The OCAV is pleased to make a submission to the Elder Abuse Discussion Paper, the second consultation document for the Elder Abuse Inquiry, in which the ALRC has been asked to consider existing Commonwealth laws and frameworks which seek to safeguard and protect older persons from misuse or abuse by formal and informal carers, supporters, representatives and others, and to examine the interaction and relationship of these laws with state and territory laws.

## About us

**About the Old Colonists’ Association of Victoria**

The Old Colonists’ Association of Victoria (OCAV) is a leading not-for-profit retirement village provider offering a continuum of care from independent living, assisted living and aged care in Victoria. Our four villages in Berwick, Euroa, North Fitzroy and St Helena are home to 500 older Victorians in need.

The OCAV was established in 1869 by Victorian founding fathers including George Selth Coppin, a Member of Parliament and philanthropist. The association’s first village was located at Rushall Park, North Fitzroy after the Government of Victoria gifted an acreage of land.

**Our vision**

To be the benchmark provider of affordable, independent community living for elderly Victorians.

**Our mission**

To advocate and provide affordable, safe and dignified independent homes for older Victorians within a village environment and to offer appropriate and practicable extended care when it is required.

**Our values**

Safe, Responsible, Dignified, Affordable, Open, Improving

**Our funding model**: we support capital investment in affordable housing through contributions from those with financial resources and at the same time provide safe and dignified housing for those with very limited or no financial means.

## National Plan

Proposal 2-1: A National Plan to address elder abuse should be developed.

We support this proposal and the four proposed components:

1. promoting respectful intergenerational relationships
2. making systems work together effectively
3. improving responses to elder abuse
4. improving the evidence base.

We also note that the Coalition Federal Government committed $15 million to develop a national plan during the 2016 Federal Election in its [*Policy to Protect the Rights of Older People*](https://www.liberal.org.au/coalitions-policy-protect-rights-older-australians).

Specifically:

1. **Making systems work together effectively**

We agree that a national approach, with consistent laws and coordinated responses is a key element in addressing elder abuse. The National Plan should consolidate the work that has been (or is being) undertaken across the states and territories.

1. **Improving responses to elder abuse**

We agree that in addition to national consistency, training people who deal with older people to recognise and respond to elder abuse, improved accessibility of services, and better responses to perpetrators are crucial.

1. **Improving the evidence base**

Proposal 2-2: A national prevalence study of elder abuse should be commissioned.

We strongly support the proposal for a national prevalence study and reiterate our previous comments about specific issues to be considered in establishing the study. We defer to the submission by NARI and AAG about ensuring the evidence-base approach is comprehensive, and includes the risk factors, and how aged care providers are to collect and report data.

## Powers of investigation

Proposal 3-1: State and territory public advocates or public guardians should be given the power to investigate elder abuse where they have a reasonable cause to suspect that an older person:

1. has care and support needs;
2. is, or is at risk of, being abused or neglected; and
3. is unable to protect themselves from the abuse or neglect, or the risk of it because of care and support needs.

We believe further consideration and consultation is needed specifically about:

* the definition of ‘care and support needs’ – should it include physical restraint but exclude other forms of restrictive practices?
* How will public advocates or guardians be funded?

Proposal 3-3: Public advocates or public guardians should have the power to require that a person, other than the older person:

1. furnish information;
2. produce documents; or
3. participate in an interview relating to an investigation of the abuse or neglect of an older person.

We believe further consideration and consultation is required regarding the appropriate legal safeguards for people furnishing information, providing documents or participating in interviews, for example:

* the right to silence
* the right to seek legal advice
* the privilege against self-incrimination.

## 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.

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:

1. a sexual offence, sexual misconduct, assault, fraud/financial abuse, ill treatment or neglect committed by a staff member on or toward a care recipient;
2. 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
3. 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.

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.

Further consideration and consultation is needed about these proposals. Who are they to report to and about what?

Proposal 11-4: There should be a national employment screening process for Australian Government funded aged care. The screening process should determine whether a clearance should be granted to work in aged care, based on an assessment of:

1. a person’s national criminal history;
2. relevant reportable incidents under the proposed reportable incidents scheme; and
3. relevant disciplinary proceedings or complaints.

Proposal 11-5: A national database should be established to record the outcome and status of employment clearances.

The ALRC has noted that both the *Aged Care Legislated Review* and the Senate *Inquiry into the Future of Australia’s Aged Care Sector Workforce* will consider workforce strategies and that this proposal should be viewed at the same time.

Proposal 11-7: The *Aged Care Act 1997 (Cth)* should regulate the use of restrictive practices in residential aged care. The Act should provide that restrictive practices only be used:

1. when necessary to prevent physical harm;
2. to the extent necessary to prevent the harm;
3. with the approval of an independent decision maker, such as a senior clinician, with statutory authority to make this decision; and
4. as prescribed in a person’s behaviour management plan.

Further consideration and consultation is needed.

Proposal 11-8: Aged care legislation should provide that agreements entered into between an approved provider and a care recipient cannot require that the care recipient has appointed a decision maker for lifestyle, personal or financial matters.

Further consideration and consultation is needed.