

Key Points for ALARM Presentation

What is ALARM?

ALARM is an incorporated non-profit that refers older Australians who have experienced abuse in aged care to legal assistance. We operate through a website and phone line where we take complaints from residents and their families. Where appropriate, we then put clients in contact with the organisation on our vetted panel of firms that is best placed to advise them.

This service is coordinated by a mix of passionate professionals and Student volunteers. Coming together in 2020, we set up ALARM to respond to the unacceptable levels of abuse in aged care that was revealed by the Royal Commission.

What problem did we see?

The Royal Commission into Aged Care Quality and Safety published its interim report on the 31st of October 2019. This report was starkly titled 'neglect'. The stories that it told were familiar to advocates fighting for reform in the aged care space but for many of the founding members of ALARM they were raw and horrifying.

With our legal backgrounds, one of the issues that was most glaring was the odds that were stacked against aged care residents and their families when seeking justice. Older Australians had very few protections in their corner and the industry that so often perpetrated abuse against them was a leviathan, propped up by the government.

The submissions made by victims to the Commission each personify this imbalance of power and only with their accounts could it be properly understood. I will now read a short passage about the experience of one resident whose matter taken on by an ALARM panel firm:

"Mrs S was a resident of the secure dementia ward at the facility and was known by staff to tend to wander. Just three days after she entered the aged care facility, she was found to have escaped the locked ward. The daughter discovered her mother was missing when a friend had informed her that she had passed her mother walking along a busy road. She telephoned the facility who said that they had been looking for her too. By this stage, she had travelled two kilometres.

Three years later, Mrs S fell and fractured her hip in the garden of the facility and was transferred by ambulance to the John Hunter Hospital after she lay for over an hour on the ground. She was also diagnosed with pneumonia from lying in the cold for an hour and a half before nurses found her. As a result of the facility's failure to ensure that Mrs S was safely housed and monitored, she subsequently passed away."

Undeniably negligent practices are exceedingly common in Australian Aged Care facilities. Many are caused by inadequate staffing, a lack of proper training, the failure to deliver services, and structural deficiencies in organisations who have accepted the responsibility of caring for vulnerable people.

Specific examples of issues caused by this neglect were laid bare by the Royal Commission into Aged Care Quality and Safety. How could it be that Australian aged care homes were rationing incontinence pads and physically restraining their residents for hours in soiled clothes? How could it be that as many as 50% of all residents in our facilities were malnourished or at risk of malnutrition.

What are we doing about it?

ALARM is contributing to the aged care advocacy space by creating a service that will directly connect victims of abuse with legal assistance that can help to lessen the power imbalance between residents and providers.

In order to achieve this, we have brought together a panel of firms in most Australian States that we are actively working to grow. These firms are providing free consultations with ALARM referrals with a view to resolving disputes against abusive aged care facilities.

We are also working to create accessible informational documents on the rights of residents in aged care. These short explainers will be available at key points of contact for victims including Community Legal Centres and MP's offices.

This work is done by groups of committed volunteer law students who are overseen by industry professionals. The age of Zoom induced by the Covid pandemic has allowed us to work together from different States on the same projects and landed us where we are now

Through the avenues of information and referral, ALARM hopes to increase the community's understanding of aged care rights and hold providers to account for unlawful abuse. The potential influence of this approach is best made clear of what can happen when abusive practices come into contact with the justice system.

How can effective litigation help?

An example of litigation in aged care that shows us the good, the bad, and the ugly of accountability through the courts is the ACCC case against BUPA in 2019 for its unlawful fee system.

The facts were that BUPA charged 4306 residents at 21 aged care homes for often expensive services that it did not provide or did not fully provide between 2007 and 2018. Some of these amenities, such as hot breakfasts, talking book libraries, and physiotherapy rooms, had the capacity to seriously affect the quality of life experienced by residents. The ACCC took action when it was made aware of these deficiencies and BUPA was ordered by the Federal court to pay a penalty of \$6 million as well as refunds.

The good in this case is that it sends a clear message to aged care providers about fee structures that they MUST change in order to comply with the consumer law and other rights of aged care residents.

The bad in this case is that action by watchdogs like the ACCC offers little in compensation, other than refunds may be years too late for affected residents. It also demonstrates the large barriers to take on very large aged care providers about longstanding practices that are seriously unlawful but too inert to stand up against alone.

What was the ugly? This case was SELF REFERRED. Thousands of residents were being unlawfully charged for services for over a decade and nothing was done until BUPA came forward with their own mistake. It should also be mentioned that their penalty was halved for this late display of good citizenship.

By agitating for the unlawful abuse that underlies the aged care crisis to be brought before the courts, ALARM seeks to help redraw best practice in the aged care industry in line with the rights of residents so they are not routinely violated by the status quo.

Our process

In its process to achieve these litigation aims, ALARM is also contributing to the national discussions about Aged Care law reform. So far this has involved the publication of a variety of law reform and education articles through the ALARM website. The topics for these pieces has ranged from restrictive practices and nutrition to the government's plan for reforming the sector. It is important to have these discussions because a lax and permissive approach to government regulation of the aged care sector, solidified by the 1997 Aged Care Act, is responsible for allowing abuse to fester.

Few examples better demonstrate the complicity of legislators than some of the concessions that have been built into the Commonwealth reform package currently in the pipeline. Rodney Lewis, a consultant for ALARM and prominent expert in elder law, will explain this conundrum in detail when he discusses these laws in his presentation.

What is next for ALARM?

The next major challenge for ALARM is coming to the market. It is clear that the bodies currently handling complaints, such as the aged care quality and safety commission, do not adequately hold providers to account. How then do we make older people with serious grievances aware of our services and help them to connect with referrals.

At the moment, many of our services are delivered online and our message is communicated almost entirely over the internet. There is a rich ecosystem of advocacy organisations and publications that are standing up for residents of aged care and part of our next step will be building stronger connections with that network. The distribution of physical documents at key points of contact and getting the word out through media organisations will also play a key role in getting our services to victims.

So please, spread the word and if you have any questions about ALARM please get in contact with our presenters! Thank you for attending our talk.