



House of Representatives Standing Committee on  
Health, Aged Care and Sport

# INQUIRY INTO THE QUALITY OF CARE IN RESIDENTIAL AGED CARE FACILITIES IN AUSTRALIA

**Submission**

8 February 2018



## ABOUT ACSA

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Aged & Community Services Australia (ACSA) is the leading aged care peak body supporting over 700 church, charitable and community-based, not-for-profit organisations. Not-for-profit organisations provide care and accommodation services to about one million older Australians.<sup>1</sup>

ACSA represents leads and supports its members to achieve excellence in providing quality affordable housing and community and residential care services for older Australians.

Aged care providers make a significant \$17.6 billion contribution to the economy by producing outputs, employing labour, paying wages and through buying goods and services.<sup>2</sup> This is akin to the contribution made by the residential housing, beef and dairy industries. In many regional and rural areas aged care is the largest employer, which is where the majority, if not all, providers are not-for-profit.

ACSA members are important to the community and the people they serve, and are passionate about the quality and value of the services they provide, irrespective of their size, service mix or location.

## ACSA CONTACTS

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<sup>1</sup> Australian Government, Department of Health, Report on the Operation of the Aged Care Act 1997, December 2016.

<sup>2</sup> Deloitte Access Economics, Australia's aged care sector: economic contribution and future directions, Aged Care Guild, June 2016, p 24.

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## INTRODUCTION

ACSA and its membership are committed to providing quality care and support a firm but fair regulatory system that protects older people while allowing service innovation to flourish.

The aged care industry takes its responsibility to ensure older Australians receive the highest quality of services very seriously. The safety, wellbeing and quality of life for care recipients in residential care is paramount. Abuse of older people, in any form, is not to be tolerated.

The Standing Committee on Health, Aged Care and Sport has commenced an Inquiry into the Quality of Care in Residential Aged Care Facilities in Australia. The purpose of this Inquiry is to examine Australia's residential aged care system, in particular, the quality of care and services provided to aged care residents. The Committee will also consider the consumer protections available for aged care residents, including those who do not have family members to help them exercise their rights.

Aged care reforms are providing older people with more choice and control over the services they receive. This places an increased emphasis on the primary relationship being between the care recipient and their provider rather than the provider's relationship to Government. This change in emphasis requires Government ensure there are appropriate safeguards and evidence based right touch regulation in place that supports the person to exercise choice but importantly to also protect older people.

Consistent with the direction of the Aged Care Sector Committee's Aged Care Roadmap<sup>3</sup> released by the Aged Care Sector Committee in 2016, ACSA supports a sustainable aged care system that is consumer driven and market based: noting in particular the roadmap goals of greater consumer choice driving quality and innovation and that the Government does not regulate beyond consumer protections.

## SUMMARY OF ACSA RECOMMENDATIONS

1. Government use the opportunity provided via a number of recent reviews undertaken (including the Review of National Aged Care Quality Regulatory Processes and the Australian Law Reform Commission Report Elder Abuse – A National Legal Response) to

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<sup>3</sup> <https://agedcare.health.gov.au/aged-care-reform/aged-care-roadmap>

undertake an audit of current regulation and reporting requirements to develop an efficient and effective approach to reporting requirements for all relevant stakeholders.<sup>4</sup>

2. The findings of this inquiry should be informed by, and form part of a considered response to the recommendations and actioning of, other recent reviews.
3. In its submitted response to Review of the National Aged Care Quality Regulatory Processes<sup>5</sup> ACSA called for a clear distinction between mandatory requirements (focused on the core consumer protection standards and what aged care providers are funded to deliver) and other expectations (focused on individual choice and market demand) and recommended:
4. More effective communication and examination/analysis of data among relevant agencies
5. Transparency and information/education for consumers on their rights and course of action where they are at risk of abuse.
6. Additional support for aged care providers through education and consultancy programs to assist aged care providers in preventing and responding to adverse incidents by people with a cognitive impairment.

#### **LINK WITH OTHER REVIEWS**

A number of recent reviews, including the Review of the National Aged Care Quality Regulatory Processes and the Australian Law Reform Commission Report Elder Abuse – A National Legal Response, have recommended increased reporting and regulation. These reports highlight concerns with the existing regulatory system and provide an opportunity to streamline arrangements.

ACSA has submitted responses to the following reviews:

- Effectiveness of the Aged Care Quality Assessment and Accreditation Framework<sup>6</sup>
- Review of the National Aged Care Quality Regulatory Processes<sup>7</sup>
- Australian Law Reform Commission Report Elder Abuse – A National Legal Response<sup>8</sup>

ACSA strongly recommends the findings of this inquiry from part of a considered and coordinated response and approach to the recommendations and actioning of these reviews.

In its response to the review of the Effectiveness of the Aged Care Quality Assessment and Accreditation Framework ACSA indicated its support for the development of broad-based,

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<sup>4</sup> ACSA 2018-19 Pre-Budget Submission, p4

<sup>5</sup> Review of the National Aged Care Quality Regulatory Processes Submission July 2017. P6

<sup>6</sup> Effectiveness of aged care quality assessment & accreditation framework submission 3 Aug 17

<sup>7</sup> Review of the National Aged Care Quality Regulatory Processes submission. July 2017

<sup>8</sup> Australian Law Reform Commission Elder Abuse Submission. March 2017

outcomes-focused regulation where all of the pieces must fit together into a sensible whole, enabling the provision of quality aged care and support.

## INQUIRY 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*

While the basic mandatory reporting framework for reportable assault<sup>9</sup> in residential aged care is in place, there is no clear division of responsibilities for acting on other adverse incidents. Under the Aged Care Act 1997(the Act), approved providers of residential aged care must:

- report to the police and the department incidents of alleged or suspected reportable assaults within 24 hours of the allegation, or when the approved provider starts to suspect a reportable assault has occurred.
- take reasonable measures to ensure staff members report any suspicions or allegations of reportable assaults to the approved provider (or other authorised person), to the police and the department.
- take reasonable measures to protect the identity of any staff member who makes a report and protect them from victimisation.<sup>10</sup>

There is no requirement to report other adverse resident incidents to external authorities. However those incidents are reported through the providers' internal processes and monitored by the Australian Aged Care Quality Agency through its scheduled auditing program.

In the case of elder abuse there are longstanding and well respected authorities, including work safe authorities, the police and the judicial system, that are well placed to undertake investigations which determine whether abuse has occurred and if proven determine the consequences for the abuser. ACSA believes it is important that aged care regulations do not then establish an additional reporting and investigative arm that places responsibilities on aged care providers beyond their role.<sup>11</sup>

In its submitted response to Review of the National Aged Care Quality Regulatory Processes<sup>12</sup> ACSA called for a clear distinction between mandatory requirements (focused on the core consumer protection standards and what aged care providers are funded to deliver) and other expectations (focused on individual choice and market demand) and recommended:

1. More effective communication and examination/analysis of data among relevant agencies:
  - In relation to care recipients who are at risk of abuse.

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<sup>9</sup> <https://agedcare.health.gov.au/ensuring-quality/aged-care-quality-and-compliance/compulsory-reporting-for-approved-providers/reportable-assaults-report>

<sup>10</sup> <https://agedcare.health.gov.au/ensuring-quality/aged-care-quality-and-compliance/guide-for-reporting-reportable-assaults>

<sup>11</sup> Effectiveness of aged care quality assessment & accreditation framework submission 3 Aug 17 – Inquiry Terms of Reference (f) pg 6,7

<sup>12</sup> Review of the National Aged Care Quality Regulatory Processes Submission July 2017. P6

- To share information with the aim of identifying earlier, aged care providers that need to improve performance to meet standards.
  - At a global level to indicate how the system is working and to identify what is working well and what needs to be improved.
  - Protocols that support the sharing of relevant and meaningful data rather than vexatious and unproven allegations.
2. Transparency and information/education for consumers about how the system works and their rights within it. Both Government and the industry have a responsibility to do this and support consumer and community confidence.
  3. Additional support through education and consultancy programs to assist aged care providers in preventing and responding to incidents by people with a cognitive impairment.

## *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*

There are currently three Commonwealth entities with responsibilities to support the delivery of high quality aged care services – the Australian Aged Care Quality Agency; the Australian Department of Health and the Aged Care Complaints Commissioner.

The Australian Aged Care Quality Agency (AACQA) is responsible for the accreditation of government-subsidised residential aged care services and the quality review of home care services, which includes community support packages, respite for carers and day therapy centres, as well as flexible care programs for Aboriginal and Torres Strait Island people. The monitoring of residential aged care providers’ compliance with the Australian Accreditation Standards<sup>13</sup> occurs through a program of accreditation and re-accreditation audits, announced and unannounced audits, and review audits.

The role of the Aged Care Complaints Commissioner was established in January 2016 to resolve concerns and complaints about aged care services funded by the Australian Government. The Aged Care Complaints Commissioner works under the *Aged Care Act 1997* (the Act)<sup>14</sup> and the *Complaints Principles 2015* (the Principles). Where necessary, the Commissioner has the power to direct a service provider to demonstrate that it is meeting its responsibilities under the Act or the Agreement. The Commissioner can at any time refer matters to the Department of Health (the Department), the Australian Aged Care Quality Agency (the Quality Agency) and other relevant agencies.

The Charter of Residents Rights and Responsibilities<sup>15</sup> (the Charter), embedded in the User Rights Principles 2014<sup>16</sup> ensure that the personal, civil, legal and consumer rights of each resident are not diminished in any way when he or she moves into a nursing home or hostel. The obligation of Residential aged care providers to uphold the rights of residents as stated in the Charter is monitored by the AACQA and the Aged Care Complaints Commissioner.

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<sup>13</sup> <https://www.aacqa.gov.au/providers/accreditation-standards>

<sup>14</sup> <https://www.agedcarecomplaints.gov.au/about/legislation-and-policies/>

<sup>15</sup> [http://www.agedrights.asn.au/rights/rights\\_charter.html](http://www.agedrights.asn.au/rights/rights_charter.html)

<sup>16</sup> <https://www.legislation.gov.au/Details/F2014L00808>

ACSA believes the existing national aged care quality framework provides a comprehensive framework covering accreditation, monitoring, review, investigation, complaints and compliance processes supported by advocacy services<sup>17</sup>.

Recommendation One of the Review of National Aged Care Quality Regulatory Processes, (referred to as the Carnell Paterson Report)<sup>18</sup> released in October 2017 proposes the establishment of an Aged Care Quality and Safety Commission that will 'centralise' accreditation, compliance and complaints handling. This involves the establishment of an Aged Care Commissioner as Chair of the Commission.

While ACSA broadly supports this proposal as an opportunity to distinguish between Department policy and compliance and streamline reporting frameworks, it does not support the introduction of the Chief Clinical Advisor role.

The Commission must also have a focus on improving the performance, processes and decision making in the regulatory functions it would deliver to ensure incidences such as Oakden, do not occur again.

In its 2018-2019 Pre-Budget Submission<sup>19</sup> ACSA stated its view that arrangements can only be streamlined if overall regulation and reporting is considered rather than merely adding extra requirements and recommended an audit of existing arrangements to determine which regulations and reporting requirements should stay, which need replacing and whether new or different reporting is required. Consideration should also be given to where reports (such as assault in residential care) should be directed to ensure appropriate action is taken. In doing this, consideration should be given to the audience, and the purpose of the regulation in question; what do consumers and their families need to know to make decisions about care and feel confident in the system? What do providers need to know to effectively manage and continually improve their services and, lastly, what does Government need to know to undertake its planning and regulatory roles appropriately? This is the only way to ensure that there is 'right touch' regulation of value to all stakeholders.

### *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*

Aged care providers have a duty of care to staff and to care recipients and are legislatively required through the Quality of Care Principles 2014 of the Aged Care Act 1997<sup>20</sup> to uphold the rights of residents and support them in exercising their rights and choices. Processes to ensure that this occurs include informing residents and their families of internal and external complaints mechanisms via information in the resident agreement document and displayed brochures, and training staff to assist residents to exercise their preferences in their daily life at the aged care facility. The effectiveness of these processes are monitored by the AACQA as part of compliance auditing and also by the Complaints Commissioner.

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<sup>17</sup> Effectiveness of aged care quality assessment & accreditation framework submission 3 Aug 17 – Inquiry Terms of Reference (a) Pg 4

<sup>18</sup> The Review of National Aged Care Quality Regulatory Processes Oct 2017, pgxi

<sup>19</sup> ACSA 2018-19 Pre-Budget Submission, p 10

<sup>20</sup> <https://www.legislation.gov.au>

In addition aged care providers seek the assistance of specialists such as the Dementia Behaviour Management Advisory Service (DBMAS) for timely assessment and intervention, engaging public advocacy services for consumers and seeking assistance from State Administrative Tribunals on matters of guardianship and attorneyship for those consumers who are not appropriately represented.

Consumer advocacy bodies are available in all states and territories to support older Australians including the Older Persons Advocacy Network (OPAN)<sup>21</sup> services funded by the Australian Government's National Aged Care Advocacy Program (NACAP), providing a national voice for aged care advocacy.

OPAN organisations offer free, independent and confidential services that focus on supporting older people and their representatives to raise and address issues relating to accessing and interacting with commonwealth funded aged care services. OPAN organisations seek to ensure that aged care consumers understand and exercise their rights and participate, to the maximum degree possible, in the decisions affecting their care.

The Community Visitors Scheme (CVS) commenced in 1992 and is available to recipients of Australian Government subsidised residential aged care services or Home Care Packages<sup>22</sup>. The CVS volunteers support and befriend residents with little or no contact with families or other support networks.

Recommendation Five of The Carnell Paterson Report proposes that the Aged Care Commission will support residents and their representatives to exercise their rights<sup>23</sup> with approved providers being required to educate consumers and their representatives about 'consumer rights'. Although ACSA and its members support this recommendation there are concerns that OPAN may not have the capacity to provide national training including regional, rural and remote regions (as proposed) and that there will be a cost burden associated with providers requirement to educate their staff. Therefore, ACSA recommends that adequate resourcing to ensure effective support for consumers regardless of where they live (e.g. rural and remote areas).

## CONCLUSION

ACSA believes the outcome of this review should be considered alongside the reviews aforementioned and that appropriate consultation on any recommended actions will be important to ensure they will improve safety, enhance services, support innovation and restore community confidence in aged care.

ACSA looks forward to working with Government to this end.

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<sup>21</sup> <http://www.opan.com.au/>

<sup>22</sup> <https://agedcare.health.gov.au/older-people-their-families-and-carers/community-visitors-scheme>

<sup>23</sup> Review of National Aged Care Quality Regulatory Processes October 2017