

Chapter 11 Aged Care

Proposal 11–1

Aged care legislation should establish a reportable incidents scheme. The scheme should require approved providers to notify reportable incidents to the Aged Care Complaints Commissioner, who will oversee the approved provider's investigation of and response to those incidents.

Baptist Care Australia members consider that the current system is working well within their facilities to provide safety and protection for residents, and accountability for them as providers. They are concerned that changes may increase the burden of reporting on providers without tangibly improving the safety of residents.

However, we understand that the purpose of this proposal is to:

- Increase the visibility of abuse incidents in aged care in order to improve policy responses, and
- Report serious incidents in a way that activates an appropriate investigation and response.

It is commendable that the Australian Government is seeking to improve the safety and security of aged care recipients, particularly given some of the concerns cited in the discussion paper. Given the complexity of aged care it is essential that the proposed reforms achieve this aim while also avoiding unintended consequences that hinder the availability of high quality aged care, especially services for people with high care needs such as those with dementia.

In relation to this specific proposal, the Aged Care Complaints Commissioner would need to have the capacity, skills and resourcing to appropriately investigate and respond to these incidents for this proposal to achieve its stated purpose. Baptist Care Australia members are concerned that the current complaints resolution function of the Commissioner may not be compatible with a role that investigates potentially criminal acts that are currently investigated by appropriate authorities.

Proposal 11–2

The term 'reportable assault' in the *Aged Care Act 1997* (Cth) should be replaced with 'reportable incident'.

With respect to residential care, 'reportable incident' should mean:

- (a) a sexual offence, sexual misconduct, assault, fraud/financial abuse, ill-treatment or neglect committed by a staff member on or toward a care recipient;
- (b) a sexual offence, an incident causing serious injury, an incident involving the use of a weapon, or an incident that is part of a pattern of abuse when committed by a care recipient toward another care recipient; or
- (c) an incident resulting in an unexplained serious injury to a care recipient.

With respect to home care or flexible care, 'reportable incident' should mean a sexual offence, sexual misconduct, assault, fraud/financial abuse, ill-treatment or neglect committed by a staff member on or toward a care recipient.

Baptist Care Australia agrees that elder abuse encompasses a broader range of behaviours than just physical assault. In this respect, we support this proposal. It is also commendable that the proposal differentiates between incidents caused by staff and those caused by another care recipient. The definitions of reportable incidents in both circumstances are clear and should be able to be adequately interpreted in care environments.

Members do have concerns about potential unintended consequences of mandatory reporting on the number of providers willing to care for people with dementia. By mandating reporting of serious incidents between care recipients, the new system may result in significantly increased reporting or investigation requirements. Alternatively if the proposed system is poorly implemented, there may be confusion and consequent over-reporting. These factors may act as a disincentive for providers to offer care to people with dementia, limiting the choice and quality of services available to them. Baptist Care Australia would be very concerned about any measure that decreases the availability of dementia care in a sector already struggling to meet the needs of the community.

Baptist Care Australia is also very concerned that the current mandatory requirements to report suspected abuse by family members or visitors have not been included in these proposals. We acknowledge the point in the discussion paper that voluntary reports can still be made in relation to these incidents. Most elder abuse is perpetrated by family members, and we are concerned that removing the mandatory reporting requirement may make it more difficult for providers to protect clients from family violence. Those who report suspected abuse report that mandated reporting provides a rationale for their actions when families confront them over the reporting. Another compelling reason for retaining this mandated reporting is that one goal of these reforms is to 'increase the visibility of abuse incidents in aged care'. Removing the mandate will ensure that abuse in home environments is less visible than it currently is. This is particularly important given the rapid growth of community aged care services. Baptist Care Australia strongly recommends that suspected abuse by families and others is included in any new incident reporting scheme.

Proposal 11–3

The exemption to reporting provided by s 53 of the *Accountability Principles 2014* (Cth), regarding alleged or suspected assaults committed by a care recipient with a pre-diagnosed cognitive impairment on another care recipient, should be removed.

Baptist Care Australia understands that the reason behind this change is that the severity of the incidents that must be reported are specified in the definitions outlined under proposal 11-2. Presumably incidents that don't meet these criteria are not required to be reported, and can be managed by providers according to their practice and procedure guidelines. The safety of care recipient victims, provider accountability, and protection from prosecution for impaired care recipients need to be balanced. The proposed reforms seek to balance these interests more evenly.

There is concern that poor implementation of these reforms may result in over-reporting and confusion on their application among aged care providers. These are important considerations and any reforms must be appropriately planned, managed and resourced. If they aren't, the ultimate victims may be exactly the people the reforms are designed to protect.