

New South Wales Nurses and Midwives' Association

Inquiry into the Quality of Care in Residential Aged Care
Facilities in Australia

January 2018

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: registered nurses; enrolled nurses and midwives at all levels including management and education, and assistants in nursing/care workers (however titled, who are unregulated).

The NSWNMA has approximately 64,500 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 currently have over 10,500 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.

We welcome the opportunity to provide a submission to this Inquiry.

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

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Terms of Reference

1. The incidence of all mistreatment of residents in residential aged care facilities and associated reporting and response mechanisms, including the treatment of whistle blowers;
2. The effectiveness of the Australian Aged Care Quality Agency, the Aged Care Complaints Commission, and the *Charter of Care Recipients' Rights and Responsibilities* in ensuring adequate consumer protection in residential aged care; and
3. The adequacy of consumer protection arrangements for aged care residents who do not have family, friends or other representatives to help them exercise choice and their rights in care.

Introduction

This Inquiry is set within a context of significant reform in the aged care sector and is one of a number of inquiries and consultations focusing on the quality of aged care. Despite this, there has been a failure to address the systemic problems in aged care, and draw together the various strands that impact on safety and quality.

Recently there have been Inquires into: The Oakden facility in SA¹; Effectiveness of the Aged Care Quality Assessment and Accreditation Framework for protecting residents from abuse and poor practices, and ensuring proper clinical and medical care standards are maintained and practised (current)²; Single Aged Care Quality Framework (as yet unreported)³; Review of National Aged Care Quality Regulatory Processes⁴; Legislated Review of Aged Care⁵ and Australian Law Reform Commission Inquiry into Elder Abuse⁶.

In addition, there has been a significant body of work presented by Professor Ibrahim⁷ highlighting that the number of preventable deaths in residential aged care facilities (RACFs) is rising. His report calls for the development of a national policy framework, including an authority to improve nursing home practices to reduce the number of premature deaths.

In each of our responses to the Inquires and consultations mentioned, we have highlighted the correlation between safe staffing and good quality care. Despite this there has been little progress on any recommendations of these Inquires so far, leaving many aged care workers and care recipients still vulnerable within the aged care system.

¹ Groves A, Thomson D, McKellar D and Procter N. (2017) *The Oakden Report*. Adelaide, South Australia: SA Health, Department for Health and Ageing.

² Inquiry can be found at:

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AgedCareQuality

³ Details of the consultation and submission can be found at: <https://consultations.health.gov.au/aged-care-access-and-quality-acaq/single-quality-framework-assessing-performance/>

⁴ Report available at:

https://agedcare.health.gov.au/sites/g/files/net1426/t/documents/10_2017/review_report_final_23_october_2017.pdf

⁵ Report available at:

https://agedcare.health.gov.au/sites/g/files/net1426/t/documents/08_2017/legislated_review_of_aged_care_2017.pdf

⁶ Report available at: <https://www.alrc.gov.au/publications/elder-abuse-report>

⁷ Ibrahim, J. (2017) *Recommendations for prevention of injury-related deaths in residential aged care services*. Monash University: Southbank.

The provision of safe staffing ratios and skills mix in aged care are intrinsically linked to safety and protection against abusive practices. Any attempts to enhance safeguards will be futile unless legislative reforms also provide minimum standards for safe staffing in RACFs. We draw your attention to the list of supporting documents produced by the ANMF and NSWNMA which should also be referred to as part of this submission (p17). These provide clear evidence of overburden at all levels within the aged care workforce and the impact on resident safety. They also propose a safe model for staffing based on research conducted during 2016.

We believe there already exists sufficient evidence to answer the questions of this Inquiry. Therefore much of our submission is based on text already produced for the purposes of addressing other associated inquires and consultations. It is hoped this Inquiry will be instrumental in drawing together the outcome of all associated findings and propose a meaningful and practical strategy for aged care.

Brett Holmes
General Secretary

The incidence of all mistreatment of residents in residential aged care facilities and associated reporting and response mechanisms, including the treatment of whistle blowers.

The lack of robust systems for monitoring management of care in RACFs means there is little data to inform incidence of mistreatment. The Australian Law Reform Commission has recently reported their findings in relation to some of these subject areas and if adopted, would go some way to address existing deficits. Collection of mortality statistics is in operation within regulatory models operating in other countries, and is a central part of intelligence gathering about services. This is one of a multitude of ways that intelligence could be gathered between site audits and re-accreditation by the Australian Aged Care Quality Agency (AACQA) and it is suggested that this area is investigated as a matter of priority.

A recent independent report by Professor Joseph Ibrahim⁸ highlighted a catalogue of preventable deaths arising in RACFs. This demonstrates that it is possible to collate data from the aged care sector, and use this to provide quality indicators and inform policy. We would strongly support more detailed analysis of untoward incidents. However, we believe it is the responsibility of the Government to administer this.

“Staff take short cuts 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, RACF

Previous consultations with our aged care members on the issue of elder abuse and mistreatment of residents were reported in the following reports: ‘Who will keep me safe?’; ‘Solutions from the frontline’ and ‘The state of medication in NSW residential

⁸ Ibrahim, J. (2017) Recommendations for Prevention of Injury-Related Deaths in Residential Aged Care Services. Monash University: Southbank

aged care'. These catalogue a series of failings within the *Aged Care Act 1997* and associated regulations in regard to the reporting of serious incidents and management of care. In particular: failure to make appropriate safeguards where restrictive practices are used; failure to implement effective behaviour management plans; fear of reprisal for workers wishing to raise issues in good faith and exemption from reporting incidents where a person is cognitively impaired. Over 60% feared reprisals if they raised issues of concern. Over 40% said that relatives and residents also considered fear of reprisal prevented them from raising concerns.

"I have witnessed elder abuse first hand and have reported it only to be victimised by management and the whole incident covered up. This left me 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, RACF

A common thread throughout responses was that for effective, safe care to be provided there must be adequate ratios of staff to residents, and greater professional oversight from registered nurses. Over 75% of nurses reported that insufficient number of staff on duty was a causal factor in the incidence of abuse.

"There is not enough staff in aged care facilities. Assistants in nursing are run off their feet and therefore cannot cope and rush. There are not enough registered nurses on each shift to supervise either and no managers who check daily on the residents."

Registered Nurse, RACF

The reports also highlight there needs to be better education and training for workers, specific legislation to determine safe staffing and management of medicines and raise concerns about the ability of aged care providers to self-report or manage incidents effectively. The reporting of incidents must be perceived as non-threatening to aged care workers and providers in an increasingly consumer-driven market, to encourage incidents to be managed effectively.

“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, RACF

“The police record check is a joke as abusers move from one facility to the next abusing residents stealing and lying. Unless the reported incident is taken to court there is no record of the abuse and the perpetrators get away with it. I have completely lost all faith in RACFs and would not send my animals to one. I no longer work in aged care due to the disappointment.”

Registered Nurse, aged care

The effectiveness of the Australian Aged Care Quality Agency, the Aged Care Complaints Commission, and the Charter of Care Recipients' Rights and Responsibilities in ensuring adequate consumer protection in residential aged care.

The NSWNMA regularly attends Agency Meetings with the state branch of the Australian Aged Care Quality Agency (AACQA) where local and national data sets are provided. Data suggests there is a continual lack of compliance, and therefore failure to ensure consumer protection in regard to: staffing; medications management; clinical care and behaviour management. It is our view that this can be explained through a combination of the following:

- Failure of consecutive Governments to address the fundamental issue of safe staffing in residential aged care and lack of impetus to establish minimum safe staffing ratios for aged care in all states; and
- Inadequate systems for determining adequacy of safe staffing, including lack of commonwealth safe staffing methodology; and
- Inadequate regulatory processes determined by risk management that allows for the same outcomes to be reported against at each site visit, leaving large gaps between reports on other outcomes (or absence of reporting); and
- Inadequate system for assessing against each outcome upon re-accreditation of facilities and over-reliance on paper based audit and self-reporting; and
- Lack of a case-tracking system for assessing care outcomes against individual care needs.

The accreditation framework is inherently flawed with regulator performance targets more focused on reducing regulatory burden on providers⁹. Also, 'Better practice awards' offered as incentives for providers to display innovative care; which portray

⁹ <https://www.aacqa.gov.au/about-us/quality-agency-regulator-performance-1>

this as aspirational rather than a basic regulatory requirement¹⁰. Both of which do little to evoke consumer confidence and promote neutrality.

The re-accreditation system relies heavily on self-reporting against care outcomes and is a largely paper-based audit. Yet accreditation may result in a licence to operate for up to five years¹¹. Interim site audits conducted more regularly are likely to be more detailed, longer and use more assessors. However, they are often targeted based on intelligence about the service. This means that a set of outcomes may not be assessed against, other than through an audit based system for over three years. Some providers are also notified of audits in advance which means a true picture of the day to day operation of the home cannot be guaranteed. This leads to huge oversights in care regulation and reduces protections for workers and residents.

“The managers do not care to correct the wrong doing until nearly time for accreditation then they sit down and alter the records to please the accredited personals; hence they can pass the accreditation.”

Assistant in Nursing, RACF

“Random audits and checks need improving as staff are told what to do and say when auditors are around. The ‘troublemakers’ are generally not rostered on that day.”

Registered Nurse, RACF

¹⁰ https://www.aacqa.gov.au/providers/promoting-quality/better-practice-awards/copy_of_2016-better-practice-award-winners

¹¹ South Australia 'Innovation Hub' Initiative

It is unsurprising therefore that the latest annual report by the AACQA states that in 2016-17, around 95% of all residential aged care facilities that went through a full audit were licensed for a three year period and less than 0.3% had their accreditation revoked¹². This is despite the rise in identification of concerns reported at review audits, a figure that rose from 13 in the previous year¹³ to 33 during 2016/17. Of concern is the fact that the top areas of non-compliance related to issues such as clinical care, medication and behavior management.

This should serve as a timely warning of the need to invest more heavily in the aged care workforce; to increase access to skilled registered nurses and provide greater levels of training for all levels of workers. In reality, what data tells us is that staff have less access to training, and that the numbers of registered nurses are decreasing, in favour of unregulated care workers¹⁴.

Changes proposed to the regulatory framework through the Single Aged Care Quality Framework to be introduced in 2018¹⁵ support less, not more regulation of the sector. Regulation will rely more on risk assessment and indications are that there will be less definition within outcomes meaning that there will be greater chance of individual assessor discretion.

It is concerning that revised outcomes fail to define a staffing model that will enable assessors to determine optimum staffing skills mix and ratios. It is our view that this is fundamental to ensuring high quality care as demonstrated in the findings of the Oakden Report; which recommends mandated staff training and states minimum staffing and skills mix to ensure safe and appropriate care¹⁶. Australian Nursing and Midwifery Federation research conducted in 2016 found that current staff hours are not adequate to even meet basic care needs¹⁷. Failure to ensure effective regulation

¹² <http://www.aacqa.gov.au/about-us/annual-reports/annual-report-2016-2017/AACQA%20Annual%20Report%202017%20Final.pdf/view>

¹³ <https://www.aacqa.gov.au/about-us/annual-reports/annual-report-2015-2016/AACQ%20Annual%20Report%202016%20ACCESSIBLE%20WEB.pdf>

¹⁴ <https://agedcare.health.gov.au/news-and-resources/publications/2016-national-aged-care-workforce-census-and-survey-the-aged-care-workforce-2016>

¹⁵ <https://www.aacqa.gov.au/providers/news-and-resources/single-aged-care-quality-framework/single-aged-care-quality-framework>

¹⁶ *ibid*

¹⁷ ANMF (2016) National Aged Care Staffing and Skills Mix Project Report 2016. Available at: http://www.anmf.org.au/documents/reports/National_Aged_Care_Staffing_Skills_Mix_Project_Report_2016.pdf

of this area, and establish minimum standards to report against will no doubt lead to a continuation of the poor practices such as those displayed at the Oakden facility.

Whilst it is pleasing that unannounced only site visits are planned following the recommendations of the Review of National Aged Care Quality Regulatory Processes¹⁸. To date, there has been no consultation or indication of any changes to aged care legislation. Unless there are clear links between outcomes to be measured and well-defined legislation, assessors will have little power to take swift remedial action where concerns are identified.

“Audits should focus on the staffing shortfalls and the resident to staff ratio - more so for the high care residents (in facilities). Management should also be made responsible for the continuation of staffing shortfalls and issues. There should be a governing body where assistants in nursing, registered nurses etc. can report the ongoing and unresolved staffing shortfalls. If management of the aged care facilities continue to ignore these issues or refuse to put measures in place to resolve these then a governing body should be able to intervene somehow. These shortfalls are directly linked with poor resident care and subsequently elder abuse. How are we expected to do our jobs successfully and efficiently with the highest standard of care when all the facility is focused on is cost cutting!”

Assistant in Nursing, RACF

Relatives, residents and workers are often poorly placed to raise issues of concern due to their dependence on the service provision and imbalance of power between aged care operators, care recipients and their carers. Fear of reprisal is commonly cited as a reason for inaction when concerns are felt and complaints processes must offer safeguards for workers, care recipients and their relatives.

¹⁸ *ibid*

“There needs to be protection for staff from bullying when they speak up about abuse.”

Assistant in Nursing, RACF

Unless complaints management is raised as a specific concern, it could be an outcome that is not explored in-depth for a minimum of three years between accreditation visits. In addition, whilst complaints are a good indicator of quality they are a reactive rather than proactive way to monitor consumer outcomes. A more appropriate way would be to ensure meaningful and independent engagement of workers, relatives and consumers throughout the accreditation cycle. Better use of data from, or meaningful engagement with, external community advocacy organisations built into formal agreements might also be of value.

Whilst registered nurses have a professional duty to report issues of concern, no such requirements are placed on unlicensed Assistants in Nursing/Care workers, yet the latter provide the most direct care to residents¹⁹. Plans to require this group to adhere to a National Code of Conduct for health care workers²⁰ will go some way to address this. However, each state will have determination about how this will be implemented which could be confusing for regulators of aged care; and the code remains good practice guidance rather than a statutory requirement.

Our members cite lack of action when they raise issues of concern to external agencies. In some cases, delays occur due to the referral pathways between the Department of Health, Aged Care Complaints Commission, Healthcare Complaints Commission, Nursing and Midwifery Board of Australia and AACQA. Greater legislative powers for the AACQA and more streamlining of the system for referrals, including a centralised reporting scheme would promote timely action and feedback for workers raising concerns in good faith.

¹⁹ Australian Government Department of Health (2017) The Aged Care Workforce 2016. Available at: https://agedcare.health.gov.au/sites/g/files/net1426/f/documents/03_2017/nacwcs_final_report_290317.pdf

²⁰ COAG Health Council (2015) Final report: A National Code of Conduct for health care workers.

“Staff and family members report to the AACQA where there are problems. They also report to the Nurses Registration Board, but little if anything is done. Registered nurses with complaints against them are told to be counselled and have a program of re-education, but the failing/lack of skill/personality problem still remains. This results in sites that are in jeopardy, but remain operating.”

Enrolled Nurse, RACF

“The cover up in facilities would make audits difficult. Any suggestion of abuse should be investigated by independent sources. The abuse I reported involved signing a nondisclosure agreement. The assistant in nursing who was threatening a resident suffering dementia is still working.”

Registered Nurse, RACF

The adequacy of consumer protection arrangements for aged care residents who do not have family, friends or other representatives to help them exercise choice and their rights in care.

Nursing is a trusted profession and as such, registered nurses, enrolled nurses and assistants in nursing working in RACFs are well placed to offer advocacy. However, unless the systemic issues detailed in this submission are addressed, they will be unable to advocate to their full potential.

Recommendations

1. There should be a mandated requirement to have a staffing model in place to determine adequate ratios of staffing and skills mix. Staffing models must account for both direct and indirect duties to be performed, level of residents care need, unique characteristics of the resident group and configuration of the accommodation.
2. Legislation should require registered nurses to be on site at all times where people are accommodated who require high levels of clinical care.
3. There should be mandated minimum training requirements that determine the basic level of education that all assistants in nursing/care workers must receive. Also which requires all aged care workers to receive accredited training on keeping people safe, responding to incidents of abuse and managing untoward incidents.
4. Assistants in nursing/care workers should be subject to licensing to ensure enhanced protections for residents, and to enable recognition of the value of this sector of the aged care workforce.
5. There should be enhanced legislation determining safe standards of medication administration and which clearly determine the role of unlicensed assistants in nursing/care workers in relation to medications management.
6. Greater intelligence gathering about the operation and performance of a facility could be gathered between site audits and re-accreditation by the AACQA. This should be investigated as a matter of priority.
7. There should be more detailed analysis of untoward incidents. Any proposed system should be legislated for, and operated centrally, to facilitate national analysis and comparison of performance across the sector.

8. There should be legislated safeguards to ensure aged care workers are protected when raising concerns in good faith.
9. The exemption from reporting incidents where a person is cognitively impaired should be removed, to enable accurate data collection and analysis about causation and subsequent incident management.
10. Any attempt to amend the outcomes to be measured against by the AACQA must be underpinned by legislation. Legislation must provide sufficient detail to enable judgements about compliance to be clearly measured and move away from self-determined tests of sufficiency and adequacy that are open to individual interpretation and challenge.
11. There should be enhanced systems for meaningful and independent engagement of workers, relatives and consumers throughout the accreditation cycle. Better use of data from, or meaningful engagement with, external community advocacy organisations built into formal agreements might also be of value.
12. To promote timely action and feedback for workers raising concerns in good faith, greater legislative powers for the AACQA and more streamlining of the system for referrals, including a centralised reporting scheme should occur.

List of supporting documents

Australian Nursing and Midwifery Council (2016) *National Aged Care Staffing and Skills Mix Project Report 2016*. Available at:
http://www.anmf.org.au/documents/reports/National_Aged_Care_Staffing_Skills_Mix_Project_Report_2016.pdf

Australian Nursing and Midwifery Council (2016) *National Aged Care Survey*. Available at:
http://www.anmf.org.au/documents/ANMF_National_Aged_Care_Survey_Report.pdf

NSW Nurses and Midwives Association (2016) *Who will keep me safe? Elder Abuse in Residential Aged Care*. Available at:
<http://www.nswnma.asn.au/wp-content/uploads/2016/02/Elder-Abuse-in-Residential-Aged-Care-FINAL.pdf>

NSW Nurses and Midwives Association (2016) *Solutions from the frontline: Practical approaches to reduce the risk of abuse in aged and disability services*. Available at:
https://issuu.com/thelampnswnma/docs/solutions_from_the_frontline

NSW Nurses and Midwives Association (2017) *The state of medication in NSW residential aged care*. Available at:
https://issuu.com/thelampnswnma/docs/medication_in_nsw_ras_final_lr