

## **COTA RESPONSE TO *Working with children and vulnerable people***

This difficult policy issue has been addressed by other States in a variety of ways but we believe that no other state has link the problems of elder abuse and child abuse in a single strategy paper and COTA doubts the practicality – or desirability – of that approach.

COTA's concern with the abuse of children must focus on two groups of carers: on grandparents raising grandchildren, and on older volunteers providing unpaid caring services to children. Grandparents who raise their grandchildren are, in every sense, in loco parentis except that they may be in receipt of a foster parenting allowance. The same responsibilities, rights and sanctions appropriate to parents must apply to them, with due regard to the support and understanding they deserve for the role they have accepted.

Older people who have agreed to accept responsibility for children in their care may include neighbours or relatives who are temporary babysitters or who assist in NGO refuges or centres caring for children on a permanent or temporary basis. If their treatment of children in their care amounts to physical abuse, they must be subject to existing laws, unprotected by the voluntary unpaid status of their relationship with the child or children. Those who become aware of the abuse have a responsibility to report it to police, who must decide if the action was criminal. There may be issues as to the physical or cognitive competence of the abuser to accept responsibility for care of the child, and these will require the consideration of police prosecutors; however, the abuse of a child by a carer cannot be excused by the voluntary nature of the relationship of the child to the abuser.

### Elder abuse

COTA Victoria and COTA Over 50s have published submissions on this topic in the last few years and we will refer to these from time to time. There have been other important policies and programs, with which COTA Tasmania is in strong agreement. These include the Victorian Government's important strategy *With Respect to Age – 2009 Rights Respect Trust* and the groundbreaking work of the Queensland Government whose strategy included an effective elder abuse hotline.

COTA Tasmania also recognises the important and comprehensive 2006 submission of *Aged and Community Services Australia (ACSA): Confronting Elder Abuse*.

## **Your questions**

**Q1)** Do you support the proposed definition of vulnerable adult? Are there any other types of definition that should be considered?

**A)** The definition of elder abuse used in the Victorian strategy is useful in defining a vulnerable adult: “Any act occurring within a relationship where there is an implication of trust, which results in harm to an older person”.

(This definition raises its own questions: what is “harm”? Is it “harm” if an incontinent patient is not toileted for eg 12 hours?)

**Q3)** Are there any activities that should be included or excluded from Annex B? Do you have any comments specific to any of the listed categories?

**A)** Difficult to deduce the criteria used to identify potential abusers. Many are simply office workers, etc not in physical contact with 4<sup>th</sup> agers. We suggest the presence of **trust** - that the imbalance of power in the relationship will not be abused - is key to the question of abuse.

**Q4)** Are there any engagement types that should be added or removed from the proposed list?

**A)** It should be possible to develop a hierarchy of potential “danger” to vulnerable persons: essential criteria –real or implied trust. The five categories in 8.3.2 seem comprehensive.

**Q6)** Do you have any comments on the checks that will be applied to supervision?

**A)** The sexual abuses involving aged patients in RACF were committed by carers who should have been effectively supervised. Workforce shortages in residential care make close supervision difficult – but necessary. The abuse will become evident through changed responses by the patient and should be observed by a supervisor.

**Q8)** Do you support the application of an exemption for people in contact with vulnerable people for infrequent or short periods? Do you support the proposed threshold of 7 days in any 12 month period?

**A)** Yes

**Q9)** Do you support the application of an exemption for people who are ‘closely related’ to each (and every) vulnerable person they have contact with?

**A)** Yes

Q10) Do you support the application of an exemption for volunteers engaged in a regulated activity who are 'closely related' to a vulnerable person who ordinarily participates in that regulated activity?

A) Yes

Q11) Do you have any comments on excluding normal employee / employer relationships?

A) No

Q12) Are there any other exemptions that should be considered?

A) No

Q13) Do you have any comments on the proposal that unregistered persons can be engaged in a position pending the outcome of their application?

A) No

Q14) Do you have any comments on the involvement of employers or organisations in the application process?

A) No

Q15) Do you have any comment on the inclusion of other types of information such as Family Violence Orders, Child Protection Orders and past employment records in the checking process?

A) No

Q16) Do you have any comments on the proposal that applicants be required to provide a statutory declaration that they have not been convicted of certain types of offences outside of Australia?

A) No

Q17) Are there any additional risk assessment principles that should be applied?

A) No

Q18) Do you have comments on the proposed list of relevant criminal offences?

A) The relevance of many of these offences to situations where trust is implicit in the relationship with a vulnerable person is very questionable. Why should someone who has at some time been convicted of an offence relating to property or fraud be assumed

incapable of caring for a vulnerable person? Such a listing supposes that rehabilitation of a person with a criminal record is impossible.

Q19) Do you have any comments on the list of questions to be considered as part of the risk assessment process?

Q20) Do you support the additional considerations applicable to non-conviction information? Are there any other considerations that should be included?

A) See above. It would seem impossible to create a list of questions which would cover every possible situation. The primacy of common sense should make such a listing unnecessary!

Q21) Do you have any comments on the proposed registration period of five years?

A) No

Q22) Do you support the proposal for the WWCVS Screening Unit to contact the employer or organisation to advise of the issuance of an interim negative notice or in the other circumstances proposed?

A) Certainly

Q23) Do you support the application of a five year prohibition on re-applying for a WWCVS Check unless there has been a material change in the information upon which the negative notice was issued? If not, why not?

A) We have no basis for commenting.

Q24) Do you have any comments on the inclusion of a mechanism for courts to make orders barring people from applying for or holding an approval to work with vulnerable people for specified periods of time?

A) No

Q25) Do you have any comments on the proposed right of internal review by the WWCVS Screening Unit and the right of external merits review by the Administrative Appeals Division of the Magistrates Court and the proposed grounds for merits review?

A) No

Q26) Do you have any comments on the proposed list of offences and the application of penalties for the proposed offences?

A) No

Q27) Do you have any comments on the proposed compliance activities?

A) No

Q24) Do you have any comments on the inclusion of a mechanism for courts to make orders barring people from applying for or holding an approval to work with vulnerable people for specified periods of time?

A) No

Q25) Do you have any comments on the proposed right of internal review by the WWCVS Screening Unit and the right of external merits review by the Administrative Appeals Division of the Magistrates Court and the proposed grounds for merits review?

A) No

Q26) Do you have any comments on the proposed list of offences and the application of penalties for the proposed offences?

A) No

Q27) Do you have any comments on the proposed compliance activities?

A) No

Q28) Do you have a view of where the WWCVS unit should be located?

A) The Commissioner for Children, with his close association with the Social Inclusion Commissioner in DPAC, would seem the obvious location for all matters to do with the care of children.

Matters concerned with elder abuse and with the abuse of adults with disability, in residential or community care, or in their own home, fall into a quite different category. COTA believes that there will prove to be little overlap between the abuse of children and the abuse of older people. For example, financial and property crimes constitute a serious problem for people with some form of cognitive impairment or physical disability. Where abuse occurs in a residential care facility, the Aged Care Standards and Accreditation Agency must be immediately involved. Responsibility for oversight of HACC providers is less obvious but must involve both Commonwealth and State health and ageing

departments. The witness of the abuse of a vulnerable person in the community - perhaps by a family member - will often be a certificated carer employed by a HACC provider to whom the abuse must be reported and whose immediate duty will be to inform the police of the abuse.

The location of a screening unit may not be the same as the location of the agency required to deal with the abuse. In fact, the skills required in screening may be quite different from those involved in recognizing and analysing the abuse.

The situation of the vulnerable person being abused who does not report the abuse or complain about it due to fear of retaliation or loss of care, is unique in legal practice. The Office of the Public Trustee or the Public Guardian would both seem to have the appropriate skills to manage such cases. Alternatively, COTA Tasmania has proposed the creation of a Commissioner for Older Tasmanians, to parallel the role of the Commissioner for Children, and to have overall responsibility for the wellbeing of Tasmanians becoming vulnerable due to their infirmity, disability or cognitive incapacity.

Whatever the outcome, COTA Tasmania is strongly of the view that administration of this program does not suit a "one size fits all" solution.

**Q30) Do you have any comments on the estimated processing times for the risk assessment process?**

A) No

**Q31) Are there other factors that should be considered when determining the priority in which checks are phased in?**

A) No

**Q32) Are there any other mechanisms to improve accountability that should be considered in this section or elsewhere in this discussion paper?**

A) We cannot say

**Q33) Are there any other issues you wish to raise that have not been addressed in this discussion paper?**

A) We would like to draw the attention of everyone responsible for design of this strategy to the Victorian strategy *With Respect to Age*, particularly its thinking on matters of mandatory reporting in respect of elder abuse. An adult protective and mandatory reporting approach is not supported by the Victorian Government, senior Victorians and industry stakeholders. Other Australian states and territories have developed empowerment approaches, as has the World Health Organization (WHO). COTA Victoria, COTA Over 50s and COTA Tasmania are all opposed to mandatory reporting for the reasons given in *With Respect to Age*. Elder abuse and child abuse are quite different – in all respects save one: abusers of children often find themselves late in life at the mercy

of the children they abused. This may be poetic justice, but it cannot be ignored by public policy.

Q34) Do you have any specific comments which you wish to raise about the proposed checking system?

A) No

Q36) Do you have any specific comments on the proposed role of employers or organisations in the application process?

A) No

### Conclusion

This Discussion Paper is welcome. While the emphasis is on the screening process and its role in the prevention of abuse, COTA is concerned that the identification of instances of abuse and the handling of the trauma caused by the abuse still require to be addressed. The matters are complex and require a multi-faceted public response.