discounts this.”

Registered Nurse – Aged Care

Recommendations

The NSW Government, through the Council of Australian Governments should urge the Commonwealth Government to create a single comprehensive adult/elder abuse strategy which includes (but is not restricted to): An extended definition of abuse; risk factors that might precipitate abusive actions; captures the full range of abusive practices that might be encountered by older people; provides clear actions for staff and protections against reprisals for both staff and those disclosing abuse.

Identifying any constraints to elder abuse being reported and best practical strategies to address such constraints

As mentioned in the previous term of reference, there is a lack of clarity regarding what constitutes elder abuse within Australian guidelines designed to assist healthcare staff to detect and respond to issues.⁵ Research findings in Australia showed that health professionals, carers and older people all perceive abuse to mean different things and that over 50% of carers failed to recognise all abusive actions.¹⁴ Similarly it is argued that health care providers including General Practitioners, peripatetic services such as chiropodists and informal carers also fail to identify elder abuse.²⁷ Therefore any attempts to define abuse in simple terms would support a preventative strategy

An Australian study which explored the perceptions of health professionals and students working in aged care of elder abuse showed that there were variations in how well they recognised abusive practices. Those professionals who had been working in aged care appeared to become more accepting, or failed to recognise potentially abusive situations⁵ suggesting that institutional abuse might be more prevalent than current data tells us.

As previously stated, our members tell us that fear of repercussions is a barrier to reporting elder abuse. However, they also tell us that although they receive regular training in elder abuse, 46% feel this is inadequate and 28% consider there are unclear policy and reporting procedures. Poor staff training is of concern, and there are calls for elder abuse to be part of a mandatory curriculum within healthcare education² and for a community wide education program.²⁸

Due to the limited expertise around this area more generally there have also been calls for a more collaborative approach to developing training programs.² Also, that these need to provide professionals with practical examples of what might constitute and abusive practice and that there should be a community wide approach to raising awareness of the risk associated with ageism and stigma of reporting abuse as a barrier to disclosure.^{27,29} This supports our view that a minimum training requirement should be mandated for AiN's working in RACF's.

Recommendations

A community wide educational framework should be developed and implemented that provides a clear definition of abuse and which raises awareness of the risks of abuse associated with ageism and stigma of reporting abuse as a barrier to disclosure.

Adult/elder abuse should be part of a mandatory curriculum within healthcare education.

Identifying any strength based initiatives which empower older persons to better protect themselves from risks of abuse as they age

It is acknowledged that there have been few evidence based prevention and intervention strategies developed to assist victims of elder abuse and that there would be value in collaboration between community organisations and research institutions.^{3,30} There are several established programs designed to empower women who have been subjected to domestic violence including the Freedom Programme© which has been found effective in working with both male and female victims.^{31,32} These could have value in raising awareness of potentially abusive situations, and teaching enabling strategies to empower older people to break free from abusive relationships.

In RACF's there must be an effective complaints system and advocacy for people who are unable to communicate effectively themselves to reduce the risk of elder abuse. However, our members tell us that there could be improvements made in terms of how well complaints are managed. An individual must feel empowered to raise concerns and evidence tells us this is not always the case due to the power imbalance between residents and staff,²² the obvious dependence on staff and the need for a secure place of tenure and continuity of care. A system similar to Healthwatch England* in the UK which informs the aged care regulator on issues affecting people receiving care through ongoing independent consultation might have value in facilitating the complaints process.

* Information about Healthwatch England can be found at: www.healthwatch.co.uk

Recommendations

The NSW Government should commission further research to investigate prevention and intervention strategies which will inform any initiatives developed by agencies to empower older people to protect themselves against the risk of abuse as they age.

The NSW Government should explore the applicability in aged care of strength-based initiatives in operation which seek to empower people who have been affected by domestic violence.

The effectiveness of NSW laws, policies, services and strategies, including the 2014 Interagency Policy *Preventing and Responding to Abuse of Older People*, in safeguarding older persons from abuse

The NSWNMA considers that the 2014 Interagency Policy was a progressive move in relation to addressing elder abuse. It offers more comprehensive working definitions of abuse although we suggest this could be further developed to explicitly capture emerging issues related to abuse such as familial financial abuse related to power of attorney failures.

The interagency policy offers no additional safeguards for older people living in residential aged care as this section of our community are exempted from this interagency policy. This is very concerning for our members working in aged care who would benefit from a State policy which offers them more clarity than the *Aged Care Act (1997)*.

It is also of concern that the interagency policy principles of intervention suggest that older people have a right to make the decision not to act. We would support the principle of respecting people's rights not to take action. However, as the policy later describes, there are issues of mental capacity to consider. This is a problematic area for our members who tell us that although some have received training on assisting decision making, they are not required to have training on mental capacity as part of their mandatory training. We know people can fluctuate in and out of capacity which means that inadequately trained staff might not be able to recognise when a person is or is not able to make such decisions for themselves. This is important because the presence or absence of capacity is often the determining factor to taking action on elder abuse.³

The possible development of long-term systems and proactive measures to respond to the increasing numbers of older persons, including consideration of cultural diversity among older persons, so as to prevent abuse

As previously stated, NSW has the highest number of RACF's across all States in Australia accommodating 59, 252 people¹² and we know that the number of people entering such facilities will only rise as life expectancy increases. The NSWNMA believes that any attempt to develop long term systems and proactive measures to respond must not exclude the significant number of older people living in RACF's within NSW. We suggest that there should be further work undertaken to address the disparity between State and Federal responses and reporting procedures.

We consider that the accreditation of AiN's and the development of minimum training requirements for those entering the workforce, including training on elder abuse and compulsory reporting be mandated. Since 10% of our surveyed members told us they had either never received training in elder abuse, or had received this more than three years ago.

International migration from non-western countries to western countries is increasing.³³ Most recent published statistics show that approximately 28% (6.6 million) of people living in Australia and 25.5% of those living in NSW were born overseas.^{34,35} Therefore cultural considerations must be integral to any long-term measures to prevent abuse. Emerging Australian communities bring with them unique characteristics and triggers for potential elder abuse. Within some cultures and communities traditions which marginalise and disempower women through potentially abusive acts such as withdrawing financial dependence, and/or which have an honour or shame basis may still be accepted within their culture and community.³⁶

Poor English language skills, lack of knowledge about the legal system in Australia and fear that disclosing abuse may mean older people are cut off from their cultural communities and are all issues that require consideration.³⁷ Although it is acknowledged that there has been better recognition of the prevalence of abuse in minority communities. It is suggested that strategies need to also consider cultural issues in relation to other issues such as the imbalance of abuse against women¹⁴ since it is recognised that older women are more vulnerable and less likely to report abuse or minimize it.³⁸

Recommendations

The development of long-term systems and proactive measures to respond to the increasing numbers of older persons should reflect a contemporary Australian society, be culturally appropriate and culturally responsive, and should seek to recognise and address gender specific issues.

The consideration of new proposals or initiatives which may enhance existing strategies for safeguarding older persons who may be vulnerable to abuse

There has been some promising research undertaken in the US which has focused on the development of the use of a standardised vulnerability risk assessment tool, which has proven statistically significant in identifying those older people living in a community dwelling setting who are more at risk of being abused. The research suggests that this tool could have value in future prevention and intervention strategies.³⁹

Similarly, it is suggested that there would be benefit from screening older people for signs of abuse using standardised tools including neglect. Patients reporting to health care providers such as GP's or Emergency Departments could be screened against triggers such as frequency of attendances, number of falls, or subtle signs such as weight loss, missing assistive devices (glasses, hearing aids), dehydration or abnormal medication levels.³⁰ It is also recommended that an education program on elder abuse be devised which is aimed at the entire population³⁰ an approach which has gathering support.^{27,29}

With a greater emphasis on community care where direct care is usually provided by AiN's or family and voluntary care givers there will be a greater risk of failure to identify abuse²⁸ due to the lack of any requirement for any level of care qualification and lack of access to training on elder abuse particularly for community members. The accreditation of unregulated care workers and the implementation of checks on staff (including volunteers) such as the Service Check Register which is in operation within the NSW Public Health sector⁴⁰ would afford older people living in RACF's and in the community the same protections as those in our public services, since our members tell us they cannot rely on aged care providers to effectively manage elder abuse situations. This is in part due to a lack of obligation for them to report unregistered care workers and lack of a framework to assist this process.

“I am in a situation as the reporter of abuse. I spoke to the alleged abuser and sent him home. The police arrested him. NOW because he is an AiN he walks out of our facility into another. He is currently working at another facility.”

Registered Nurse – Aged Care

“I have experienced elder abuse in RACF within the past three years. I have lost all hope and confidence in managers that are in a management position as nothing ever is dealt with..... The police record check is a joke as abusers move from one facility to the next abusing residents stealing and lying. Not unless the reported incident is taken to court then there is no record of the abuse and the perpetrators get away with it. I have completely lost all faith in RACF would not send my animals to one. I no longer work in aged care due to the disappointment”.

Registered Nurse – Former Aged Care

“I am a strong believer that all classifications should be registered with APRHA so that inappropriate staff conduct by staff at AIN level does not go unpunished and that they cannot move on to another aged care facility and commence offending there. I have had staff that engaged in bad behaviour but did not meet the classification of abuse but definitely put residents at risk. These staff are now working for other organisations who are none the wiser.”

Registered Nurse – Aged Care

“One staff member was given the option to leave and no further action was taken. They simply started working at the next facility down the road.”

Assistant in Nursing – Aged Care

Recommendations

The NSW Government should commission further research to explore models in operation within other countries that seek to capture risk factors for elder abuse and which seek to develop opportunistic assessment tools to detect abuse.

The NSW Government, through the Council of Australian Governments should urge the Commonwealth Government to establish a system that requires aged care providers both in residential and community settings to perform checks on staff (including volunteers) prior to appointment, similar to the Service Check Register which is in operation within the NSW Public Health system.

Any other related matter.

The Federal legislative framework provides an exemption from the requirement to report incidents which involve residents affected by an assessed cognitive or mental impairment and where there are repeated allegations of the same assault. This is concerning since it has been recognised that cognitive impairment is one of the main barriers to reporting elder abuse^{23,28} and yet is one of the main contributors for abuse.¹³ The legislation justifies this by requiring aged care providers to effectively manage peoples' behaviours and to provide adequate staffing to control these and prevent recurrence.

The justification for omitting the mandatory reporting requirement for this and other types of abuse has been questioned.² Particularly since financial abuse and neglect have been found to exist in residential aged care⁴¹ and our members tell us that other forms of abuse such as psychological abuse, institutional abuse, physical and/or chemical restraint exist in residential aged care facilities.

The Australian Aged Care Quality Agency (AACQA) is required to monitor an approved providers compliance with compulsory reporting requirements.¹⁵ However, the experience of our members appears to be at variance to the AACQA's recent statement that "*Currently less than one per cent of aged care homes have identified failures*".⁴² Rather than identifying high levels of compliance, our survey suggests that elder abuse is prevalent in some RACF's, and the incidence of abuse could be much greater since our survey suggests that some members fear repercussions should they report.

Whilst we acknowledge our survey only represents a small number of RACF's, since almost a third of our 280 surveyed members stated that they witness some form of verbal or physical abuse from residents or between residents on every shift it would be reasonable to suggest that the AACQA is also failing to effectively monitor how well some aged care providers are complying with their obligations to manage residents' behaviours effectively. This places not only staff, but also other residents at risk of daily physical or verbal assault, a situation that would not be tolerated in any other industry, or against any other section of our society.

“Elder abuse is also from the facility owners on how they run the home. Lack of activities/ low staffing levels where the expected care level can’t be given Accreditors come out from spot inspections. Staff will tell them about issues within the work place *and* how it affects the standard of living for the elderly. Days before the inspection management will go around and tidy up the place and school staff on what to say to the accreditors yet the facility will pass with flying colours so you tell me does the Government really care about elder abuse?”

Assistant in Nursing –Aged Care

Recommendations

The NSW Government, through the Council of Australian Governments should urge the Commonwealth Government to monitor the effectiveness of the Australian Aged Care Quality Agency in relation to its obligations to ensure accredited aged care providers manage incidents of abuse, particularly those involving people with cognitive impairment.

The NSW Government, through the Council of Australian Governments should urge the Commonwealth Government to review the exemption to report incidents of abuse involving cognitively impaired residents and to consider whether a failure to safeguard residents and staff through inaction in this regard constitutes a criminal offence.

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