



**Royal Commission**  
into Aged Care Quality and Safety

# **A HISTORY OF AGED CARE REVIEWS**

**BACKGROUND PAPER 8**

**OCTOBER 2019**

The Royal Commission into Aged Care Quality and Safety was established by Letters Patent on 8 October 2018. Replacement Letters Patent were issued on 6 December 2018, and amended on 13 September 2019.

The Honourable Tony Pagone QC and Ms Lynelle Briggs AO have been appointed as Royal Commissioners. They are required to provide an interim report by 31 October 2019, and a final report by 12 November 2020.

The Royal Commission intends to release consultation, research and background papers. This background paper has been prepared by staff of the Office of the Royal Commission, for the information of Commissioners and the public. The views expressed in this paper are not necessarily the views of the Commissioners.

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## Introduction

The Australian aged care sector has been the subject of numerous major inquiries and reviews over the last two decades since major reforms were introduced to the aged care system through the Aged Care Act 1997 (Cth). The Terms of Reference for this Royal Commission direct the Commissioners to have regard to, amongst other things, ‘the findings and recommendations of previous relevant reports and inquiries’.

This background paper provides an overview of many of the major public reports and inquiries related to publicly-funded aged care in Australia since 1997, with a greater focus on the more recent of them. It deals primarily with official inquiries that generally involved submissions and evidence from the public and generated reports that are publicly available.<sup>1</sup>

These reviews and inquiries address recurring issues within the aged care system, including:

- the difficulty people have in understanding and navigating the aged care system
- the need for improved advocacy services for older people
- the lack of coordination across different levels of government and between different types of services in the care and services provided to older people
- poor access to care, especially for people with chronic conditions or complex needs, and long waiting times for access to services for many people, especially those who are still living at home
- the recurrence of instances of poor quality of care across the aged care system, including for dementia and other cognitive disability
- the excessive use of chemical—sedatives, psychotropic medication and other drugs—and physical restraints on people in aged care
- the need for additional support for people with special needs, including those with dementia, those at the end of their life, those with mental illness, people with disability and those experiencing homelessness
- serious current and projected shortages of appropriately skilled and qualified nursing and personal care workers
- ineffective regulatory oversight of aged care providers, and a lack of focus on the quality of care
- the absence of any rating or assessment system for providers that can give older people and their families accurate, or sometimes any, information about the services they are seeking to access
- complaints mechanisms that are difficult to access, a lack of responsiveness by the Australian Government complaints authority and situations where people fear to make a complaint because of the risk of retaliation by the service provider
- weaknesses in the delivery of services aimed at maintaining healthy functioning, such as physiotherapy, nutrition advice, speech pathology, oral health services and podiatry

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<sup>1</sup> For a history of aged care reform see TH Kewley, *Social security in Australia 1900–72*, 1973; TH Kewley, *Australian social security today: Major developments from 1900 to 1978*, 1980; and DJ Cullen, *Historical perspectives: the evolution of the Australian Government’s involvement in supporting the needs of older people, Background Paper 4, Review of Pricing Arrangements in Residential Aged Care*, 2003.

- inadequate access to, and integration with, the broader health care system, impacting on the health outcomes of older people
- failings in the quality of the care provided for people who are close to death.

Sadly, the Royal Commission has been confronted by many of these issues in its own investigations into the aged care system.

Many of the previous reviews and inquiries relevant to the Royal Commission's terms of reference have been conducted by Parliamentary Committees. In line with the requirements set out in s 16(1) of the *Parliamentary Privileges Act 1987* (Cth), the Royal Commission draws on the findings and recommendations of those reports as background information. Nothing in this background paper is intended to draw, or invite the drawing of, inferences or conclusions wholly or partly from those reports. This approach has been confirmed as appropriate by the presiding officers of the Parliament.<sup>2</sup>

This paper has been prepared to assist in understanding the issues covered, findings and recommendations of previous major public inquiries. Previous inquiry reports have been included in this paper where they are relevant to current concerns with aged care quality and safety, have involved public processes and have been widely received or influential. Because of the limitation of space and time available, not all the reviews and reports that meet these criteria have been included. A non-exhaustive list of previous reviews and inquiries over the last four decades is provided in an appendix.

It should not be inferred that the authors of this paper agree, or disagree, with the recommendations of any of the reviews and inquiries discussed in this paper.

## **Report on Funding of Aged Care Institutions, Senate Community Affairs References Committee, 1997**

The Senate initiated an inquiry into the funding of aged care institutions in response to the major structural reforms of residential aged care announced in the 1996 Budget and set out in the *Aged Care Bill 1997* (Cth).

The proposed changes were to consolidate funding arrangements for the then separate nursing home and hostel sectors and provide for a single residential care system to determine the level of Australian Government subsidy for each resident. They outlined a greater reliance on resident contributions to the cost of care, including through a system of accommodation bonds, and residential care benefits subject to income testing. They also proposed a relaxation of previous regulatory requirements, such as tight financial acquittal requirements, and their replacement by a 'lighter-touch' accreditation approach.<sup>3</sup> These proposed changes encouraged private investors, including for-profit providers, to enter the

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<sup>2</sup> Correspondence between the Honourable Richard Tracey AM RFD QC and Ms Lynelle Briggs AO and the presiding officers of the Parliament: Senator the Hon. Scott Ryan, President of the Senate, and the Hon. Tony Smith MP, Speaker of the House of Representatives, 7 March 2019 and 16 May 2019.

<sup>3</sup> Senate Community Affairs References Committee, *Report on Funding of Aged Care Institutions*, Commonwealth of Australia, 1997, pp 2–3. J Braithwaite, T Makkai and V Braithwaite, *Regulating Aged Care: Ritualism and the New Pyramid*, 2007, p 182.

residential aged care market by reducing the reliance by providers on Government capital funding.<sup>4</sup>

The reforms were initially scheduled to take effect on 1 July 1997, but many of the details of the new arrangements were still being negotiated as the Committee completed its work.<sup>5</sup>

The terms of reference for the inquiry allowed for a very broad reflection on the impact on quality and equity arising from the proposed changes to aged care arrangements announced in the 1996–97 Federal Budget.<sup>6</sup> The Committee handed down a majority report, with a dissenting minority report. The majority report is discussed below.

The Committee maintained that the proposed changes to aged care might encourage a two-tiered system of aged care.<sup>7</sup> Under the proposed legislation, residents who wished to receive higher quality accommodation, services and food would have the opportunity to pay higher weekly contributions than those driven by the formula for Government-funded subsidies.<sup>8</sup> The Committee took the view that the proposed changes would result in access to nursing homes increasingly depending on a person's capacity to pay.<sup>9</sup> This concern centred around the introduction of the proposed accommodation bonds, which they saw as effectively imposing 'a charge for the provision of health care on those who are most vulnerable in the community—the frail elderly'.<sup>10</sup> The Committee particularly suggested that the bonds would produce an incentive for providers to differentiate between residents based on capacity to pay.<sup>11</sup>

The Committee was concerned that the proposed reforms had the potential to compromise the standards of care in aged care facilities.<sup>12</sup>

Prior to the proposed changes, providers were required to acquit a portion of their funding against expenditure on direct care staff and duties.<sup>13</sup> The proposed reforms removed the system of acquittal funding, replacing it with a single non-acquittal payment system.<sup>14</sup> The Committee was wary of the removal of acquittal requirements for providers because of potential impacts on quality of care.<sup>15</sup> It said that 'any system that claims to be concerned about the quality of care in nursing homes must ensure that public money provided for nursing care is spent for this purpose' and recommended that the acquittal system be retained.<sup>16</sup>

The Committee was of the view that the accreditation standards and quality assurance system needed to ensure that skilled and trained nursing staff levels were maintained in aged care facilities and that these levels should be monitored by the Aged Care Standards

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<sup>4</sup> J Braithwaite, T Makkai and V Braithwaite, *Regulating Aged Care: Ritualism and the New Pyramid*, 2007, p 182.

<sup>5</sup> Senate Community Affairs References Committee, *Report on Funding of Aged Care Institutions*, 1997, p 71.

<sup>6</sup> *ibid.*, p 1.

<sup>7</sup> *ibid.*, p 32.

<sup>8</sup> Parliament of Australia, Parliamentary Library, 'Proposed changes to institutional Residential Aged Care in Australia', *Current Issues Brief 27 1996–97*, 1997.

<sup>9</sup> Senate Community Affairs References Committee, *Report on Funding of Aged Care Institutions*, 1997, p 32.

<sup>10</sup> *ibid.*, 1997, p 10.

<sup>11</sup> *ibid.*, p 13 & 32.

<sup>12</sup> *ibid.*, p 63.

<sup>13</sup> *ibid.*, p 53.

<sup>14</sup> *ibid.*, p 53.

<sup>15</sup> *ibid.*, p 63.

<sup>16</sup> *ibid.*, p 57.

Agency.<sup>17</sup> Ultimately, the Committee believed that nursing care was the essence of residential aged care and that proposed reforms needed to guarantee the quality of this care.<sup>18</sup> It expressed some reservations about the role and likely effectiveness of the proposed Aged Care Standards Agency.<sup>19</sup> It believed the Agency should play an important role in monitoring standards of care and that it needed to have adequate monitoring and enforcement mechanisms in place to ensure industry compliance with care standards, and be adequately funded.<sup>20</sup>

The Committee considered appropriate prudential oversight arrangements in some detail.<sup>21</sup> This was in light of the proposed introduction of the accommodation bond scheme. It noted that the proposed reforms allowed for the prudential requirements to be set out in the User Rights Principles, which had not been drafted at the time of the inquiry.<sup>22</sup> The committee believed that prudential arrangements were essential to ensure the complete protection of accommodation bonds.<sup>23</sup> In the event, the 1997 legislation introduced some prudential requirements.<sup>24</sup> Subsequent reviews, including Hogan in 2004, the Productivity Commission in 2011, and the Tune Review in 2017, supported strengthening the prudential oversight of providers.<sup>25</sup>

The status of the family home of prospective aged care residents was a major point of discussion in this 1997 inquiry. The Committee noted the commitment of the then Minister for Family Services that older people would not be forced to sell their homes.<sup>26</sup> The Committee took the view that the sale of a person's home should be only an absolute 'last resort' and concluded that the only way of guaranteeing older people would not have to sell their home would be to exclude the home from the assets test.<sup>27</sup>

The Committee believed that an effective user rights system needed to be in place to protect the rights of residents in aged care facilities.<sup>28</sup> It was of the view that given the emphasis in the reforms towards a more market-driven model of service provision, there was a need for stronger measures to protect residents' rights than in the past. The Committee considered, therefore, that user rights protections would be enhanced by the incorporation of User Rights Principles in the principal Act.

The Committee also found that there was a need for an external independent complaints mechanism to be established including a complaints body that was independent of all stakeholders.<sup>29</sup> Concerns about the independence or effectiveness of complaint mechanisms in the aged care system have been expressed in a number of subsequent

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<sup>17</sup> *ibid.*, p 60.

<sup>18</sup> *ibid.*, p 60.

<sup>19</sup> *ibid.*, p 61.

<sup>20</sup> *ibid.*, p 62.

<sup>21</sup> *ibid.*, pp 65–72.

<sup>22</sup> *ibid.*, p 65.

<sup>23</sup> *ibid.*, p 71.

<sup>24</sup> The Auditor-General, *Protection of Residential Aged Care Accommodation Bonds*, Department of Health and Ageing, Audit Report No. 5 2009–10 Performance Audit, pp 13–14

<sup>25</sup> WP Hogan, *Review of Pricing Arrangements in Residential Aged Care, Final Report*, 2004, p 163–164; Productivity Commission, *Caring for Older Australians*, Inquiry Report No. 53, 2011, Vol 2, pp 432–433; D Tune, *Legislated Review of Aged Care*, Australian Government Department of Health, 2017, p 10.

<sup>26</sup> Senate Community Affairs References Committee, *Report on Funding of Aged Care Institutions*, 1997, p 16 & 21.

<sup>27</sup> *ibid.*, p 21.

<sup>28</sup> *ibid.*, p 50.

<sup>29</sup> *ibid.*, p 45 & 48.



reviews, including those by the Senate Community Affairs Committee in 2005, the Productivity Commission in 2011, and the Carnell-Paterson report in 2017.<sup>30</sup>

The Committee made 28 recommendations related to the following matters: accommodation bonds; the treatment of the family home for the purpose of the assets test; the level of the concessional rental supplement paid by the Government; quota and funding arrangements to ensure equality of access to the aged care system for the financially disadvantaged; mechanisms to protect the rights of the residents of aged care facilities; the retention of some existing regulatory requirements, including that nursing homes continue to be required to acquit funding expended on nursing and personal care; and the development of standards and quality assurance processes to ensure the employment of appropriately skilled and trained nursing staff in aged care facilities.

The Committee's findings and recommendations did not have the support of all members, leading to dissenting reports by Government members and the Australian Democrats, and were not accepted by the Government. However, the Government did modify its reform package in response to issues raised in the inquiry and other feedback. These modifications included further consideration of the proposal to transfer responsibility for aged care to the States and additional powers for the Minister to limit the value of the accommodation bond that could be agreed between the provider and the resident of an aged care facility.<sup>31</sup> A Complaints Commissioner was established in the Australian Department of Health in 1997, but the function remained a part of the aged care regulatory function. Other recommendations were returned to in later reviews, as will become apparent in the discussion below.

The Australian Government implemented the package of reforms in 1997 through the Aged Care Act. This introduced significant structural changes to the aged care system.

## ***Review of Pricing Arrangements in Residential Aged Care, WP Hogan, 2004***

Professor Warren Hogan was appointed in 2002 to conduct a comprehensive review of the pricing arrangements in residential aged care.<sup>32</sup> The terms of reference focused on the financing of the residential aged care industry, the performance and viability of the industry, and options for private and public funding of residential aged care.

At the heart of the Hogan *Review of Pricing Arrangements in Residential Aged Care* was a concern about the rise in aged care spending and the potential burden of these costs on the next generation of taxpayers. These concerns had been generated, in part, by a number of demographic studies undertaken during the 1990s and early 2000s showing an ageing population and the associated fiscal pressures set out by the Government in the first Intergenerational Report.<sup>33</sup>

The review indicated that its central concern was 'how intergenerational inequities are to be relieved by the older members of Australia's society taking a relatively higher financial

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<sup>30</sup> Senate Community Affairs References Committee, *Quality and equity in aged care*, 2005, p 64; Productivity Commission, *Caring for Older Australians*, Inquiry Report No. 53, 2011, Vol 1, p XXVI; K Carnell and R Paterson, *Review of National Aged Care Quality Processes*, 2017, pp 148–155.

<sup>31</sup> Parliament of Australia, *Bills Digest 132 1996–97 Aged Care Bill 1997*, 1997.

<sup>32</sup> WP Hogan, *Review of Pricing Arrangements in Residential Aged Care, Final Report*, 2004, p 1.

<sup>33</sup> *ibid.*, p 2.

responsibility for their aged care needs while at the same time ensuring that the needy and disadvantaged in society are supported'.<sup>34</sup>

The review provided an analysis of the workings of the aged care industry and demand for aged care services. It noted how little information was available to support the work of the Review and how much fresh data had to be collected to enable the Review to do its job.<sup>35</sup> The data collected by the Review provided a basis for consideration of the financial and economic conditions experienced by providers and prospects for growth. The Review also considered the level of capital spending necessary to sustain the expansion of residential aged care.<sup>36</sup>

The review drew attention to a substantial shortfall in funding of the aged care system relative to expectations of future demand.<sup>37</sup> It found that three main demographic influences would increase demand for aged care services over the next four decades by as much as three to five times.<sup>38</sup> The ageing of the population was the most significant demographic driver. The second driver was the fall in the proportion of the older population who would have access to informal care. Thirdly, and on the other hand, the review noted that the improving health of older people might partially offset the demand presented by an ageing population.<sup>39</sup>

The review noted that even assuming that the health status of older Australians did improve, and that Australian taxpayers would be willing and able to continue to finance the same level of provision of aged care services, there would still remain a degree of excess demand for aged care services.<sup>40</sup> The Review found that, if left unchecked, the current aged care financing arrangements would be in deficit to the order of \$31.2 billion (0.6 per cent of Gross Domestic Product) by 2042–43.<sup>41</sup> It indicated that the Australian Government would not be able to cover this deficit without imposing a significantly higher burden on future taxpayers.<sup>42</sup>

Overall, the review found that the policy arrangements at the time supported an immature industry, characterised by 'a very tight relationship between the Government and the management of residential aged care services'.<sup>43</sup> In particular, the review was concerned about a number of constraints on the industry:

Decisions in great detail are taken by Government on administrative grounds with little or no emphasis given to using price signals other than general adjustments of government subsidies and related payments to providers. In this setting, board and management of aged care facilities have little scope for decision-making. Prices and revenues are determined by Government. Investment proposals are subject to approval of place allocations. Initiatives for experimenting in alternative ways of offering care are almost solely dependent on support and authorisation, in many instances, by one regulatory authority or another.<sup>44</sup>

The review called for support for the industry to mature such that it would be 'more able to operate in a commercial world and thereby boost the sustainability of the industry'.<sup>45</sup>

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<sup>34</sup> *ibid.*, p xi.

<sup>35</sup> *ibid.*, p xi.

<sup>36</sup> *ibid.*, p xi.

<sup>37</sup> *ibid.*, pp 108–109.

<sup>38</sup> *ibid.*, p 91.

<sup>39</sup> *ibid.*, p 91.

<sup>40</sup> *ibid.*, p 97.

<sup>41</sup> *ibid.*, p 122.

<sup>42</sup> *ibid.*, p 122.

<sup>43</sup> *ibid.*, p 273.

<sup>44</sup> *ibid.*, p 273.

<sup>45</sup> *ibid.*, p 273.

At the same time, the review noted that constraints on the industry to promote quality and consumer interests were justified:

because providers and aged care recipients have unequal access to relevant information and the frailty of residents can make them vulnerable to exploitation. The tight supply of places, the reinforcement this constraint on supply has on providers' market power and the inability of residents to exercise choice, necessitate regulatory provisions on quality assurance and conditions on entry.<sup>46</sup>

The review called for a balance between encouraging efficiency and innovation within the service sector and protecting quality care, equity of access, and appropriate spending of taxpayer money.<sup>47</sup>

The review made 20 detailed, multi-part recommendations intended to improve equity and access, contribute to the efficiency of the sector, and encourage the development of a more sustainable industry.<sup>48</sup> These recommendations were intended to be implemented in the medium-term, before 2008. Many of the recommendations involved technical changes to planning arrangements relating to the allocation of places, processes for the assessment of resident needs and the determination of funding supplements. The review recommended that rental assistance arrangements be streamlined (and the pensioner supplement abolished) so that a maximum basic daily care fee for all residents would be set at 85 per cent of the value of the maximum rate of the basic single pension plus the full value of the maximum rate of rent assistance.<sup>49</sup> It suggested that accommodation payments for non-concessional permanent residents entering care should be restructured, so that new residents should have the option of paying a fully refundable lump sum bond (not subject to retention amounts) to be held for the period of the resident's stay or a daily rental charge, applicable for the duration of the resident's stay.<sup>50</sup>

The review suggested stronger prudential arrangements for the protection of resident accommodation bonds, including the creation of a guarantee fund.<sup>51</sup> Arrangements for the prudential oversight of providers had been considered by the Senate Committee in 1997. The review also proposed other changes to the prudential oversight of providers, including that the Department of Health and Ageing should require the names of entities and major shareholders of the companies and associate companies that own or part own residential aged care services. Government's monitoring and authorisation of key personnel who owned or bought bed licences would be extended to personnel of entities that owned or bought entire aged care providers (which at the time were being sold, instead of the bed licences, to 'circumvent' the monitoring of key personnel owning bed licences).<sup>52</sup>

The Review proposed a number of measures to improve the quality of services. It proposed that the regulator should have a clearer focus on the accreditation of services and the dissemination of accreditation results to support informed consumer choice, including exploring a star rating system.<sup>53</sup> The Review also recommended that the Government should increase its support for the education and training of aged care nurses and care workers, including through the expansion of university places for the training of registered nurses and the provision of support for aged care workers to complete higher levels of certification.<sup>54</sup>

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<sup>46</sup> *ibid.*, p 273.

<sup>47</sup> *ibid.*, p 274.

<sup>48</sup> *ibid.*, pp xvii–xxv.

<sup>49</sup> *ibid.*, p 293.

<sup>50</sup> *ibid.*, p 295.

<sup>51</sup> *ibid.*, p 287.

<sup>52</sup> *ibid.*, p 290.

<sup>53</sup> *ibid.*, p 284.

<sup>54</sup> *ibid.*, p 286.

Some of the recommendations were directed at rebalancing the power between participants in the aged care sector. The review proposed that assessment of residents' income and assets should be the responsibility of the Australian Government and carried out by Centrelink and not the aged care provider.<sup>55</sup>

The review also canvassed a number of options that the Government might consider in the longer term, noting that they required further exploration and some may prove impracticable.<sup>56</sup> One option proposed that funding for places be directed to prospective residents or their families through the provision of consumer vouchers, rather than being paid directly to providers.<sup>57</sup> Another involved the establishment of a Government contracting agency to act on behalf of Government in negotiating prices and conditions for residents in aged care facilities.<sup>58</sup>

A further option suggested that aged care means testing arrangements should be brought into line with those that apply to the age pension and that in the longer-term, consideration be given to exempt the proceeds of the sale of the family home from a tax imposition or inclusion in an asset valuation assessment.<sup>59</sup> The review suggested that the Government could allow funds from any sale to be deposited with a Government agency and Consumer Price Index interest could be drawn as an income. In addition, part of the deposit could be used to purchase some form of aged care.<sup>60</sup> The review further suggested that in the longer-term the Government should consider an auction system for place allocations.<sup>61</sup>

The Government provided a detailed response to the Hogan review in May 2007.<sup>62</sup> It accepted many of the review's recommendations. Increased support was provided for aged care assessments. A new funding model, the Aged Care Funding Instrument, with simplified resident categories, was introduced in 2008. The Government simplified resident accommodation fees and the accommodation subsidy by replacing the Concessional Resident and Pensioner Supplements and some of the current Hardship Supplements with a single means tested Accommodation Supplement.

Increases in funding were provided to cover these changes and provide for additional placements, targeted capital assistance and support for remote and very remote residential aged care facilities supporting people with special needs. Increased funding was provided to support some workforce developments, although not for all of the Hogan recommendations.

Strengthened financial and ownership reporting requirements were imposed on providers, though the Government rejected many of the review's longer-term proposals. After consulting with the community and aged care providers, the Government decided not to proceed with options relating to vouchers, a contracting agency, or a place allocation auction. The Government also rejected the option that it revise asset test arrangements for the family home, where funds are used to access aged care.

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<sup>55</sup> *ibid.*, p 288.

<sup>56</sup> *ibid.*, p 296.

<sup>57</sup> *ibid.*, p 297.

<sup>58</sup> *ibid.*, p 298.

<sup>59</sup> *ibid.*, p 299.

<sup>60</sup> *ibid.*, pp 299–300.

<sup>61</sup> *ibid.*, pp 300–301.

<sup>62</sup> Australian Government, *Final Response to the Review of Pricing Arrangements in Residential Aged Care* ('Hogan Review'), 2007.

# ***Future Ageing: inquiry into long-term strategies to address the ageing of the Australian population over the next 40 years, Report on a draft report of the 40<sup>th</sup> Parliament, House of Representatives Standing Committee on Health and Ageing, 2005***

In June 2002, the House of Representatives' Standing Committee on Health and Ageing was asked by the Minister for Ageing to inquire into long-term strategies to address the ageing of the Australian population over the next 40 years. The inquiry was undertaken in response to the release of a number of influential papers on the policy and funding challenges associated with an ageing population.<sup>63</sup> Parliament lapsed before the review was complete. While the Committee released its draft report, it refrained from making recommendations, making 'conclusions' instead.<sup>64</sup>

Formal aged care was a relatively small part of the inquiry. The focus of the Committee was on actions communities might take to improve the quality of life for the aged, support healthy ageing and provide opportunities for the aged to be productive while they remained active in the community. Nevertheless, the Committee noted that much of the evidence it received related to 'concerns about current aged care and health service[s]'.<sup>65</sup> This background paper describes those parts of the Committee's report that directly relate to the Government-funded aged care system.

The Committee identified several broad themes that it considered represented areas of common concern in aged care and health services. These included:

- inadequate focus on services aimed at maintaining healthy functioning including physiotherapy; nutrition advice; speech pathology; oral health services; and podiatry
- confusion caused by multiple community care services, and issues around the quality of community care services
- the need for further development of the potential enabled under flexible care funding
- the availability and quality of care for people with dementia or mental health problems, and for those needing respite or palliative care
- the availability, quality and viability of residential care
- hospitals that were seen as increasingly unfriendly to older people and poorly integrated with other care services for older people
- the need for changes in general practice and the ways general practitioners work with other health professionals to provide better care for people as they grow older
- workforce shortages, especially nurses and other residential care staff.<sup>66</sup>

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<sup>63</sup> House of Representatives Standing Committee on Health and Ageing, *Future Ageing, Report on a draft report of the 40th Parliament: Inquiry into long-term strategies to address the ageing of the Australian population over the next 40 years*, 2005, pp 1–3.

<sup>64</sup> *ibid.*, p v.

<sup>65</sup> *ibid.*, p 115.

<sup>66</sup> *ibid.*, p 119.

The Review concluded that three overarching responses would be critical to addressing these issues, together with related funding issues:

- a workforce more attuned to the needs of older people and more appropriately skilled to provide services: not just solving the shortage of nurses, but changing the attitudes and work practices of the other health professionals and better utilising services to maintain functioning
- increased focus on research to gain a better understanding of ageing and the care of the aged
- better integration of services at all levels: from genuine cooperation between the states, territories and the Australian Government, to a far greater willingness by health and care professionals to work together to provide person-centred care.<sup>67</sup>

The Committee formulated six conclusions related to the aged care system. It proposed increased support for those with dementia, subsidies for respite care to recognise the additional requirements of people with complex care needs, and improvements to the safety and quality of care provided to older people in hospitals.<sup>68</sup> The Committee also suggested a number of actions that Ministers might take to improve the wellbeing of the aged who remained outside the formal aged care system. It suggested that future research programs should give a priority to ageing productively, and at gaining a better understanding of nutrition for people aged over 65 years.<sup>69</sup> Finally, the Committee concluded that the Department of Education, Science and Training should work with the Committee of Deans of Australian Medical Schools to increase the focus on the health of older people in the curriculum for under-graduate medical education.<sup>70</sup>

The Committee did not anticipate a Government response to the review because it refrained from making recommendations.<sup>71</sup> A response was not provided.

## **Quality and Equity in Aged Care, Senate Community Affairs References Committee, 2005**

The Senate and Community Affairs References Committee's 2005 inquiry into *Quality and Equity in Aged Care* was established in the context of the 2004 Hogan *Review of Pricing Arrangements in Residential Aged Care*<sup>72</sup> and the response to the Hogan Review in the 2004 Budget.

The 2004 Budget included \$2.2 billion over five years for the aged care sector 'to continue to provide affordable and quality aged care for the increasing number of older Australians'.<sup>73</sup> In particular, the Budget announced changes to the residential aged care system, including an increase in care places; incentives to encourage staff training through a 'conditional adjustment payment' to providers; increased training opportunities for nurses and care workers; an increase in accommodation charges for high care residents; and a one-off

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<sup>67</sup> *ibid.*, p 119.

<sup>68</sup> *ibid.*, pp 189–190.

<sup>69</sup> *ibid.*, p 195.

<sup>70</sup> *ibid.*, p 197.

<sup>71</sup> *ibid.*, p v.

<sup>72</sup> WP Hogan, *Review of Pricing Arrangements in Residential Aged Care, Final Report*, 2004.

<sup>73</sup> The Hon P Costello, Treasurer, 'Budget Speech 2004–05 delivered on 11 May 2004 on the second reading of the Appropriation Bill (No. 1) 2004–05', 2004, p 9.

payment to providers to inject immediate capital into the system.<sup>74</sup> In addition, the Budget committed to redirecting existing resources to a residential care supplement (to be introduced in 2006) for people with dementia exhibiting challenging behaviours and people requiring complex palliative nursing care and funding to strengthen culturally appropriate aged care.<sup>75</sup>

The Community Affairs References Committee was asked in 2004 to inquire into the adequacy of the recent budget measures, the performance and effectiveness of the Aged Care Standards and Accreditation Agency, the appropriateness of young people in residential aged care, the adequacy of Home and Community Care programs, and the effectiveness of current arrangements for the transition of the elderly from acute hospital settings to aged care settings or back to the community. The Committee made 51 recommendations in relation to:

- workforce shortages and training requirements
- improvements to the operation of the accreditation agency (the 'Agency'), accreditation standards and complaints resolution
- increased support for community care programs
- reducing excessive documentation requirements and improving use of technology
- increasing funding to support adequate care for aged care residents with special needs, such as mental health problems, homelessness, dementia or palliative care requirements
- reducing the numbers of young people in residential aged care
- improvements to transitional care.

In relation to workforce issues, the Committee concluded that the shortages of nurses, medical practitioners and allied health professionals willing to work in the aged care sector were impacting on the quality of care being delivered in the sector.<sup>76</sup> It noted its recommendations 'reiterate[d] what has been said many times before'.<sup>77</sup>

The Committee made a number of specific and detailed recommendations to alleviate workforce shortages. It recommended that the Australian Government further increase the number of undergraduate nursing places at Australian universities to 1000 and that the Australian Government work with aged care providers to ensure they assist enrolled nurses to complete medication management training targets.<sup>78</sup> Both actions had been recommended in the Hogan Review but had only been partially accepted by the Government.<sup>79</sup>

The Committee also recommended that the Department of Health take the lead in the development of aged care workforce strategies, including mechanisms to ensure that the conditional adjustment payment proposed in the Budget successfully restored wage parity for nurses, personal carers and other staff in the aged care sector.<sup>80</sup> The Committee was of the view that quality of care could be improved through the development of a benchmark of care,

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<sup>74</sup> *ibid.*, p 10.

<sup>75</sup> Senate Community Affairs References Committee, *Quality and equity in aged care*, 2005, p 133.

<sup>76</sup> *ibid.*, p 29.

<sup>77</sup> *ibid.*, p 28.

<sup>78</sup> *ibid.*, p xv.

<sup>79</sup> WP Hogan, *Review of Pricing Arrangements in Residential Aged Care, Final Report*, 2004, p XIX.

<sup>80</sup> Senate Community Affairs References Committee, *Quality and equity in aged care*, 2005, p 30.

which would ensure that the level and skills mix of staffing in facilities was sufficient to deliver the care required.<sup>81</sup>

The Committee expressed concerns about the accreditation standards, the accreditation processes, and the performance of the aged care regulator. The Committee considered that the accreditation standards were too generalised to effectively and consistently measure care outcomes, particularly with respect to medication management and access to medical services.<sup>82</sup> It called for a review of these standards to define the expected outcomes in precise terms.<sup>83</sup> The Committee also expressed concern about the variability in accreditation assessments and called for the establishment of benchmarks against which the accuracy of assessors' decisions could be evaluated, and the publication of this data.<sup>84</sup>

Subsequent inquiries have made similar observations about the need for more consistency and transparency in the application of the quality standards, including the Productivity Commission in 2011,<sup>85</sup> the Carnell-Paterson report in 2017,<sup>86</sup> and the Senate Committee on Community Affairs in 2019.<sup>87</sup>

The Committee expressed concern about the Agency's accreditation audits. It considered that spot checks could play an important role in ensuring compliance with the Accreditation Standards. It found, however, that the current system of spot checks, in which only one in 10 residential facilities on average received a spot check per year, was 'grossly inadequate'.<sup>88</sup> The Committee recommended that all residential facilities receive at least one spot check and one announced visit per year.<sup>89</sup> The Agency's reliance on pre-announced visits was returned to in the Carnell-Paterson review in 2017.<sup>90</sup>

The Committee expressed concerns about the Complaints Resolution Scheme, noting the relatively high non-acceptance of complaints by the Scheme.<sup>91</sup> The Committee favoured a reform of current arrangements, rather than establishing an independent complaints agency.<sup>92</sup> In particular, it made recommendations directed at improving the accessibility and responsiveness of the scheme, relaxing eligibility for accepting complaints, registering and categorising complaints, and introducing whistle-blower legislation to protect people wishing to disclose inadequate standards of care in aged care facilities.<sup>93</sup> The Committee was particularly disturbed by evidence of instances of retribution and intimidation of residents in aged care facilities and their families.<sup>94</sup> It recommended that the Commissioner for Complaints investigate the nature and extent of retribution and intimidation of residents in aged care facilities and their families.<sup>95</sup>

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<sup>81</sup> *ibid.*, pp 50–51.

<sup>82</sup> *ibid.*, p 58.

<sup>83</sup> *ibid.*, p 58.

<sup>84</sup> *ibid.*, pp 37–38.

<sup>85</sup> Productivity Commission, *Caring for Older Australians*, Inquiry Report No. 53 2011, Vol 1, p 101.

<sup>86</sup> K Carnell and R Paterson, *Review of National Aged Care Quality Regulatory Processes*, 2017, p ix.

<sup>87</sup> Senate Community Affairs Reference Committee, *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*, Final Report, 2019, p 34 & 98.

<sup>88</sup> *ibid.*, p 46.

<sup>89</sup> *ibid.*, p 46.

<sup>90</sup> K Carnell and R Paterson, *Review of National Aged Care Quality Regulatory Processes*, 2017, p 131.

<sup>91</sup> Senate Community Affairs References Committee, *Quality and equity in aged care*, 2005, p 64.

<sup>92</sup> *ibid.*, p 64.

<sup>93</sup> *ibid.*, p 64.

<sup>94</sup> *ibid.*, p 64.

<sup>95</sup> *ibid.*, p 68.



The Committee noted the importance of community care in enabling older people to live at home.<sup>96</sup> However, the Committee found that the current system of community care was complex, fragmented, difficult to access, and did not provide adequate levels of service.<sup>97</sup> It called for 'significant reform' of community care programs to achieve a system that better responded to the needs of consumers, care workers and service providers.<sup>98</sup>

The Committee found that additional resources needed to be provided to special needs groups to ensure equitable access to Home and Community Care services.<sup>99</sup> Special needs groups identified by the Committee included the homeless, people from culturally and linguistically diverse backgrounds, Aboriginal and Torres Strait Islander people, people with dementia, financially disadvantaged people, and people living in remote or isolated areas.<sup>100</sup>

The Committee offered 10 recommendations in relation to community care arrangements, including the following: the need for funding for additional places; revised indexation arrangements; provision for special needs groups; a funding supplement for care services in regional, rural and remote areas; increased support for carers; and improved service linkages between aged care and disability services.<sup>101</sup> It also called for greater recognition of the 'central role of carers in the community care system' and for increased funding for respite for carers and carer information and support.<sup>102</sup> It called for a more effective interface between ageing and disability services.<sup>103</sup>

The Committee considered the adequacy of funding for residential care for residents with special needs, including those with dementia, those at the end of their life, those with mental illness, those people with a disability who are ageing and those experiencing homelessness.<sup>104</sup> It identified a number of 'significant issues' in relation to these groups and argued that once people enter the aged care system, the Australian Government has an obligation to ensure that appropriate services are provided whether they arise from a condition related to ageing, a pre-existing condition or from circumstances such as homelessness.<sup>105</sup>

The Committee made seven separate recommendations in relation to people in residential care with special needs. It recommended the following: that the proposed supplementary funding for dementia patients come from additional funding not from within the current budget as proposed; expedition of work on a National Framework for Action on Dementia; a review of whether the proposed supplementary funding is sufficient for the adequate care of those with dementia and those needing palliative care; establishment of a funding supplement for residents in residential aged care who have additional needs arising from mental illness and from homelessness; the investigation of psychogeriatric services and the effectiveness of psychogeriatric care units; targeted funding for education of the aged care workforce caring for people with mental illness; improved access to appropriate aged care services by people ageing with a disability, including service provision in supported accommodation.<sup>106</sup>

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<sup>96</sup> *ibid.*, p 167.

<sup>97</sup> *ibid.*, p 167.

<sup>98</sup> *ibid.*, p xii.

<sup>99</sup> *ibid.*, p 159.

<sup>100</sup> *ibid.*, pp 157–159.

<sup>101</sup> *ibid.*, p 156, 159, 161, 167 & 170.

<sup>102</sup> *ibid.*, p 170.

<sup>103</sup> *ibid.*, p 167.

<sup>104</sup> *ibid.*, pp 131–150.

<sup>105</sup> *ibid.*, p 148.

<sup>106</sup> *ibid.*, pp 149–150.

The Committee was 'strongly of the view that the accommodation of young people in aged care facilities was unacceptable in most instances'.<sup>107</sup> It considered that young people should not be in aged care facilities as these facilities and services are designed for, and respond to, the needs of the 'frail elderly', which are quite different from those of young people.<sup>108</sup> The Committee found that there was an 'urgent need to provide alternative services for young people in aged care facilities, particularly those aged less than 50 years'.<sup>109</sup> It also called for programs to ensure that more young people were not placed in aged care facilities inappropriately.<sup>110</sup>

The Committee recommended that all jurisdictions work cooperatively to assess the suitability of the location of each young person currently living in aged care facilities; provide alternative accommodation for young people who were currently accommodated in aged care facilities; and ensure that no further young people were moved into aged care facilities in the future because of the lack of accommodation options.<sup>111</sup> The Committee recommended that the Department of Health and Ageing compile data on young people in aged care facilities by disability type so that future policy decisions could be better informed by data.<sup>112</sup> A similar recommendation was made by the same Committee ten years later, in 2015.<sup>113</sup>

The Committee inquired into the transition of older people from hospital settings to aged care settings or back to the community. It found that transitional care arrangements at the interface of acute and aged care were 'fragmented and ill-equipped to meet the transitional care needs of the elderly'.<sup>114</sup> The Committee suggested that significant improvements were needed in discharge planning, assessment procedures and rehabilitation services.<sup>115</sup> It also found that the effectiveness of transitional programs depended on other complementary strategies, including the Australian Government and State and Territory Governments working collaboratively to ensure continuity of care and the provision of an adequate supply of residential aged care places.<sup>116</sup>

The Committee recommended that the Australian Government, in conjunction with the States and Territories, develop a national framework for geriatric assessment and discharge planning and the provision of post-acute and convalescent services and facilities, including community services; and that discharge planning be coordinated across a range of medical, allied health and community care professions and involve the patient, their family and carers in the development of these plans.<sup>117</sup> The Committee also recommended the various health sectors implement a common assessment procedure for patients so that medical records and diagnostic results could be easily transferred across these sectors; improve cross-jurisdictional coordination and include the community sector and health professionals in the development of programs; and that innovative pilot programs be widely disseminated.<sup>118</sup>

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<sup>107</sup> *ibid.*, pp 125–126.

<sup>108</sup> *ibid.*, p 126.

<sup>109</sup> *ibid.*, p 126.

<sup>110</sup> *ibid.*, p 126.

<sup>111</sup> *ibid.*, p 127.

<sup>112</sup> *ibid.*, p 129

<sup>113</sup> Senate Community Affairs Reference Committee, *Adequacy of existing residential care arrangements available for young people with severe physical, mental or intellectual disabilities*, 2015, p 2.

<sup>114</sup> Senate Community Affairs References Committee, *Quality and equity in aged care*, 2005, p 182.

<sup>115</sup> *ibid.*, p 182.

<sup>116</sup> *ibid.*, 2005, pp 182–183.

<sup>117</sup> *ibid.*, p 183.

<sup>118</sup> *ibid.*, p 183.

The Government responded to this Senate inquiry in September 2007, summarising initiatives of the Government over the previous two years.<sup>119</sup> The Government did not agree with or did not adopt the following: a star rating system; a benchmark of staffing levels; the use of the conditional adjustment payment to restore wage parity; taking on primary responsibility for promoting best practice; or ceasing direct staff training. The Government committed to additional unannounced visits to aged care facilities, major reforms to the complaints-handling processes and the establishment of a new Office of Aged Care Quality and Compliance, improved documentation requirements, and some additional funding.

In 2006 an across jurisdictional program was established to reduce the number of young people in residential aged care and ran until 2011.<sup>120</sup> This program had some success in reducing the number of people with disability under the age of 50 living in residential aged care.<sup>121</sup> However, despite this program, the numbers of 50–64 year-olds—nearly 90 per cent of young people living in residential care—remained largely unchanged. In addition, while this program had some success in assisting younger people with disability in aged care to move into more suitable accommodation, it did little to reduce the flow of other younger people with disability into aged care. In early 2019 the Government launched the Young People in Residential Aged Care Action Plan, which has a long-term goal of reducing the number of younger people in residential aged care.<sup>122</sup>

## ***A healthier future for all Australians: final report, National Health and Hospitals Reform Commission, 2009***

In 2008, the Australian Government established the National Health and Hospitals Reform Commission to provide a blueprint for reforms to the Australian health system. The Commission released their report *A Healthier Future for all Australians* in June 2009. Aged care was one of the health-related issues addressed by the Commission.

The Commission had a wide brief: it was asked to develop strategies to reduce inefficiencies; better integrate and coordinate care across all aspects of the health sector; bring a greater focus on prevention to the health system; better integrate acute services and aged care services, and improve the transition between hospital and aged care; improve frontline care to better promote healthy lifestyles and prevent and intervene early in chronic illness; improve the provision of health services in rural areas; improve Aboriginal and Torres Strait Islander health outcomes; and provide a well-qualified and sustainable health workforce into the future.<sup>123</sup> Many of these issues have a direct bearing on the quality and safety of aged care.

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<sup>119</sup> Australian Government, *Australian Government Response to the Senate Community Affairs References Committee's Report of the Inquiry into Aged Care—Quality and Equity in Aged Care*, 2007.

<sup>120</sup> Senate Community Affairs Reference Committee, *Adequacy of existing residential care arrangements available for young people with severe physical, mental or intellectual disabilities*, 2015, p 99.

<sup>121</sup> *ibid.*, p 80 & 98.

<sup>122</sup> Australian Government, Department of Social Services website, 'Disability and Carers: Younger People in Residential Aged Care', 2019, <https://www.dss.gov.au/disability-and-carers-programs-services-for-people-with-disability-younger-people-with-disability-in-residential-aged-care-initiative/younger-people-in-residential-aged-care-action-plan>, viewed 12 September 2019.

<sup>123</sup> National Health and Hospitals Reform Commission, *A healthier future for all Australians*, final report, 2009, p 181.

The Commission found that the current health system worked well for people experiencing acute or emergency problems, where they required a one-off medical intervention. It found, however, that ‘the needs of people living with chronic diseases, people with multiple complex health and social problems, and older, increasingly frail people were less well met’.<sup>124</sup>

The Commission made a number of broad recommendations of direct relevance to the aged care system. The most significant was that the Australian Government assume full responsibility for the public funding of aged care, including home and community care.

The Commission made additional specific recommendations in relation to aged and end of life care. These included measures that were directed towards the following: increasing consumer choice and increased competition in aged care; changing subsidies for aged care; streamlining eligibility tests for aged care; increased flexibility in community care subsidies; aligning assessments, subsidies and user payments in community and residential aged care settings; improved access to end of life care; a national approach to advance care planning; access to primary health care providers and geriatricians; and the better use of technology to support safety, effectiveness and efficiency.<sup>125</sup>

More specifically, the Commission recommended that assessment processes, care subsidies and user payments be aligned across community care packages and residential care. It also recommended that older people should be given greater scope to choose for themselves between using their care subsidy for community or for residential care.<sup>126</sup> Notwithstanding this, the Commission noted that given the increase in frailty and complexity of care needs, residential care would remain the best and only viable option for meeting the care needs of many elderly people. It considered that the level of care subsidies should be periodically reviewed to ensure they were adequate to meet the care needs of the most-frail in residential settings.<sup>127</sup>

The Commission considered that Government subsidies for aged care should be more directly linked to people rather than places.<sup>128</sup> This recommendation echoed a similar proposal in the 2004 Hogan Review that the choice of a residential aged care provider should be placed in the hands of the prospective resident or the resident’s family through the provision of consumer vouchers.<sup>129</sup> In February 2017 the Government transferred funding for home care services from providers to aged care recipient.<sup>130</sup> In July 2017 the Legislated Review of Aged Care recommended that funding for residential aged care should likewise transfer to consumers.<sup>131</sup> Government funding for residential aged care services, however, continues to be directed to the provider.

The Commission recommended that aged care providers be required to make standardised information on service quality and quality of life publicly available on a Government website, to enable older people and their families to compare aged care providers.<sup>132</sup> Successive

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<sup>124</sup> *ibid.*, p 6.

<sup>125</sup> *ibid.*, pp 18–19.

<sup>126</sup> *ibid.*, pp 109–110.

<sup>127</sup> *ibid.*, pp 109–110.

<sup>128</sup> *ibid.*, p 22.

<sup>129</sup> WP Hogan, *Review of Pricing Arrangements in Residential Aged Care, Final Report*, 2004, pp 296–297.

<sup>130</sup> Australian Government, Department of Health, Ageing and Aged Care website, *Home Care Reforms* <<https://agedcare.health.gov.au/programs/home-care/home-care-reforms>> viewed 13 September 2019.

<sup>131</sup> D Tune, *Legislated Review of Aged Care*, 2017, pp 57–58.

<sup>132</sup> National Health and Hospitals Reform Commission, *A healthier future for all Australians*, final report, 2009, p 22.

independent inquiries have made similar, although not universally aligned, recommendations to make data available on the performance of providers.<sup>133</sup>

The Commission recommended changes to the planning formula on which the Government made decisions about the number of publicly funded places that would be made available. It recommended that the planning ratio for Government subsidies transition from the then current basis of places per 1000 people aged 70 or over to care recipients per 1000 people aged 85 or over, as a better reflection of the need for aged care places.<sup>134</sup>

A number of the recommendations of the Commission would have implications for the amounts that individuals would be required to contribute to their care. The Commission considered that as a general principle, people who can contribute to the costs of their own care should contribute the same for care in the community as they would for residential care (not including accommodation costs).<sup>135</sup> The Commission also suggested that consideration be given to permitting accommodation bonds or alternative approaches as payment options for accommodation for people entering high care.<sup>136</sup> To increase choice, the Commission considered that people supported to receive care in the community should also be given the option to determine how the resources allocated for their care and support are used.<sup>137</sup>

Like other reviews before and since, the Commission identified issues with access to an appropriately trained and skilled aged care workforce and recommended planning and action to support the development of the right workforce in sub-acute settings, including in the community.<sup>138</sup>

The Commission also identified that difficulties had arisen in the aged care sector from obstacles to access primary health care providers. It recommended that funding be provided for use by residential aged care providers to make arrangements with primary health care providers and geriatricians to provide visiting sessional and on-call medical care to residents of aged care homes.<sup>139</sup>

The Commission believed that the safety, efficiency and effectiveness of care for older people in residential and community settings could be assisted by better and innovative use of technology and communication. It recommended a range of initiatives to provide improved access to e-health, online and telephonic health advice by older people and their carers. It also recommended more timely provision of pertinent information on a person's hospital care to the clinical staff of their aged care provider.<sup>140</sup>

The recommendation that the Australian Government assume full responsibility for the public funding of aged care was agreed through the Council of Australian Governments in 2011 and fully implemented in 2018, when Western Australia joined the national framework.<sup>141</sup> These

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<sup>133</sup> See, for example, WP Hogan, *Review of Pricing Arrangements in Residential Aged Care, Final Report*, Commonwealth of Australia, 2004 pp 283 & 244–245; Senate Community Affairs References Committee, *Quality and equity in aged care*, 2005, p 42; Productivity Commission, *Caring for Older Australians*, Inquiry Report No. 53, 2011, Vol 1, p xlvi; K Carnell and R Paterson, *Review of National Aged Care Quality Regulatory Processes*, 2017, p 103.

<sup>134</sup> National Health and Hospitals Reform Commission, *A healthier future for all Australians*, final report, 2009, p 22.

<sup>135</sup> *ibid.*, p 22.

<sup>136</sup> *ibid.*, p 22.

<sup>137</sup> *ibid.*, p 22.

<sup>138</sup> *ibid.*, p 22.

<sup>139</sup> *ibid.*, p 23.

<sup>140</sup> *ibid.*, p 23.

<sup>141</sup> Australian Government, Department of Health, Ageing and Aged Care website, 'history', <https://agedcare.health.gov.au/programs-services/commonwealth-home-support-programme/consultation-process>, viewed 20 September 2019.

changes meant that, for the first time, the Australian Government controlled all of the policy, management, funding and planning for all aged care services.<sup>142</sup>

## **Caring for Older Australians, Productivity Commission, 2011**

In 2010 the Government asked the Productivity Commission ‘to develop detailed options for redesigning Australia’s aged care system to ensure it can meet the challenges facing it in coming decades’.<sup>143</sup> The terms of reference identified a number of challenges to the system, including:

- the ageing of the Australian population and increasing demand on aged care
- significant shifts in the type of care required by older Australians due to factors including changes in patterns of disease and increasing acuity, changes in older people’s preferences, changes in the affluence of older people, reduced access to carers, and the diverse geographic spread of the population
- workforce challenges due to workforce availability and parity issues.<sup>144</sup>

The terms of reference required the Commission to systematically examine the social, clinical and institutional aspects of aged care in Australia, including planning, regulatory, funding and workforce issues. The Commission was also required to take account of ‘technical and allocative efficiency issues’ and to ensure that its recommendations ‘were fiscally sustainable’. In developing any transitional arrangements, the Commission was directed to ‘take into account the Government’s medium-term fiscal strategy’.<sup>145</sup>

The Productivity Commission concluded that the aged care system required ‘fundamental reform’ to address the challenges facing it, and noted that this view was consistent with other reviews and inquiries.<sup>146</sup> It found that the aged care system was difficult to navigate; services and consumer choice were limited; quality was variable; the coverage of needs, pricing, subsidies and user co-contributions was inconsistent or inequitable; and workforce shortages were exacerbated by low wages and that some workers had insufficient skills.<sup>147</sup>

The Productivity Commission noted that many older Australians were having difficulty accessing information, care and support. It identified that:

- the aged care system was complex and difficult to navigate
- there were significant waiting times for low priority assessment services
- services, including respite, could be difficult to access in the settings that older Australians and their carers preferred
- access to medical practitioners and allied health professionals could be difficult
- consumer choice and the ability of providers to offer continuity of care was limited by restrictions on the number of bed licenses and care packages and regulations governing the services that providers could offer
- there was a lack of continuity of services to respond to changing care needs

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<sup>142</sup> Council of Australian Government, *National Health Reform Agreement*, 2011.

<sup>143</sup> Productivity Commission, *Caring for Older Australians*, Inquiry Report No. 53, 2011, Vol 1, p v.

<sup>144</sup> *ibid.*, p v.

<sup>145</sup> *ibid.*, pp v–vii.

<sup>146</sup> *ibid.*, p 101 & 136.

<sup>147</sup> *ibid.*, p xxii.

- there was a lack of incentives for providers to engage in restorative activities to maintain and improve the functional independence of older people.<sup>148</sup>

The Productivity Commission found that the ‘pricing, subsidy and private co-contribution regimes were inconsistent and inequitable for clients both within, and between, care settings’.<sup>149</sup> It questioned the sustainability of some aspects of the pricing regime and was concerned that providers were not investing in some areas of service provision. For example, it was concerned about a lack of investment in ordinary high care residential services unless they are ‘extra service’ places, for which providers can charge an accommodation bond.<sup>150</sup>

The Commission said that a key weakness of the system was the ‘excessive, unnecessary and/or duplicative’ nature of some aspects of the regulatory system. The Commission was concerned that the accreditation and quality assurance systems overemphasised processes rather than outcomes and suggested that recent regulatory initiatives had imposed significant and avoidable regulatory burdens on service providers.<sup>151</sup>

The Productivity Commission made 58 recommendations, each with multiple subsections. These recommendations covered:

- the appropriate policy aims of an aged care system, including the health and wellbeing of older people, the needs of carers and family members and the impacts on current and future taxpayers
- consumer-directed care, including a ‘gateway’ to the aged care system including assessment, care that meets individual needs of older Australians, and opening up the supply of care and accommodation to enhance choices of services
- changes to funding of aged care, including a new care co-contribution regime, protection against very high costs of care, and a funding model for accommodation costs
- care delivery by informal carers and the formal workforce, including wages, pricing, and professional development accredited courses
- reform of the regulatory framework, including the following: removal of unnecessary regulations; phasing out limits on the number of residential places and care packages and removal of distinctions between different levels of care; and establishing an independent commission to regulate quality of care, prudential requirements of providers, resident ratios, service pricing, support to and education of the sector, information and data gathering and dissemination, and complaints handling
- enhancing quality by the following measures: increasing consumer choice; improving funding and working conditions; retention of an accreditation system; making standardised performance information publicly available; improving recognition of the needs of diverse population groups; and increasing access to consumer advocates
- improved use of technology
- recognition of geographic and demographic diversity and special needs, including through ‘additional emphasis on the need for improved funding, better skills training of staff, flexible service delivery models, culturally appropriate assessment tools,

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<sup>148</sup> *ibid.*, p 101.

<sup>149</sup> *ibid.*, p 101.

<sup>150</sup> *ibid.*, pp XXXIII–XXXIV & p 101.

<sup>151</sup> *ibid.*, p 101.

and enhanced recognition of diversity and special needs in standards and care practices’

- interfaces with disability care and health systems.<sup>152</sup>

The Productivity Commission claimed the adoption of its key recommendations would benefit older Australians by making it possible for them to:

- be able to contact a simplified ‘gateway’ for: easily understood information; an assessment of their care needs and their financial capacity to contribute to the cost of their care; an entitlement to approved aged care services; and for care coordination—all in their region
- receive aged care services that address their individual needs, with an emphasis on reablement where feasible
- choose whether to receive care at home, and choose their approved provider
- contribute, in part, to their costs of care (with a maximum lifetime limit) and meet their accommodation and living expenses (with safety nets for those of limited means)
- have access to a government-sponsored line of credit (the Australian Aged Care Home Credit scheme), to help meet their care and accommodation expenses without having to sell their home. A person’s spouse, or other ‘protected person’ would be able to continue living in that home when an older person moved into residential care
- choose to pay either a periodic charge or a bond for residential care accommodation
- if they wish to sell their home, retain their Age Pension by investing the sale proceeds in an Australian Age Pensioners Savings Account
- have direct access to low intensity community support services
- be able to choose whether to purchase additional services and higher quality accommodation.<sup>153</sup>

The Australian Government addressed some of the recommendations of the Productivity Commission report and the report of the National Health and Hospitals Reform Commission in the 2012 *Living Longer Living Better* reform package.<sup>154</sup> The Government implemented changes including through the *Aged Care (Living Longer Living Better) Act 2013* (Cth). These changes included:

- additional support and care to help older people remain living at home
- additional help for carers to have access to respite and other support
- establishing a gateway to services to assist older Australians to find information and to navigate the aged care system
- changes to means testing in home and residential aged care
- changes to improve services for people with dementia
- additional funding for the aged care workforce.<sup>155</sup>

While the Government adopted many of the Productivity Commission’s recommendations, the reform package did not adopt several of the more significant recommendations. The Government did not remove restrictions on the number of aged care places and packages made available to the community.

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<sup>152</sup> *ibid.*, pp xxviii–li.

<sup>153</sup> *ibid.*, p xviii.

<sup>154</sup> Australian Law Reform Commission, *Elder Abuse—A National Legal Response*, Final Report, 2017, p 106.

<sup>155</sup> Australian Government, *Living Longer. Living Better. Aged Care Reform Package*, April 2012



The Productivity Commission's recommendation for the establishment of a separate aged care commission and the separation of policy and funding roles was also not adopted at the time.<sup>156</sup> In January 2019 the Aged Care Quality and Safety Commission was established following a similar recommendation in 2017 by the Carnell-Paterson *Review of the National Aged Care Quality Regulatory Processes*.<sup>157</sup>

## **Training for aged and community care in Australia, Australian Skills Quality Authority, 2013**

In November 2012, the Australian Skills Quality Authority initiated a review into aged and community care training in response to the Productivity Commission's 2011 report, *Caring for Older Australians*.<sup>158</sup> The review noted the following key workforce related findings of the Productivity Commission:

- the quality and variability of training provided to prepare aged and community care workers;
- vastly different lengths of training provided for the same qualification by different [Registered Training Organisations];
- whether sufficient amounts of practical on-the-job training were provided;
- whether trainers and assessors possessed current industry experience; and
- whether aged and community care training was being regulated effectively.<sup>159</sup>

In addition, the Authority noted the implications for the aged and community care workforce of the Productivity Commission's projections regarding the ageing population.<sup>160</sup>

The purpose of the review was to 'examine the efficacy of the current provision of training for aged and community care workers and to advise how this training can be improved'.<sup>161</sup> The review was based on audits and surveys of registered training organisations, and stakeholder feedback.<sup>162</sup>

The review agreed with the Productivity Commission's assessment of the workforce skills issues faced by the sector, noting that there was variability in the quality and quantity of training, training and assessment was sometimes provided by those with little knowledge of

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<sup>156</sup> Australian Law Reform Commission, *Elder Abuse—A National Legal Response*, Final Report, 2017, p 118.

<sup>157</sup> K Carnell and R Paterson, *Review of National Aged Care Quality Regulatory Processes*, 2017, p 82; *Aged Care Quality and Safety Commission Act 2018* (Cth).

<sup>158</sup> Australian Government, Australian Skills Quality Authority website, 'Aged and community care training', 2013, <https://www.asqa.gov.au/about/strategic-reviews/aged-and-community-care-training-2013>, viewed 25 September 2019.

<sup>159</sup> Australian Skills Quality Authority, *Training for aged and community care in Australia*, 2013, p ix.

<sup>160</sup> *ibid.*, p ix.

<sup>161</sup> *ibid.*, p ix.

<sup>162</sup> *ibid.*, p ix.

the industry, and there was insufficient work-based training.<sup>163</sup> The key findings of the review included:

- Aged and community care training programs are largely too short and include insufficient time in a workplace for satisfactory skills development.
- Registered training organisations (RTOs) delivering high-quality training programs face unfair competition from those RTOs offering cheap and unrealistically short training programs.
- Most RTOs offering aged care and community care training were not fully compliant at the initial audit, with 87.7% not complying with at least one of the national training standards.
- RTO leadership and staff had a poor knowledge and understanding of the required national standards, and of the requirements of training packages (which form a core element of these national standards).
- Most RTOs offering aged and community care training struggle with appropriate assessment. Up to 80% of RTOs had compliance issues with assessment at the initial audit.<sup>164</sup>

The Authority noted these findings were ‘disturbing’ given the need to grow the aged and community workforce in the face of the ageing population.<sup>165</sup> It called for improvements to the quality of aged care workforce training and assessment if the increasing demand for properly qualified aged care workers was to be adequately met.<sup>166</sup>

The Authority made ten recommendations directed primarily at itself and the Vocational Education and Training sector.<sup>167</sup> These recommendations were directed at the following: maintaining a regulatory focus on the aged and community care workforce training and assessment industry; strengthening training packages for aged care and community care qualifications; providing workshops to support the training industry to understand their obligations and requirements; improving the skills of assessors both through revising assessment components and mandatory requirements for training and assessment qualifications and through developing additional training for existing assessors; increasing work placements for learners; and developing benchmarks for minimum volume of learning and competency and skill sets across the vocational education and training sector.<sup>168</sup>

Subsequent reviews of the aged care system have continued to point to the need for improvements in the training and development of the aged care workforce. Many of the deficiencies in the training of aged care workers identified in the Authority’s review were repeated four years later in the Senate Community Affairs Committee 2017 inquiry, *The Future of Australia’s Aged Care Sector Workforce*.<sup>169</sup> That Committee indicated that it was ‘deeply concerned’ that the significant issues associated with the provision of aged care workforce training were undermining the development of the workforce.<sup>170</sup> In late 2017, the

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<sup>163</sup> *ibid.*, p ix–xii.

<sup>164</sup> Australian Government, Australian Skills Quality Authority website, ‘Aged and community care training’, 2013, <https://www.asqa.gov.au/about/strategic-reviews/aged-and-community-care-training-2013>, viewed 25 September 2019.

<sup>165</sup> Australian Skills Quality Authority, *Training for aged and community care in Australia*, 2013, p xvi.

<sup>166</sup> *ibid.*, p xvi.

<sup>167</sup> *ibid.*, p xii–xvi.

<sup>168</sup> *ibid.*, p xii–xvi.

<sup>169</sup> Senate Community Affairs References Committee, *Future of Australia’s Aged Care Sector Workforce*, 2017, p 64 & 107.

<sup>170</sup> *ibid.*, p 64.

Australian Government announced its support for an industry led taskforce to develop an aged care workforce strategy.<sup>171</sup>

## **Care and management of younger and older Australians living with dementia and behavioural and psychiatric symptoms of dementia, Senate Community Affairs References Committee, 2014**

This report considered the care and management of Australians living with dementia and the behavioural and psychological symptoms of dementia.

The Senate Committee's focus was on assessing the scope, adequacy, resourcing and management of models of Australian Government and State and Territory Government services and supports for this cohort of people living with dementia in both community care and residential care.<sup>172</sup>

The Committee noted the large numbers of older people living with dementia and that this was projected to increase with the ageing of the population. It noted more than half the residents of Government-funded aged care facilities were living with dementia.<sup>173</sup> Despite the numbers of older Australians with dementia in aged care, the Committee found that aged care in Australia was not always well suited to the needs of people with dementia, especially those with behavioural and psychiatric symptoms of dementia and younger people with younger onset of dementia.<sup>174</sup>

The Committee identified a lack of skills and training of aged care personnel, noted claims of the use of physical restraints, and found a significant overuse of psychotic medication in aged care. The Committee was of the view that this 'must not be allowed to continue'.<sup>175</sup> Overall, the Committee called for personalised care from well-trained staff, noting there is not one 'correct model of care for those with dementia'.<sup>176</sup> The Committee observed that staff working in aged care were some of Australia's lowest paid workers.<sup>177</sup> It expressed concern that the remuneration of aged care workers was not commensurate with their responsibilities or the community's expectation of their experience and expertise.

The Committee argued that to address the lack of skills and experience in dementia care, this low remuneration needed to be remedied. It supported a view previously expressed by the Productivity Commission:

An increase in the level of remuneration for aged care workers will have a flow-on effect to other factors affecting the workforce. For example, the image and reputation of the sector as an area where caring work is valued would be enhanced by better wages. In addition, the quality and continuity of care may be increased as workers are more content

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<sup>171</sup> Aged Care Workforce Strategy Taskforce, updated 14 January 2019, <https://agedcare.health.gov.au/reform/aged-care-workforce-strategy-taskforce>, viewed 2 October 2019.

<sup>172</sup> Senate Community Affairs References Committee, *Care and management of younger and older Australians living with dementia and behavioural and psychiatric symptoms of dementia (BPSD)*, 2014, p 1 & 99.

<sup>173</sup> *ibid.*, p 99.

<sup>174</sup> *ibid.*, p 56 & 97.

<sup>175</sup> *ibid.*, p 68, 80 & 85.

<sup>176</sup> *ibid.*, p 99.

<sup>177</sup> *ibid.*, p 70.

to stay in the sector and turnover is reduced. In turn, this may allow more funding for education and training to be targeted towards up skilling the workforce, rather than basic training for new entrants who are unlikely to stay for long under current conditions.<sup>178</sup>

The Committee shared the Productivity Commission's confidence that an increase in the remuneration of aged care workers would have a positive impact on the quality and safety of care.

The Committee drew attention to weaknesses in the oversight and regulation of the use of restraints in aged care. While it acknowledged the existence of Australian Government guidelines and decision-making tools on the use of physical restraints, it expressed concern that some in the aged care sector, including the medical profession, were unaware of them. It also noted a lack of penalties for the overuse of medication, or incentives to minimise the use of restraints.<sup>179</sup>

The Committee identified 'pressing challenges' for governments, health advocates and the aged care sector in the effective care and management of people with dementia, including:

- improving early and accurate diagnosis of the condition, including enabling specialists and family members to become involved in the diagnosis process;
- ensuring that there were proper support systems in place for people living with dementia to remain at home;
- ensuring that carers have adequate support, including respite, training, and guidance in accessing dementia services; and
- ensuring a high standard of care for dementia sufferers through adequate funding, innovation and design. While the model of delivery may differ from one provider to the next, the standard of care should be based on:
  - a person-centred approach that takes into account the individual's qualities, abilities, interests, preferences and needs;
  - recognition that dementia alters perceptions and appropriate environments can minimise BPSD;
  - respect for their rights as patients, offering activities that are engaging and stimulating rather than chemicals and restraints to suppress the outward signs of the illness;
  - training and retaining high-quality residential and community care workers; and
  - facilitating greater community awareness and understanding of the illness.<sup>180</sup>

The Committee offered 18 recommendations to address these issues, including the following: changes to Medicare items to encourage longer consultations; funding for programs to support people with younger onset dementia; improved knowledge of dementia management guidelines; improved knowledge of supports for family and carers of people

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<sup>178</sup> *ibid.*, p 70, quoting Productivity Commission, *Caring for Older Australians*, Inquiry Report No. 53 2011, Vol 2, p 365.

<sup>179</sup> Senate Community Affairs References Committee, *Care and management of younger and older Australians living with dementia and behavioural and psychiatric symptoms of dementia (BPSD)*, 2014, p 82.

<sup>180</sup> *ibid.*, pp 99–100.

with dementia; the establishment of dementia-specific respite facilities, including in regional and remote areas; changes to the accreditation standards for residential aged care providers, including additional requirements for dementia-friendly design principles and increased focus on quality-of-life outcomes; increased dementia training and the phasing in of a requirement that all employees of aged care residential facilities undertake accredited training in dementia care; the use of antipsychotic medication be reviewed by the prescribing doctor after the first three months to assess ongoing need; and improved reporting and data capture of diagnosis of dementia and antipsychotic medication treatment of dementia.<sup>181</sup>

The Australian Government responded to the Committee report in December 2017.<sup>182</sup> The Government noted or supported in principle most of the Committee's recommendations, indicating that a range of initiatives and reforms targeting dementia had been implemented since the report had been tabled. These included the engagement of a single national provider to deliver nationally consistent accredited dementia training and education for the aged care workforce and health care professionals across Australia. The Government indicated that accredited training in best practice care of people with behavioural and psychiatric symptoms of dementia was available for free to eligible health professionals and care workers.<sup>183</sup> However, these actions fell well short of the scope of the recommendations of the Committee.

Many of the Committee's observations on the quality of care provided for people with dementia within the aged care system were shared by later reviews, including the same Committee's 2017 report on the *Future of Australia's Aged Care Workforce*.<sup>184</sup>

In early 2019 the Minister for Aged Care announced that new regulations would be introduced to prevent excessive use of physical and chemical restraints in aged care.<sup>185</sup> These were introduced on 1 July 2019<sup>186</sup> but their implementation has been delayed pending an enquiry by the Parliamentary Joint Committee on Human Rights.<sup>187</sup>

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<sup>181</sup> *ibid.*, p 70, quoting Productivity Commission, *Caring for Older Australians*, Inquiry Report No. 53 2011, Vol 1, p ix–xi.

<sup>182</sup> Australian Government, Australian Government Response to the Senate Community Affairs References Committee report: *Care and management of younger and older Australians living with dementia and behavioural and psychiatric symptoms of dementia (BPSD)*, 2017.

<sup>183</sup> *ibid.*, p 5.

<sup>184</sup> Senate Community Affairs References Committee, *Future of Australia's aged care sector workforce*, 2017, p 108.

<sup>185</sup> Australian Broadcasting Corporation, 'New regulations to prevent excessive use of physical and chemical restraints in aged care', online, 17 January 2019, <https://www.abc.net.au/news/2019-01-17/new-regulations-against-chemical-physical-restraint-in-aged-care/10724038>, viewed 2 October 2019.

<sup>186</sup> *Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019* (Cth)

<sup>187</sup> Parliament of Australia, website, 'Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019', [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/QualityCareAmendment](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/QualityCareAmendment), viewed 26 September 2019.

## ***Adequacy of existing residential care arrangements available for young people with severe physical, mental or intellectual disabilities, Senate Community Affairs References Committee, 2015***

In 2015 the Senate Community Affairs Committee reported on the adequacy of residential care arrangements for young people with severe physical, mental or intellectual disability. The inquiry was undertaken against the background of continuing concerns about the accommodation of young people with severe disability aged 65 years or under who were living in or were at risk of entering a residential care facility.

The Committee noted that its inquiry was being conducted at a time of transition, as the National Disability Insurance Scheme was being phased in. While the Committee noted that the Government had assured it that the needs of this cohort would be met once the National Disability Insurance Scheme was fully rolled out across the country, the Committee was concerned that the full rollout of the National Disability Insurance Scheme was not scheduled to be complete until at least 2018. The Committee considered young people in residential aged care to be a discrete group of people with complex needs and that the National Disability Insurance Scheme had not demonstrated a methodology to meet their needs.<sup>188</sup> The Committee also found that the role of the National Disability Insurance Scheme in provision of specialised disability housing was unclear and that there had been delays in clarifying this issue.<sup>189</sup> It took the view that ‘too much time has already been lost and that young people in residential care require a solution now to improve their lives’.<sup>190</sup>

The Committee noted that based on available data young people under 65 years occupied at least 5% of residential aged care facility beds and that 90% of these people were aged between 50–64 years.<sup>191</sup> However, the Committee found that the data on young people with disability in aged care was patchy and unreliable, and expressed concern that the available statistics may in fact understate the scale of the problem.<sup>192</sup> The Committee also identified gaps in the data available on unmet need.<sup>193</sup> It noted that many carers of young people with disability were themselves ageing and may not have capacity to care for their children in the future.<sup>194</sup>

The Committee repeated the findings of previous inquiries that residential aged care was inappropriate for young people living with disability as it is not designed or funded to provide care for young people. The Committee cited problems of age appropriate accommodation and services, access to services, bullying, social isolation and exclusion, financial imposts, and mental health issues for young people in aged care.<sup>195</sup> It also pointed to gaps in the training and experience of staff within the aged care sector to ensure that they were capable

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<sup>188</sup> Senate Community Affairs References Committee, *Adequacy of existing residential care arrangements available for young people with severe physical, mental or intellectual disabilities*, 2015, p 1.

<sup>189</sup> *ibid.*, p 87.

<sup>190</sup> *ibid.*, p 1.

<sup>191</sup> *ibid.*, p 6.

<sup>192</sup> *ibid.*, p 7.

<sup>193</sup> *ibid.*, p 14.

<sup>194</sup> *ibid.*, p 14.

<sup>195</sup> *ibid.*, pp 15–31.

of effectively caring for younger people with disability.<sup>196</sup> The Committee acknowledged that, in some circumstances, aged care facilities could be an appropriate option for young people, but suggested that this was only the case if the aged care sector sought innovative ways to deliver care that was age appropriate and related to the conditions of the young people with disability.<sup>197</sup>

The Committee identified a number of factors contributing to the admission of young people into residential aged care. It considered that current decision-making processes around the transition from acute care to other options including aged care were poorly informed. The Committee was concerned that young people with little knowledge of other accommodation or transition options were being moved into aged care. The Committee was also concerned that the health system itself was not aware of other accommodation or transition options and was operating in a silo removed from other government agencies and service providers such as disability and housing.<sup>198</sup>

The report made 12 recommendations: six for consideration by the Australian Government, one for the Joint Standing Committee on the National Disability Insurance Scheme, and five for consideration by the Council of Australian Governments. The recommendations addressed the need for the following: improved data, including longitudinal studies on young people with disability; changes to the aged care assessment process and assessment tool as it applied to younger people; changes to the accreditation standards for residential aged care to include standards relating to the clinical outcomes and lifestyle needs of young people with disability; an inquiry into the issue of disability housing; the inclusion of additional matters into National Disability Insurance Scheme trial sites; and that the Council of Australian Governments establish a joint taskforce for young people living in residential care.<sup>199</sup>

The Australian Government responded to the Committee's report in November 2016, indicating that it would accept one recommendation, partially support another and support one recommendation in-principle.<sup>200</sup> The Government accepted the Committee's recommendation that the National Disability Insurance Scheme should consider how it supports young people with Foetal Alcohol Spectrum Disorder and work with other jurisdictions and community health services on the development of a standardised diagnostic tool. It also accepted the recommendation that jurisdictions provide early intervention services and other health services such as speech pathology, physiotherapy and occupational therapy to people with Foetal Alcohol Spectrum Disorder.<sup>201</sup> The Government indicated that it shared the Committee's desire to limit new admissions to residential aged care by encouraging collaboration between State and Territory disability services, the National Disability Insurance Agency and the health system.<sup>202</sup> However, the Government merely noted the recommendation for the development of a comprehensive assessment and placement tool or residential assessment instrument to assess the care and accommodation needs of young people at risk of entering residential care.<sup>203</sup>

The Government indicated that it partially supported the Committee's recommendation that supplementary assessment guidelines and tools be developed to ensure proper assessment of all young people being considered for an aged care placement. However, the

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<sup>196</sup> *ibid.*, p 77.

<sup>197</sup> *ibid.*, p 26–29.

<sup>198</sup> *ibid.*, p 45.

<sup>199</sup> *ibid.*, pp xiii–xiv.

<sup>200</sup> Australian Government, Australian Government Response to the Senate Community Affairs References Committee report, *Adequacy of existing residential care arrangements available for young people with severe physical, mental or intellectual disabilities*, 2015.

<sup>201</sup> *ibid.*, p 13.

<sup>202</sup> *ibid.*, p 1.

<sup>203</sup> *ibid.*, p 5.

Government defended the existing assessment arrangements, claiming that all people entering residential care were already properly assessed regardless of age and indicated that it did not support placing additional requirements on providers to case manage young people in aged care.<sup>204</sup> Other recommendations were noted or not accepted.

## **Legislated Review of Aged Care, David Tune, 2017**

A review of the reforms made by the *Living Longer. Living Better* package was legislated as part of the changes introduced in the *Aged Care (Living Longer Living Better) Act 2013* (Cth). The review itself was commissioned in September 2016 by the Minister for Senior Australians and Aged Care, the Hon Ken Wyatt AM MP. Minister Wyatt appointed the Chair of the Aged Care Sector Committee, Mr David Tune AO PSM, as the independent reviewer. The Aged Care Sector Committee had released the *Aged Care Roadmap* in 2016.<sup>205</sup>

The scope of the review was confined to aspects of the *Living Longer. Living Better* reforms rather than the aged care system more generally.<sup>206</sup> The review noted a number of additional changes to the aged care system since the *Living Longer. Living Better* reforms which furthered the marketisation and consumer driven intent of the reforms. Most notably, it focused on:

- changes impacting on the supply of aged care services, such as the introduction of restorative places in residential care and increased flexibility in the allocation of new residential places
- increased choice in home care through assigning packages directly to consumers through a national prioritisation queue
- significant changes to dementia care, including ceasing the Dementia and Severe Behaviours supplement in residential aged care and redirecting funds to the nationalised Severe Behaviour Response Teams
- changes to aged care workforce policies, including a Government contribution to an increase in remuneration for part of the workforce to be decided by Fair Work Australia, and a decrease in the aged care workforce fund and consolidation of this fund into a single health workforce fund.<sup>207</sup>

In light of its terms of reference, the review focused on the planning, means testing and accommodation payment aspects of funding aged care, access to services, and workforce issues.<sup>208</sup>

The review formed a generally positive view about developments in the aged care system as a result of the *Living Longer. Living Better* package. It considered that the *Living Longer. Living Better* reforms had 'been successful in taking Australian aged care further along the road towards a consumer demand-driven and sustainable system that will meet both current and future aged care needs'.<sup>209</sup> It was particularly supportive of the development of the My Aged Care gateway and the facilitation of investment in residential aged care infrastructure. However, the review noted that 'other changes, such as those

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<sup>204</sup> *ibid.*, p 6.

<sup>205</sup> Aged Care Sector Committee, *Aged Care Roadmap*, 2016.

<sup>206</sup> D Tune, *Legislated Review of Aged Care*, 2017, p 6.

<sup>207</sup> *ibid.*, p 6, 52, 165 & 178.

<sup>208</sup> *ibid.*, p 18.

<sup>209</sup> *ibid.*, p 12.



that sought to increase consumer contributions to care, have had a more modest effect'.<sup>210</sup> It called for further reforms in relation to 'information, assessment, consumer choice, means testing, and equity of access'.<sup>211</sup> It suggested that there was 'a broad consensus shared by government and sector stakeholders that aged care requires further reform to become a more consumer-centred system' whereby care types were oriented around the 'demands of consumers and giving consumers greater choice and control'.<sup>212</sup> The review did not test the extent to which these views were shared across the broader community.

The review offered 38 recommendations, including:

- the Government (in the medium term) maintain control of the number and mix of aged care places but make planning changes, including a rebalancing of the mix of home care places to meet the demands of people with higher care needs; assigning residential care places directly to consumers (with measures to ensure supply in thin markets); increasing the aged care provision ratio and review the mix of places; expanding the National Aboriginal and Torres Strait Islander Flexible Aged Care Program to better support Aboriginal and Torres Strait Islander people; and review the multi-purpose service program to align service delivery with mainstream aged care and ensure funding is properly targeted
- changes be made to charging and means testing of care recipients' fees, including mandatory means-tested consumer contributions for home support, including the full value of a person's former home in the asset test for residential care; charging a minimum daily care fee in residential care; removing life-time caps for fees; and increasing the limits on accommodation payments
- there be a review of respite care
- strengthening prudential requirements for service providers
- improving access to wellness, reablement and restorative activities
- consolidating the aged care assessment workforce
- additional support for consumers including improved transparency on fees, improvements to the My Aged Care system, better supports for special needs groups, and
- support for the development of a workforce strategy by the aged care sector, the vocational education and training sector and the tertiary education sector to ensure a workforce better prepared to meet the needs of the sector.<sup>213</sup>

While the review was supportive of the increasing marketisation and consumer-centredness of the aged care system reforms, it identified four conditions that needed to be met before this could be realised:

- an accurate understanding by government of the underlying demand for aged care services
- equitable and sufficient consumer contributions to the costs of their care, without those contributions being so high that they create a barrier to accessing care
- a robust system for assessing eligibility for Government-funded aged care services
- an equitable supply of services across different population groups, and in settings where there is limited choice or competition, such as remote locations.<sup>214</sup>

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<sup>210</sup> *ibid.*, p 12.

<sup>211</sup> *ibid.*, p 12.

<sup>212</sup> *ibid.*, p 7.

<sup>213</sup> *ibid.*, pp 13–17.

<sup>214</sup> *ibid.*, p 7.

The review documented shortfalls against each of these conditions and identified a range of steps that could be taken over time to address them.<sup>215</sup>

With respect to workforce, the review restated many of the concerns expressed by the Productivity Commission in 2011 and the Australian Skills Quality Authority Review of 2013 (see above). It indicated that:

Wages in the sector have been, and remain, relatively low and are an ongoing source of concern for both employees and the sector more broadly. Other workforce issues include the need for stronger education and training; the sector expressed concern about the adequacy of entry level qualifications, the role of ongoing education and training in maintaining skills and providing career pathways, and problems with the performance of some training providers.<sup>216</sup>

The review indicated that these issues were primarily issues for the sector to address in collaboration with the vocational education and training and tertiary education sectors. It expressed the view that aged care providers were best able to determine their workforce needs and that the development of a workforce strategy was best led by the sector with support from Government.<sup>217</sup> The review noted that the Government had announced funding to support development of an aged care workforce strategy while the review was underway.<sup>218</sup> The review called for the strategy to address pay, training and education; develop recruitment, retention and growth strategies; improve the sector's image as a place to work; and encourage cross-sectoral workforce linkages'.<sup>219</sup>

A draft Government response to the review was prepared by the Australian Department of Health but was never finalised.<sup>220</sup> In September 2017 the Government indicated it would create additional high care Home Care Packages and 'revamp' the My Aged Care gateway to improve access issues. It rejected recommendations to include the full value of the owner's home in the means test for residential care and to remove the annual and lifetime caps on means-tested care fees.<sup>221</sup> It also did not adopt the recommendation of a Level 5 Home Care Package, changes to the aged care provision ratio to the population cohort aged 75 years or over, or informing consumers of the value of their Government subsidy.<sup>222</sup>

The subsequent Federal Budget also provided for additional investments in the aged care system, including funding for additional Home Care Packages, more aged care places in remote Aboriginal and Torres Strait Islander communities, improvements to the My Aged Care website, and development of the national assessment framework.<sup>223</sup> Many of these changes are 'in progress' and have not been fully implemented.<sup>224</sup>

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<sup>215</sup> *ibid.*, pp 7–12.

<sup>216</sup> *ibid.*, p 12.

<sup>217</sup> *ibid.*, p 12.

<sup>218</sup> *ibid.*, p 12.

<sup>219</sup> *ibid.*, p 12.

<sup>220</sup> Exhibit 3–2, Sydney Hearing, General Tender Bundle, tab 39, CTH.1000.0002.6501.

<sup>221</sup> The Hon K Wyatt, Minister for Aged Care, media release, *6,000 extra high need home care packages and \$20 million My Aged Care revamp*, 14 September 2017.

<sup>222</sup> Exhibit 1–23, Adelaide Hearing 1, Tune review recommendations—Implementation progress—Feb 2019, CTH.0001.1000.4506, exhibit to the statement of Glenys Beauchamp, 4 February 2019, WIT.0022.0001.0001.

<sup>223</sup> Parliament of Australia, Parliamentary Library website, 'Aged care Budget Review 2018–19 Index', 2018, viewed 15 October 2019.

<sup>224</sup> Exhibit 1–23, Adelaide Hearing 1, Tune review recommendations—Implementation progress—Feb 2019, CTH.0001.1000.4506, exhibit to the statement of Glenys Beauchamp, 4 February 2019, WIT.0022.0001.0001

The Government also made provision for a compulsory levy on providers to recoup the cost of providers defaulting on the repayment of accommodation bonds to consumers, which was one of the outstanding elements of the 1997 reforms and later endorsed by the Senate Committee on Community Affairs in 1997<sup>225</sup> and the Hogan review in 2004.<sup>226</sup> However, that reform would require legislation which at the time of writing is still to be introduced into Parliament, so the Government remains the default insurer.

In December 2018, the Government announced additional funding for high-level Home Care Packages and to reduce the maximum basic daily fee for consumers receiving lower level Home Care Packages.<sup>227</sup>

## **Future of Australia's aged care sector workforce, Senate Community Affairs References Committee, 2017**

In December 2015, the Senate referred to its Community Affairs Committee an inquiry into aged care workforce. The inquiry sought to assess the workforce impacts of current and expected changes to the aged care service sector, and to advise on workforce changes required to deliver aged care services into the future.<sup>228</sup> During the course of the inquiry, the Government committed to an industry-led taskforce to develop a national aged care workforce strategy.<sup>229</sup> The Committee reported in June 2017.

The Committee noted changes experienced by the aged care sector were placing 'significant pressure' on the aged care workforce. It found these changes included the increasing age of the population and aged care workforce, more diversity within those using aged care, increasingly complex health needs as people remain at home for longer, and the uptake of technology to assist with service delivery.<sup>230</sup> In particular, it noted the funding model for aged care had changed. Service delivery organisations were no longer directly funded by the Government through 'block funding', and consumers were able to exercise greater control over how funding was spent. In addition, it believed the rollout of the National Disability Insurance Scheme had added to pressures on the aged care workforce as demands for more staff grew across both the disability and aged care sectors.<sup>231</sup>

The Committee identified four key themes in its inquiry:

- the need for an integrated sector-wide workforce development strategy
- the need for improved training;
- the need for further workforce and workplace regulation; and
- the particular challenges facing the aged care workforce in remote communities.<sup>232</sup>

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<sup>225</sup> Senate Community Affairs References Committee, *Report on Funding of Aged Care Institutions*, 1997, p 71.

<sup>226</sup> WP Hogan, *Review of Pricing Arrangements in Residential Aged Care, Final Report*, 2004, p xx.

<sup>227</sup> The Hon S Morrison MP, Prime Minister, The Hon G Hunt MP, Minister for Health, The Hon K Wyatt MP, Minister for Indigenous Health and Aged Care, Joint Media Release, *Boosting support for older Australians*, 17 December 2018.

<sup>228</sup> Senate Community Affairs References Committee, *Future of Australia's aged care sector workforce*, 2017, p 1.

<sup>229</sup> *ibid.*, p 21 & 100.

<sup>230</sup> *ibid.*, pp 1 & 99.

<sup>231</sup> *ibid.*, p 1.

<sup>232</sup> *ibid.*, pp 100–101.

The Committee noted that deficiencies in aged care workforce data and a lack of nationally agreed standards made it difficult to analyse the composition of the current workforce, and how that workforce may need to develop and adjust to meet future needs.<sup>233</sup>

It drew attention to concerns about the quality of training provided by Registered Training Organisations and steps that could be taken to improve the regulatory framework and bring greater national consistency.<sup>234</sup> The Committee noted that recommendations pertinent to these issues had already been made by the Senate Education and Employment References Committee in 2015.<sup>235</sup>

Particular workforce issues identified by the Committee included pressures arising from the roll-out of the National Disability Insurance Scheme;<sup>236</sup> issues in relation to workforce attraction;<sup>237</sup> retention and training difficulties arising from poor pay and conditions;<sup>238</sup> the absence of a registration scheme for many working in the aged care sector;<sup>239</sup> concerns that the ratio of workers to patients in some aged care facilities risked compromising the quality of care;<sup>240</sup> and difficulties experienced in relation to the diversity of the workforce.<sup>241</sup>

The Committee also observed that nurses, medical professionals and allied health professionals were under-used in the aged care sector and that allied health professionals in particular required greater integration into the sector.<sup>242</sup>

The Committee made 19 recommendations. Many of these related to the proposed aged care workforce taskforce, which had been announced by the Government but was yet to be established. The recommendations covered matters such as the composition of the workforce taskforce and the topics it should focus on (including the development of data standards and the role of informal carers and volunteers in the aged care sector).<sup>243</sup> The Committee also made a number of recommendations in relation to the inclusion of age care related course content into professional training; the publication of service provider staff to client ratios; the availability of block funding to remote and very remote service providers; a review of the implementation of consumer directed care; the implementation of recommendations in the 2015 Senate Education and Employment Committee report; scholarships and incentives to encourage health and allied health professionals to undertake specific geriatric and dementia training; and development of nationally consistent workforce and workplace regulation across all carer service sectors.<sup>244</sup>

The Minister for Senior Australians and Aged Care provided an initial response to the inquiry in June 2017, indicating that the Committee's work would feed into the Government's thinking in relation to the industry led workforce strategy.<sup>245</sup> A more detailed response to the Committee's Report was provided in 2018. The Government generally supported or noted

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<sup>233</sup> *ibid.*, p 27.

<sup>234</sup> *ibid.*, p 65 & 69.

<sup>235</sup> Senate Education and Employment References Committee, *Getting our money's worth: the operation, regulation and funding of private vocational education and training (VET) providers in Australia*, 2015.

<sup>236</sup> Senate Community Affairs References Committee, *Future of Australia's aged care sector workforce*, 2017, p 41.

<sup>237</sup> *ibid.*, p 49.

<sup>238</sup> *ibid.*, p 46 & 49.

<sup>239</sup> *ibid.*, p 109.

<sup>240</sup> *ibid.*, p 60.

<sup>241</sup> *ibid.*, pp 87 & 97.

<sup>242</sup> *ibid.*, p 39.

<sup>243</sup> *ibid.*, pp 103–104.

<sup>244</sup> *ibid.*, p 101–110.

<sup>245</sup> The Hon K Wyatt, Minister for Senior Australians and Aged Care, media release, *Report welcomed as Government works to strengthen aged care sector*, 21 June 2017.

the recommendations of the Committee and referred most of them to the industry-led taskforce.<sup>246</sup>

In response to the recommendation that the Government consider requiring aged care service providers to publish and update their staff to client ratios, the Government indicated that there was an opportunity for providers to include information on their staffing arrangements in the aged care homes service finder tool on the My Aged Care website. However, the Government also said that it would consider additional approaches to achieving the intention of this recommendation.<sup>247</sup>

The industry-led Taskforce was established in late 2017 and provided its report to Government in June 2018. On 13 September 2018, the then Minister for Senior Australians and Aged Care launched Australia's Aged Care Workforce Strategy. The Taskforce's report and the Government's response are discussed in more detail below.

## ***Elder Abuse—A National Legal Response, Australian Law Reform Commission, 2017***

In 2017 the Australian Law Reform Commission released its report into elder abuse, *Elder Abuse—A National Legal Response*. The Report formed one of a number of initiatives at the Australian Government level towards addressing elder abuse.<sup>248</sup> The inquiry covered a wide range of areas relating to elder abuse. This paper describes those findings and recommendations that relate specifically to the aged care system.

The Australian Law Reform Commission pointed to the prevalence of abusive practices within the aged care system and criticised gaps in the regulatory and reporting systems that allowed these practices to persist.<sup>249</sup> It suggested that ensuring quality of care for the aged was the best safeguard against abuse and neglect, noting that mistreatment is more likely to be a cultural issue than a 'bad apple' problem.<sup>250</sup> The Australian Law Reform Commission noted that while the aged care system was moving towards a flexible, consumer-directed approach, regulation of the aged care sector has a role in ensuring safety and quality of care and protecting vulnerable people.<sup>251</sup>

The Australian Law Reform Commission found failures in reporting on abuse and in institutional responses to instances of abuse. It found that some 'resident-on-resident' incidents were exempt from reporting and that while providers were required to keep records

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<sup>246</sup> Australian Government, *Australian Government Response to the Senate Community Affairs References Committee report: Future of Australia's aged care sector workforce*, 2018.

<sup>247</sup> *ibid.*, p 10.

<sup>248</sup> The inquiry built on other reviews, including the 2007 report of the House of Representatives Standing Committee on Legal and Constitutional Affairs, *Older People and the Law*; the 2015 report of the Senate Community Affairs References Committee into violence, abuse and neglect against people with disability in institutional and residential settings; the 2016 research report by the Australian Institute of Family Studies, *Elder Abuse: Understanding Issues, Frameworks and Responses*; and the Australian Law Reform Commission's 2014 report, *Equality, Capacity and Disability in Commonwealth Laws* (see D Tune, *Legislated Review of Aged Care*, 2017, pp 18–19).

<sup>249</sup> Australian Law Reform Commission, *Elder Abuse—A National Legal Response*, Final Report, 2017, pp 112–113, 144–147.

<sup>250</sup> S Biggs, *Submission 235—Submission to Elder Abuse Discussion Paper. Australian Law Reform Commission*, as cited in Australian Law Reform Commission, *Elder Abuse—A National Legal Response*, Final Report, 2017, p 103.

<sup>251</sup> Australian Law Reform Commission, *Elder Abuse—A National Legal Response*, Final Report, 2017, pp 101–102.

of reportable assaults, there was no obligation on the provider to record any actions taken in response to an incident.<sup>252</sup> The Australian Law Reform Commission considered that providers should be required to investigate and respond to incidences of alleged or suspected assault.<sup>253</sup>

While leaving many workforce matters for other inquiries, the Australian Law Reform Commission noted that a 'safe, qualified aged care workforce in sufficient numbers is an essential safeguard against elder abuse in aged care'.<sup>254</sup> It made recommendations relating to staffing numbers and models of care; codes of conduct applicable to the aged care workforce; and pre-employment screening.<sup>255</sup> More specifically, the Australian Law Reform Commission recommended that more work should be done to determine optimum staffing levels and to set benchmarks to guide practice and inform assessments against legislative standards.<sup>256</sup> The Australian Law Reform Commission found that many people working in aged care, such as assistants in nursing, aged care workers, or personal care workers, are not part of a registered profession.<sup>257</sup> It recommended care workers be subject to a National Code of Conduct for Health Care Workers.<sup>258</sup>

Addressing the use of restraints within the aged care system, the Australian Law Reform Commission suggested that the use of restrictive practices may sometimes amount to elder abuse.<sup>259</sup> It found that while a national framework exists for reducing and eliminating the use of restrictive practices in the disability service sector, the use of restrictive practices in aged care was not explicitly regulated.<sup>260</sup> The Australian Law Reform Commission considered that a consistent approach to the regulation of restrictive practices in aged care and disability services was desirable. It observed that similar human rights considerations apply across the aged care and disability sectors to decisions to interfere with a person's rights and freedoms, and that a consistent approach would provide the opportunity for aged care to adopt best practice approaches to regulation developed in other sectors.<sup>261</sup>

The Australian Law Reform Commission drew attention to the abuse of formal and informal decision-making powers in the aged care sector.<sup>262</sup> It had some difficulty with aspects of the Aged Care Act that allowed for, or required, the appointment of representatives to act on behalf of care recipients. While recognising the complexities in decision-making for some older people with impaired competency, the ALRC considered that the appointment of a representative decision maker should not be required as a condition of entry to aged care.<sup>263</sup> The ALRC also recommended that decision making in aged care be aligned with the more general approach proposed by the Australian Law Reform Commission.<sup>264</sup>

The Australian Law Reform Commission Report made 43 recommendations in relation to the abuse of older people. Fourteen of these directly related to aged care and included:

- establishing a serious incident response scheme in aged care legislation;

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<sup>252</sup> *ibid.*, pp 112–113.

<sup>253</sup> *ibid.*, p 114.

<sup>254</sup> *ibid.*, p 126.

<sup>255</sup> *ibid.*, p 127.

<sup>256</sup> *ibid.*, p 127.

<sup>257</sup> *ibid.*, p 132.

<sup>258</sup> *ibid.*, p 132.

<sup>259</sup> *ibid.*, p 142.

<sup>260</sup> *ibid.*, p 144.

<sup>261</sup> *ibid.*, p 147.

<sup>262</sup> *ibid.*, p 147.

<sup>263</sup> *ibid.*, p 152.

<sup>264</sup> *ibid.*, p 22.

- reforms relating to the suitability of people working in aged care—enhanced employment screening processes, and ensuring that unregistered staff are subject to the proposed National Code of Conduct for Health Care Workers;
- regulating the use of restrictive practices in aged care; and
- national guidelines for the community visitors scheme regarding abuse and neglect of care recipients.<sup>265</sup>

At the time the Royal Commission was finalising this background paper, the Government had not provided an overall response to the Australian Law Reform Commission Report. Following further allegations of abuse in nursing homes in January 2019, the Minister for Senior Australians and Aged Care announced that new regulations would be introduced to prevent excessive use of physical and chemical restraints in aged care.<sup>266</sup> As indicated earlier, these regulations were introduced on 1 July 2019 but their implementation has been delayed pending an enquiry by the Parliamentary Joint Committee on Human Rights.<sup>267</sup>

In March 2019, the Government released a discussion paper, *Strengthening protections for older Australians—Development of models and options for a Serious Incident Response Scheme for Commonwealth-funded aged care service providers*. At the time the Royal Commission was finalising this background paper, the Government was consulting on the details of the operation of the serious incident scheme.<sup>268</sup>

The other recommendations of the Australian Law Reform Commission have not been implemented.

## **Introducing Competition and Informed User Choice into Human Services: Reforms to Human Services, Productivity Commission, 2017**

In 2015, the final report of the Competition Policy Review ('the Harper Review') was released.<sup>269</sup> The Harper Review recommended adopting choice and competition principles in human services (recommendation 2). The Government supported the recommendation and announced it would commission a review into human services.<sup>270</sup> In April 2016, the Government asked the Productivity Commission to examine the application of competition

<sup>265</sup> *ibid.*, p 22.

<sup>266</sup> Australian Broadcasting Corporation, 'New regulations to prevent excessive use of physical and chemical restraints in aged care', online, 17 January 2019, <https://www.abc.net.au/news/2019-01-17/new-regulations-against-chemical-physical-restraint-in-aged-care/10724038>, viewed 2 October 2019.

<sup>267</sup> Parliament of Australia, website, 'Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019', [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/QualityCareAmendment](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/QualityCareAmendment), viewed 26 September 2019.

<sup>268</sup> Department of Health, Aging and Aged Care website, 'Strengthening protections for older Australians—Serious Incident Response Scheme (SIRS)', 2019, <https://agedcare.health.gov.au/quality/strengthening-protections-for-older-australians-serious-incident-response-scheme-sirs>, viewed 27 September 2019.

<sup>269</sup> I Harper, P Anderson, S McCluskey & M O'Bryan QC, *Competition Policy Review: Final Report*, March 2015.

<sup>270</sup> P Davidson, 'Government response to the Harper Competition Policy Review: a quick guide', Research Paper Series, 2016–2017, 2016, p 1.

and user choice to services within the human services sector.<sup>271</sup> The Commission reported in October 2017 and Government released the report in March 2018.<sup>272</sup>

The Commission focused on six areas of human services for which it believed 'greater user choice, competition and contestability would improve outcomes for the people who receive them'.<sup>273</sup> These services were end-of-life care; social housing; family and community services; services in remote Aboriginal and Torres Strait Islander communities; patient choice over referred health services; and public dental services. Chapters 3 and 4 of the final report address end of life care in Australia.

The Commission did not consider end of life care for aged care home care services in detail as it was 'unable to obtain data to suggest that this occurs in anything but a handful of cases'.<sup>274</sup> The Commission found that while the care provided in some aged care facilities was excellent, end of life care was often inadequate.<sup>275</sup> The Commission made five recommendations in relation to end of life care, three of which related specifically to aged care:

- the availability of community-based end of life care be increased
- end of life care become a core business of aged care facilities, such that the restrictions on availability and scope of palliative care be removed and funding be appropriately increased
- Medicare items be used to facilitate advance care planning discussions
- the residential aged care Quality of Care principles include the facilitation of ongoing conversations about advance care planning; and
- Australian, State and Territory Governments ensure integrated services, establish standards, monitor and evaluate end of life services, develop an end of life care data strategy and review end of life care in 2025.<sup>276</sup>

The Commission considered end of life care to be core business for the aged care system, noting that many people in residential aged care die there.<sup>277</sup> The Commission believed the Australian Government, as steward of the aged care system, is responsible for ensuring that people in the aged care system receive the same quality of end of life care as other Australians.<sup>278</sup> To achieve this, two requirements needed to be met: greater access to services delivered by clinically qualified staff and assistance to consumers in selecting appropriate residential aged care facilities that provide high quality end of life care.<sup>279</sup>

With respect to achieving better access to clinically qualified staff, the Commission found that 'too often' people are transferred between acute hospitals and aged care facilities because of the absence of palliative care expertise and of staff qualified to administer pain relief.<sup>280</sup> The Commission found that the Australian Government's assessment and funding systems did

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<sup>271</sup> Productivity Commission, *Introducing Competition and Informed User Choice into Human Services: Reforms to Human Services*, 2017, p v-vi.

<sup>272</sup> Productivity Commission website, 'Reforms to Human Services', <https://www.pc.gov.au/inquiries/completed/human-services/reforms/report>, viewed 30 September 2019.

<sup>273</sup> Productivity Commission, *Introducing Competition and Informed User Choice into Human Services: Reforms to Human Services*, 2017, p 2.

<sup>274</sup> *ibid.*, p 121.

<sup>275</sup> *ibid.*, p 121.

<sup>276</sup> *ibid.*, p 131.

<sup>277</sup> *ibid.*, p 121 & 148.

<sup>278</sup> *ibid.*, pp 148–150.

<sup>279</sup> *ibid.*, pp 148–149.

<sup>280</sup> *ibid.*, p 109.



not take proper account of palliative care needs by supporting the availability of clinically qualified staff.<sup>281</sup> It noted that the Aged Care Funding Instrument, which is used to assess the care needs of those living in residential aged care, set restrictive limits on funding for palliative care. These limits included providing funding only for the last week or days of a resident's life, requiring a pain assessment and a palliative care directive from a medical practitioner or specialist nurse, and setting a 'high' funding ceiling such that many residents eligible for high funding levels are unable to access additional funding for palliative care needs.<sup>282</sup>

The Commission observed that making 'intensive nursing and other palliative care services available only in the last week or days of life does not align with users' needs nor with the way in which the health system considers, or aims to consider, end-of-life care (the last 12 months of life)'.<sup>283</sup> The Commission was also of the view that such an approach did not accord with the trajectories of decline for people with dementia, noting the high number of people in residential care with this condition.<sup>284</sup>

The Commission also noted that the cap on high needs meant that many people in residential aged care were not eligible for palliative care funding. It noted that if a resident was already receiving funding for high care needs, they would not be eligible for additional funding if their care needs increased.<sup>285</sup> The Commission observed that in 2014-15 more than 50% of residents in residential aged care already received 'high' level funding for their health care. This meant that more than half of residents would not be eligible for additional funding for palliative care (or any other additional health care needs).<sup>286</sup>

The Commission recommended additional funding for end of life care as a further step in ensuring the right clinical care is provided.<sup>287</sup> It noted that the required level of funding was unknown because the unmet need was unknown.<sup>288</sup> The Commission suggested that how the additional funding should be used 'should be a decision for the individual provider' as long as standards are met and residents receive the same care as other Australians.<sup>289</sup>

The Commission noted that aged care facilities may choose to employ nurses and nurse practitioners to lead and coordinate end of life care. However, the Commission indicated that it remained of the view that mandatory staffing ratios were unlikely to be an efficient way to improve the quality of care in aged care, preferring providers to have flexibility in the staffing mix they employed.<sup>290</sup>

The Productivity Commission pointed to shortcomings and gaps in the information available to consumers on end of life care in residential aged care facilities.<sup>291</sup> It suggested that two main changes were needed to address this gap in information. First, it proposed that 'the Australian Government should specify and clearly communicate the standard of end-of-life care that aged care providers are expected to deliver'.<sup>292</sup> It noted that this standard of care should be clear and understandable to both aged care providers and residents.<sup>293</sup>

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<sup>281</sup> *ibid.*, p 123 & 149.

<sup>282</sup> *ibid.*, p 124.

<sup>283</sup> *ibid.*, p 149.

<sup>284</sup> *ibid.*, p 149.

<sup>285</sup> *ibid.*, p 124.

<sup>286</sup> *ibid.*, p 124.

<sup>287</sup> *ibid.*, pp 149–151.

<sup>288</sup> *ibid.*, p 151.

<sup>289</sup> *ibid.*, p 151.

<sup>290</sup> *ibid.*, p 152.

<sup>291</sup> *ibid.*, p 154.

<sup>292</sup> *ibid.*, p 154.

<sup>293</sup> *ibid.*, p 154.

Second, the Commission was of the view that consumers need access to better information about the quality of care, including end of life care, provided by residential aged care facilities, beyond mere compliance with minimum standards.<sup>294</sup> The Commission noted that despite recent and ongoing aged care reforms, there was not enough information provided to recipients of care about variations in the quality of care.<sup>295</sup>

While the Commission recognised that the Australian Aged Care Quality Agency published detailed accreditation reports that outlined the Agency's assessment of the quality of care, including end of life care, in residential aged care facilities, it considered this information was difficult to find and understand.<sup>296</sup>

The Commission considered that advance care plans were 'a vital component of putting users' needs and choices at the heart of end-of-life care services'.<sup>297</sup> It recommended the Australian Government promote advance care planning in primary care.<sup>298</sup> In relation to residential aged care, the Commission proposed that advance care planning should be a 'normal activity' in this care setting. It noted, however, that advance care plans were not common in aged care facilities and some staff are not trained in facilitating this planning.<sup>299</sup> Therefore, the Commission recommended that the accreditation standards for aged care facilities include a requirement that clinically trained staff hold conversations with residents about their future care needs, and develop a plan within two months of admission to the facility.<sup>300</sup>

The Commission found that poor stewardship by different levels of government was a major barrier to the delivery of better end-of-life care.<sup>301</sup> It considered that this poor stewardship was particularly detrimental in the residential aged care setting, where responsibility for specialist palliative care services is unclear and overlaps: while the Australian Government is the steward of the aged care system, State and Territory Governments provide specialist palliative care.<sup>302</sup> The Commission noted:

- The Australian Government rarely acknowledges that providing end-of-life care is (or should be) core business for residential aged care and has, for many years, failed to ensure that residential aged care providers receive sufficient funding for delivering palliative care....
- State and Territory Governments can be reluctant to fund palliative care for people aged over 65 years who, by virtue of their age, could also be eligible for aged care funded by the Australian Government. Some State and Territory Governments have end-of-life and palliative care policies that omit the needs of those in aged care, or focus only on specialist palliative care (ignoring the end-of-life care needs of frail elderly people who do not require specialist care).

More broadly, the Commission called for stronger collaboration between governments to support better coordination between residential aged care, community-based palliative care, hospitals and primary care.<sup>303</sup> The Commission called for governments to stop 'buck passing' and to collect better data to inform planning, monitoring and provision of care.<sup>304</sup> In particular, the Commission recommended that through the Council of Australian Governments Health Council all levels of government work to plan, fund and deliver

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<sup>294</sup> *ibid.*, p 154.

<sup>295</sup> *ibid.*, p 154.

<sup>296</sup> *ibid.*, p 154.

<sup>297</sup> *ibid.*, p 156.

<sup>298</sup> *ibid.*, p 160.

<sup>299</sup> *ibid.*, p 160.

<sup>300</sup> *ibid.*, p 162.

<sup>301</sup> *ibid.*, p 127.

<sup>302</sup> *ibid.*, p 127.

<sup>303</sup> *ibid.*, p 128.

<sup>304</sup> *ibid.*, p 162.

integrated end of life care, set standards of end of life care, monitor and evaluate end of life care services, develop a data strategy for end of life care, and commission a review of this care in 2025.<sup>305</sup>

At the time of finalising this paper, the Government had not responded to this report.

## ***Review of National Aged Care Quality Regulatory Processes, Carnell-Paterson, 2017***

The Carnell-Paterson review was commissioned by the Australian Government as a response to failures of care at the Oakden Older Persons Mental Health Service (Oakden facility) in South Australia.

The Oakden facility provided specialist mental health and aged residential care for older people with severe mental illness.<sup>306</sup> After repeated complaints from families, a review of the facility was conducted by the South Australian Chief Psychiatrist, Dr Aaron Groves. His report entitled *The Review of the Oakden Older Persons' Mental Health Service* (Oakden report) was highly critical of the Oakden facility, finding that a culture of poor leadership, management and low staff morale led to a pattern of substandard care, particularly in the facility's Makk, McLeay and Clements wards.<sup>307</sup> Care failings included neglect, rough-handling, use of restraints and medication errors.<sup>308</sup>

A central question for the Carnell-Paterson review was why the Australian Government's regulatory processes failed to detect longstanding failures at the Oakden Facility. The review also sought to identify 'improvements to the regulatory system that will increase the likelihood of immediate detection, and swift remediation by providers'.<sup>309</sup>

The Carnell-Paterson review found that the 'current regulatory mechanisms do not consistently provide the assurance of quality that the community needs and expects'.<sup>310</sup> The reviewers stated that:

Clearly, the accreditation processes that permitted the Makk and McLeay wards at Oakden to pass all 44 outcomes under the Accreditation Standards in February 2016 were inadequate. This was a deeply concerning failure. All too often, the Review heard about accreditation by the Quality Agency that was focused on processes rather than outcomes, and appeared to be a 'tick-the-box' exercise.<sup>311</sup>

The review found that the regulatory system was fragmented, creating opportunity for miscommunication or lack of coordination between the three responsible organisations.<sup>312</sup> It found that improved clarity and reduced overlap in the roles of regulatory authorities would help strengthen the system.<sup>313</sup> Further, it considered that a single agency, as proposed by the Productivity Commission in 2011, would allow the integration of accreditation, compliance

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<sup>305</sup> *ibid.*, p 169.

<sup>306</sup> Dr Aaron Groves, Chief Psychiatrist, *The Review of the Oakden Older Persons' Mental Health Service* Oakden Review, 2017, p 31, 116.

<sup>307</sup> *ibid.*, p 30, 31, 65, 66, 89, 99, 109, 100, 113, 115.

<sup>308</sup> *ibid.*, pp 31, 65, 66, 89, 99, 109, 100, 113, 115.

<sup>309</sup> K Carnell and R Paterson, *Review of National Aged Care Quality Processes*, 2017, p 161.

<sup>310</sup> *ibid.*, p v.

<sup>311</sup> *ibid.*, p ix.

<sup>312</sup> *ibid.*, p vii.

<sup>313</sup> *ibid.*, p 73.

and complaints handling in an independent body.<sup>314</sup> Carnell-Paterson also called for clearer distinction between regulators and policy agencies and improvement in associated information-sharing processes.<sup>315</sup>

The review was concerned with an overall lack of information for the public. It found that there was a lack of:

- reliable, comparable information about quality of care in residential aged care, noting that there is 'little meaningful quality information available to the public'<sup>316</sup>
- awareness of the Charter of Care Recipients' Rights and Responsibilities and of consumers' rights, which in turn prevents consumers from exercising their rights<sup>317</sup>
- transparency of accreditation for residents and their family or friends.<sup>318</sup>

The review also recommended the regulator develop a more effective risk-based approach to accreditation and compliance monitoring, with unannounced visits after the initial accreditation visit.<sup>319</sup> It noted polypharmacy and medication errors to be an issue that was frequently raised and suggested each resident undergo resident medication management reviews upon admission to an aged care facility, after any hospitalisation, upon any worsening of medical condition or behaviour, or on any change in medication regime.<sup>320</sup>

The review noted widespread dissatisfaction with complaints handling by providers and by the Aged Care Complaints Commissioner.<sup>321</sup> It called for residential aged care providers to have clear and fair complaints handling processes, for the Complaints Commissioner to remain independent, and for increased powers for the Commission to maintain a publicly available complaints register.<sup>322</sup>

Overall, the review made 10 recommendations to support the improvement of the regulatory system. In particular, the review called for:

- better coordination of regulatory functions through the establishment of an integrated and independent single agency that regulates safety and quality in aged care (the Aged Care Quality and Safety Commission)
- the Commission to be overseen by an independent Government board and supported by a chief clinical advisor
- the new Commission to be comprised of an Aged Care Quality Commissioner, an Aged Care Complaints Commissioner and an Aged Care Consumer Commissioner
- expanded intelligence-gathering capacity, including capturing resident, family and staff views, contemporising risk / quality indicators, increasing reporting of risk indicators and serious incidents and restraint practices by service providers, and developing risk profiling capability
- a better system for sharing information on provider performance with the public and aged care service providers, to promote service improvement, including developing performance benchmarking and a star-rated system for providers

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<sup>314</sup> *ibid.*, p vii.

<sup>315</sup> *ibid.*, p 73.

<sup>316</sup> *ibid.*, p vi.

<sup>317</sup> *ibid.*, p viii.

<sup>318</sup> *ibid.*, p vii.

<sup>319</sup> *ibid.*, p ix.

<sup>320</sup> *ibid.*, p ix.

<sup>321</sup> *ibid.*, p ix.

<sup>322</sup> *ibid.*, p x.

- changes to accreditation, compliance monitoring and complaints-handling processes to make them more responsive to emerging issues with care quality, including unannounced accreditation visits and increased powers of the Complaints Commissioner.<sup>323</sup>

The Australian Government has not publicly released an action-by-action response to the Carnell-Paterson review.<sup>324</sup> A draft Government response to the review was prepared by the Department of Health but was never finalised.<sup>325</sup> Some but not all of the recommendations of the Carnell-Paterson review were reflected in measures announced in the 2018–19 Budget.<sup>326</sup> Documents provided to this Royal Commission set out a brief summary of the status of the recommendations.<sup>327</sup> Many of those changes remain in progress.<sup>328</sup> The Government did not proceed with the Carnell-Paterson recommendations that the quality regulator be overseen by a governing board or adopt a star rating system. At the time the Royal Commission was completing this background paper, the Government was in the process of working with the aged care sector to develop options for a Serious Incident Response Scheme.

## ***A Matter of Care Australia's Aged Care Workforce Strategy, Aged Care Strategy Taskforce, 2018***

An Aged Care Workforce Strategy Taskforce (the Taskforce) chaired by Professor John Pollaers OAM was established by the Australian Government in 2017.<sup>329</sup>

The terms of reference required the Taskforce to focus on:

- workforce planning including size, structure, managing growth, changes in service requirements, occupation mix, roles and the needs of different care settings and markets
- supply and retention of the right workers where they are needed and ensuring skills are kept up-to-date
- the role and capacity of providers, as employers and sector leaders, to equip the workforce
- building the sector's capability to innovate and work in new ways to meet the needs
- care recipients, their families, carers and communities.<sup>330</sup>

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<sup>323</sup> *ibid.*, pp ii–x.

<sup>324</sup> Transcript, Amy Laffan, Brisbane Hearing, 8 August 2019 at T4638.15–43.

<sup>325</sup> Exhibit 3–2, Sydney Hearing, General Tender Bundle, tab 39, CTH.1000.0002.6501.

<sup>326</sup> Transcript, Amy Laffan, Brisbane Hearing, 8 August 2019 at T4638.15–43.

<sup>327</sup> Exhibit 1–23, Adelaide Hearing 1, Carnell-Paterson recommendations—Implementation progress—Feb 2019, CTH.0001.1000.4510, exhibit to Statement of Glenys Beauchamp, 4 February 2019, WIT.0022.0001.0001

<sup>328</sup> Exhibit 8–29, Brisbane Hearing, *Precis of evidence prepared by Professor Ron Paterson*, RCD.9999.0143.0001 at .0003–0004 [23]–[32].

<sup>329</sup> Australian Government, Department of Health, Ageing and Aged Care website, 'Aged Care Workforce Strategy Taskforce', 2019, <https://agedcare.health.gov.au/reform/aged-care-workforce-strategy-taskforce>, 2019, viewed 2 October 2017.

<sup>330</sup> Australian Government, Department of Health, Ageing and Aged Care website, 'Aged Care Workforce, Strategy Taskforce Terms of Reference', 2017, <https://agedcare.health.gov.au/reform/aged-care-workforce-strategy-taskforce/aged-care-workforce-strategy-taskforce-terms-of-reference>, viewed on 2 October 2019.

In June 2019, the Taskforce delivered its report, *A Matter of Care—Australia’s Aged Care Workforce Strategy* to the then Minister for Senior Australians and Aged Care. The Taskforce developed 14 strategic actions for Australia’s current and future aged care workforce:

- commence a social change campaign to reframe caring and promote the workforce
- establish a voluntary industry code of practice
- reframe the qualification and skills framework to address current and future competencies and skills requirements
- define new career pathways, including accreditation
- develop cultures of feedback and continuous improvement
- establish a new standard approach to workforce planning and skills mix modelling
- implement new attraction and retention strategies for the workforce
- develop a revised workforce relations framework for workforce organisation and productivity
- strengthen the interface between aged care and primary / acute care
- improve training and recruitment practices for the Australian Government aged care workforce
- establish a remote accord
- establish an Aged Care Centre for Growth and Translational Research
- consider current and future funding, including staff remuneration
- transition the existing workforce to the new standards.<sup>331</sup>

Underpinning these actions, the Taskforce proposed guiding principles<sup>332</sup> and leadership pledges<sup>333</sup> for a voluntary code of practice. It also suggested that consideration be given to an industry / government co-regulatory approach if a self-regulatory code did not deliver the required reforms.<sup>334</sup>

The Taskforce recommended that providers review their own continuous improvement practices,<sup>335</sup> establish an integrated care and clinical governance committee to review holistic care plans and ensure they are being updated and delivered, and publish the models and hours of care across the care plan.<sup>336</sup> It also recommended that managing bodies of providers regularly review and act on clinical indicators as well as missed care and serious major incident reports.<sup>337</sup>

The Taskforce recommended discussion across governments to improve the integration of the health, aged and disability sectors; increase multidisciplinary care; promote preventative care and wellness; and support better access to services for people who are financially vulnerable and isolated.<sup>338</sup> The report drew particular attention to the interaction between aged care and primary, dental and tertiary care, and recommended the establishment of

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<sup>331</sup> Aged Care Workforce Strategy Taskforce, *A Matter of Care Australia’s Aged Care Workforce Strategy*, 2018, pp 14–17.

<sup>332</sup> *ibid.*, pp 21–22.

<sup>333</sup> *ibid.*, p 24.

<sup>334</sup> *ibid.*, p 25.

<sup>335</sup> *ibid.*, p 46.

<sup>336</sup> *ibid.*, p 53.

<sup>337</sup> *ibid.*, p 47.

<sup>338</sup> *ibid.*, p 70.

social care networks to improve service coordination between local and primary health networks.<sup>339</sup>

The report also directed recommendations to the Australian Government about the recruitment, training and skills of Government staff within the Aged Care Quality and Safety Commission, Australian Aged Care Quality Agency and My Aged Care, as well as Aged Care Funding Instrument validators and Department of Health aged care compliance staff.<sup>340</sup>

To support the transition to new standards, the Taskforce recommended the formation of an Industry Council<sup>341</sup> that would take the lead in establishing a new, industry-led workforce accreditation system.<sup>342</sup>

On 13 September 2018, the Government released an Aged Care Workforce Strategy which accords with the 14 strategic actions detailed by the Taskforce.<sup>343</sup> The Australian Government has not provided a detailed outline of how the strategic actions will be implemented, aside from a commitment to fund the Aged Care Centre for Growth and Translational Research.<sup>344</sup> On 17 May 2019, the Aged Care Workforce Industry Council consisting of 12 members drawn from a range of provider types, representative bodies and geographical regions was established to prioritise and progress the 14 Taskforce's strategic actions.<sup>345</sup>

## ***Report on the Inquiry into Quality of Care in Residential Aged Care Facilities in Australia, House of Representatives Standing Committee on Health, Aged Care and Sport, October 2018***

In October 2018, the House of Representatives Standing Committee on Health, Aged Care and Sport (Committee) delivered their *Report on the Inquiry into Quality of Care in Residential Aged Care Facilities in Australia*.

The inquiry was established in response to concerns about potential gaps in oversight of the system and the urgent need for reform. The Committee considered that this need was highlighted by recent, well-publicised instances of mistreatment of people in aged care in South Australia, Queensland and New South Wales.<sup>346</sup> The Committee also pointed to the growth in the number of complaints about aged care, citing a 23% increase in total complaints made to the Aged Care Complaints Commissioner between 2016–17 and 2017–18.<sup>347</sup>

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<sup>339</sup> *ibid.*, p 70.

<sup>340</sup> *ibid.*, p 74.

<sup>341</sup> *ibid.*, p 101.

<sup>342</sup> *ibid.*, p 42.

<sup>343</sup> Australian Government, Department of Health, Ageing and Aged Care website, 'Aged Care Workforce Strategy Taskforce', <https://agedcare.health.gov.au/reform/aged-care-workforce-strategy-taskforce>, viewed 2 October 2019.

<sup>344</sup> Transcript, Prof JC Pollaers, Melbourne Hearing 2, 14 October 2019 at T5812.10–46.

<sup>345</sup> Aged Care Workforce Industry Council website, 'home', 2019, <https://www.agedcareonline.com.au/2019/08/Aged-Care-Workforce-Industry-Council-kicks-off-with-a-sense-of-purpose-and-urgency>, viewed on 2 October 2019.

<sup>346</sup> House of Representatives Standing Committee on Health, Aged Care and Sport, *Report on the Inquiry into the Quality of Care in Residential Aged Care Facilities in Australia*, 2018, p 1.

<sup>347</sup> *ibid.*, p 20.

The Committee focused on the effectiveness and adequacy of regulatory protections for the quality and safety of residents in aged care facilities.<sup>348</sup> It did so by considering the current system for the delivery of aged care, the prevalence of mistreatment and associated reporting mechanisms and consumer protection.

The Committee found that the Government regulatory agencies had failed to prevent mistreatment or poor care to individuals in residential aged care.<sup>349</sup> The Committee pointed to Oakden as an example of this failure,<sup>350</sup> where Oakden had passed the accreditation process and continued to operate despite manifest failings.<sup>351</sup> It also considered that the Accreditation Standards were too focused on the provider and did not help consumers distinguish between providers delivering high quality care from those who were only passing minimum standards.<sup>352</sup>

The Committee considered that the current system could be strengthened if a registered nurse was present at a residential aged care facility at all times. The Committee suggested this should be the default position, unless it could be demonstrated that the resident mix or size of a facility did not warrant compliance with this standard.<sup>353</sup> It also considered that the Community Visitors Scheme, under which volunteers provide support to older people in residential aged care, was an under-used resource which could be directed to better support residents who want to raise issues of quality of care.<sup>354</sup> It noted there was currently limited guidance for volunteers on how to respond to allegations of suspicions of mistreatment, and suggested that a consistent, national approach could strengthen the role of the Community Visitors Scheme in residential aged care.<sup>355</sup>

As part of their consideration of mistreatment and associated reporting mechanisms, the Committee drew on personal accounts of poor-quality care received by aged care residents.<sup>356</sup> It noted detailed failings of care in the management of wounds and pain, the provision of medication, nutrition and lack of assistance for residents.<sup>357</sup> However, the Committee concluded that the true prevalence of mistreatment in residential aged care was not known as the Australian Department of Health did not regularly collect and publish a comprehensive range of data.<sup>358</sup> The Committee noted that more comprehensive data was important to support the regulatory system and promote consumer confidence in the aged care system.<sup>359</sup> It concluded that incidents of mistreatment should be more fully measured.<sup>360</sup>

The Committee also commented on various barriers preventing residents and family members from engaging with current reporting mechanisms and the complaints process. This included communication difficulties, the complexity of the complaints system and a fear of reprisal. Further, the Committee noted that inquiry participants felt the system did not have a focus on improving a resident's quality of life, and instead, was focused on bureaucratic reporting.<sup>361</sup>

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<sup>348</sup> *ibid.*, p 4.

<sup>349</sup> *ibid.*, p 50.

<sup>350</sup> *ibid.*, p 50.

<sup>351</sup> *ibid.*, pp 8–9 and p 50.

<sup>352</sup> *ibid.*, p 49.

<sup>353</sup> *ibid.*, p 51.

<sup>354</sup> *ibid.*, p 22 & 49.

<sup>355</sup> *ibid.*, p 49.

<sup>356</sup> *ibid.*, p 94.

<sup>357</sup> *ibid.*, p 94.

<sup>358</sup> *ibid.*, p 94.

<sup>359</sup> *ibid.*, p 94.

<sup>360</sup> *ibid.*, p 94.

<sup>361</sup> *ibid.*, pp 94–95.



In examining the prevalence of mistreatment in aged care, the Committee considered the 'resident-on-resident' exemption for reportable assaults. While providers were required to report allegations or suspicions of 'reportable assaults' to the police and to the Department of Health,<sup>362</sup> there is a discretion not to report for assaults where the alleged perpetrator is a resident with a cognitive or mental impairment. The Committee considered this hid the incidence of mistreatment in residential aged care facilities.<sup>363</sup>

The Committee reflected on conditions which prevent the aged care market from operating efficiently.<sup>364</sup> These conditions included a high level of demand for services, low level of awareness of consumer rights and advocacy services, inadequate information about residential aged care facilities, and the questionable accessibility of *My Aged Care*.<sup>365</sup> The Committee commented that consumers are not able to exercise full choice when selecting an aged care facility.<sup>366</sup>

The Committee considered that consumer choice and awareness would be enhanced by increased transparency, which would allow the public to access more information about each residential aged care facility. This information could include the number of complaints and reportable incidents that have been lodged, responded to and resolved at individual aged care facilities.<sup>367</sup>

The Committee presented 14 recommendations, including:

- developing national guidelines for the Community Visitors Scheme, including policies related to observed or suspected abuse or neglect
- developing a consumer rating system for aged care facilities
- making information about the number of complaints lodged against individual aged care centres publicly available
- reviewing the Aged Care Funding Instrument to ensure it is providing for adequate levels of care
- ensuring all aged care facilities have at least one registered nurse on site at all times
- monitoring staffing mixes and their impacts on reducing complaints and abuse
- developing mandatory and more effective quality indicators
- limiting the use of restrictive practices by amending the Aged Care Act.<sup>368</sup>

At the time the Royal Commission was finalising this background paper, the Government had not responded to this report.

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<sup>362</sup> *ibid.*, p 90.

<sup>363</sup> *ibid.*, p 95.

<sup>364</sup> *ibid.*, p 122.

<sup>365</sup> *ibid.*, p 122.

<sup>366</sup> *ibid.*, p 122.

<sup>367</sup> *ibid.*, p 123.

<sup>368</sup> *ibid.*, p v.

# **Advisory report on the Aged Care Amendment (Staffing Ratio Disclosure) Bill 2018, House of Representatives Standing Committee on Health, Aged Care and Sport, December 2018**

On 22 August 2018, the Aged Care Amendment (Staffing Ratio Disclosure) Bill 2018 (the Bill) was referred to the Standing Committee on Health, Aged Care and Sport (the Committee).<sup>369</sup>

The purpose of the proposed Bill was to:

Effect the quarterly publication of ratios of aged care recipients to staff members for each residential care services operated by approved providers, with the aim of creating greater public transparency in the provision of residential care services and informing members of the public in any choice they may make regarding residential care services.<sup>370</sup>

The Bill set out ten staff categories that were to be included in the reporting by providers on staff to care recipient ratios.<sup>371</sup>

The focus of the Committee's advisory report was on the publication of staffing ratios under 10 different categories of staff, as proposed in the Bill. At the time of the Committee's inquiry, a Private Senator's bill addressing minimum staffing ratios, the Private Senator's Aged Care Amendment (Ratio of Skilled Staff to Care Recipients) Bill 2017, was before the Senate.<sup>372</sup> This bill lapsed on 1 July 2019.

The Committee found that the majority of the evidence it received suggested there is 'in principle community support for greater transparency, accountability and comparability' of data concerning aged care staffing levels.<sup>373</sup> It noted, however, that the recent industry-led Aged Care Workforce Strategy Taskforce (the Taskforce) had not recommended the introduction of legislated staff ratios, but had instead emphasised flexibility according to the care needs, the service or facility size as well as its design, the way work is organised, the extent to which services are outsourced, and the prevailing business model.<sup>374</sup>

In its report, the Committee acknowledged that the publication of staffing ratios would not, on their own, provide sufficient transparency to enable consumers to make informed decisions or increase the quality of aged care services. The Committee recommended that, with some enhancements, Parliament pass the Bill as it would increase the amount of information available to consumers.<sup>375</sup> It made six recommendations in respect of the Bill.

The Committee recommended that the Department of Health consider how resident acuity levels could be explained alongside each facility's staffing ratios so as to enable a 'like-for-like' comparison.<sup>376</sup> It observed the Bill did not account for variations in staffing levels between day and night or over weekends or public holidays. It also found some aspects of the Bill, primarily concerning changes of 10% or more in staff ratios, could impose

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<sup>369</sup> House of Representatives Standing Committee on Health, Aged Care and Sport, *Advisory Report on the Aged Care Amendment (Staffing Ratio Disclosure) Bill 2018*, 2018, p 1.

<sup>370</sup> *ibid.*, p 4, citing the Explanatory Memorandum, p 2.

<sup>371</sup> *ibid.*, p 4, citing the Explanatory Memorandum, p 36

<sup>372</sup> *ibid.*, p 6.

<sup>373</sup> *ibid.*, p 11.

<sup>374</sup> *ibid.*, p 8.

<sup>375</sup> *ibid.*, p 25.

<sup>376</sup> *ibid.*, p 26.

an unnecessary regulatory burden on smaller rural and remote facilities.<sup>377</sup> It recommended that the Department of Health monitor the need to report night and weekend ratios, as well as the reporting burden on smaller facilities over a 12 month period.

The Committee reported that approximately 10% of providers were participating in the National Aged Care Quality Indicator Program, a program established in 2016 to generate data on a small set of quality indicators. The Committee repeated the recommendation it had made in its *Report on the Inquiry into the Quality of Care in Residential Aged Care Facilities in Australia* (Aged Care Report) that this program should be expanded and made mandatory.<sup>378,379</sup>

The Committee held that a minimum level of staffing was necessary for the consistent provision of quality aged care. It pointed to the recommendation in its earlier Aged Care Report that a minimum of one registered nurse be on site at all times in residential aged care facilities, and called for that requirement to be legislated.<sup>380</sup>

The Committee also recommended that the Australian Government monitor and report on the correlation between standards of care and staffing mixes to guide further decisions in relation to staffing requirements.<sup>381</sup> Finally, it recommended that, 12 months after implementation, the Australian Government review whether publishing staff ratios against the 10 staffing categories identified in the Bill improved transparency and consumer choice.<sup>382</sup>

At the time the Royal Commission was finalising this paper, Government had not responded to this report. The Bill has not been passed.

On 22 July 2019, another Private Member's Bill, Aged Care Amendment (Staffing Ratio Disclosure) Bill 2019, was introduced in the House of Representatives. This Bill incorporates some of the Standing Committee on Health, Aged Care and Sport's views on the 2018 Bill. One significant change is the inclusion of a method of comparing providers within one of four categories determined by their averaged Aged Care Funding Instrument quartile.<sup>383</sup> It remains before Parliament.<sup>384</sup>

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<sup>377</sup> *ibid.*, p 26.

<sup>378</sup> *ibid.*, p 27.

<sup>379</sup> In July 2019 it became mandatory for providers to collect and report on three quality indicators. The Government has indicated it proposes to add two more indicators, but not until 2021. (My Aged Care, 'Quality indicators', Australian Government, 2019, <https://www.myagedcare.gov.au/quality/quality-indicators>, viewed 28 August 2019; Submissions of the Commonwealth in response to submissions of Counsel Assisting, 4 September 2019, RCD.0012.0028.0011 at 0014 [9]).

<sup>380</sup> House of Representatives Standing Committee on Health, Aged Care and Sport, *Advisory Report on the Aged Care Amendment (Staffing Ratio Disclosure) Bill 2018*, 2018, p 41.

<sup>381</sup> *ibid.*, p 42.

<sup>382</sup> *ibid.*, p 42.

<sup>383</sup> Explanatory Memorandum, Aged Care Amendment (Staffing Ratio Disclosure) Bill 2019 (Cth).

<sup>384</sup> Parliament of Australia website, 'House Hansard Database: Bills Aged Care Amendment (Staffing Ratio Disclosure) Bill 2019', <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansardr%2F094f9d89-b5ce-43ef-8ad4-277117167c00%2F0029;query=id%3A%22chamber%2Fhansardr%2F094f9d89-b5ce-43ef-8ad4-277117167c00%2F0028%22>, viewed 3 October 2019.

# ***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 practiced, Senate Community Affairs References Committee, 2019***

In 2017, the Senate Committee on Community Affairs was asked to review the effectiveness of aged care frameworks in ensuring the quality and safety of care following reports on incidents in Oakden and other aged care facilities. The Committee released an interim report in February 2018, which focused on the critical care failures in the Makk and McLeay wards of the Oakden facility.<sup>385</sup>

In its interim report, the Committee found that many of the circumstances that led to the substandard level of care given to residents of Oakden were not unique to that facility.<sup>386</sup> It found not only that there were similar models of care in other facilities, but that many of the failures in the quality oversight frameworks were universal, in that they could occur again in relation to any aged care facility, in any location, providing any kind of general or specialised aged care service.

The Committee also observed that there was uncertainty within the aged care sector as to the definition of the care being provided, who was responsible for providing appropriate clinical care in residential aged care facilities and which agencies should have quality oversight responsibility of that care.<sup>387</sup> It noted that the model of care issues found at Oakden would become increasingly relevant to aged care service delivery around Australia, with the increasing rates of dementia in our ageing population, and the increasing use of mixed-model services, where specialist mental health and dementia services are provided within the context of a mainstream aged care service.<sup>388</sup>

Of particular relevance to this background paper, the Committee observed that:

Perhaps the most compelling argument pointing to a regulatory system that is failing to provide adequate oversight of the aged care sector is the number of recent reviews and inquiries into various aspects of aged care service delivery.<sup>389</sup>

In April 2019, the Committee released its final report that focused on the effectiveness of the aged care quality assessment and accreditation framework.<sup>390</sup> In light of this Royal Commission being announced and the focus of the Carnell-Paterson review, the Committee

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<sup>385</sup> Senate Community Affairs Committee, *Effectiveness of the Aged Care Quality Assessment and Accreditation Framework. Interim Report*, 2018.

<sup>386</sup> *ibid.*, p 67.

<sup>387</sup> *ibid.*, p.56

<sup>388</sup> *ibid.*, p 30.

<sup>389</sup> *ibid.*, p 64.

<sup>390</sup> Senate Community Affairs References Committee, *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*, Final Report, 2019.

elected to focus on the regulation of clinical, medical and allied health care in the aged care context.<sup>391</sup>

The Committee reflected on a number of issues facing aged care:

- The overall approach to compliance to minimum standards by individual providers does not support sector-wide capacity building or encourage improvements beyond the minimum benchmarks.
- There is not an accreditation process specific to aged care services with specialist elements of mental health or behavioural and psychological symptoms of dementia (BPSD) services.
- There is a clear schism in how the aged care sector defines different levels of aged care services as personal care as opposed to clinical or medical care, and therefore the level of clinical governance required for that care.
- Accreditation auditors do not necessarily have a background in clinical care, and may not be best placed to audit clinical care standards.
- Clinical governance within the aged care sector is significantly less developed than in the health care sector.
- Rates of physical and chemical restraint are too high and these practices are largely unregulated in the aged care sector.
- Workforce pressures impact on care standards, including both a lack of a suitably trained workforce as well as staffing levels within individual [residential aged care facilities].
- A lack of data on quality of care is a significant barrier to ensuring an appropriate quality framework for aged care services.
- Complaints handling, by individual [residential aged care facility] providers and by the Commonwealth aged care regulatory regime, is done poorly and the adversarial nature does not support open disclosure and industry-wide collaboration and improvement of care standards.<sup>392</sup>

Overall, the Committee considered 'the lack of appropriate regulation of clinical care standards' within residential aged care facilities as the overarching regulatory failure underpinning these issues.<sup>393</sup> Its recommendations included:

- an explicit recognition of a duty of care for people in residential aged care, held by both the residential aged care facility and the Aged Care Quality and Safety Commission
- a continuous improvement approach to aged care, driven by the Aged Care Quality and Safety Commission, including the establishment of a body with responsibility for aged care research
- the development of a clear service framework, including a model of care, with a clinical governance framework and clearly defined scope of personal and clinical care
- benchmarks for staffing levels and skills mix, which includes the requirement to roster a registered nurse on duty at all times

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<sup>391</sup> *ibid.*, p 8.

<sup>392</sup> *ibid.*, pp 2–3.

<sup>393</sup> *ibid.*, p 3.

- the reduction and elimination of restrictive practices
- investigation of changes to ensure that the use of antipsychotic medications must be approved by the Chief Clinical Advisor of the Aged Care Quality and Safety Commission and to develop a regulatory model to oversee medications management
- improvements to palliative care
- the development of mechanisms to increase the focus on wellness and reablement
- increased regulation of the use of antipsychotic medications and medication use more generally
- collaboration between the aged and health care sectors to better integrate the aged care environment with the primary health and acute care sectors.<sup>394</sup>

At the time of finalising this paper, the Australian Government had not responded to the final report of this inquiry.

## Conclusion

The aged care system has been reviewed repeatedly over the past twenty years. The questions asked in these reviews have shifted over time, as community attitudes toward ageing have changed and as governments have responded to evolving demographic and fiscal pressures on the aged care system. But underlying all of these reviews and inquiries there has been an underlying concern that the system has not been performing as it should.

It is often difficult to determine the Australian Government response to previous reviews and inquiries. Responses often come years after the review and recount what has been done in an almost tangential way to the actual recommendations. Even when responses are provided, they can be opaque, rendering it near impossible to even determine whether the Government intends to implement the recommendation in the form proposed by the reviewer. Changes committed to are often slow to eventuate or fall away prior to implementation.

While governments have responded with ad hoc reforms to elements of the system, they have not been able to resolve the underlying problems with a system that has failed to provide the Australian community with the assurance of quality and safety in the aged care that it expects. Time and again, the reviews and inquiries have been asked to address similar concerns and have made remarkably similar recommendations. Many of these issues and recommendations have been identified in submissions and in hearings conducted by this Royal Commission. Despite all of these reviews, and all of the Government responses, the underlying problems remain.

The overarching question that arises is why, after all these reviews, the aged care system still fails to support an appropriate quality life for the most frail and vulnerable members of our community.

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<sup>394</sup> *ibid.*, pp xiii–xv.

# Appendix: Non-exhaustive list of major reviews and inquiries into aged care

## 1980s

Auditor-General, *Report of the Auditor-General on an efficiency audit: Commonwealth administration of nursing home programs*, 1981.

House of Representatives Standing Committee on Expenditure, *In a home or at home: accommodation and home care for the aged*, 1982.

Senate Select Committee on Private Hospitals and Nursing Homes, *Private nursing homes in Australia, their conduct, administration and ownership*, 1985.

Department of Community Services, *Nursing homes and hostels review*, 1986.

C Ronalds, P Godwin, J Fiebig & Department of Health, Housing and Community Services, *Residents' rights in nursing homes and hostels: final report*, 1989.

## 1990s

Care Aggregated Model (CAM) Review Steering Committee & Department of Community Services and Health, *CAM review report to the Minister for Aged, Family and Health Services*, 1990.

RG Gregory, Housing and Community Services, *Aged Care Reform Strategy Mid-Term Review 1990–91*, 1991.

J Braithwaite, T Makkai, V Braithwaite & D Gibson, *Raising the Standard: resident centred nursing home regulation in Australia*, 1993.

RG Gregory, Housing, Local Government and Community Services, *Aged Care Reform Strategy Mid-Term Review Stage 2*, 1993.

RG Gregory, *Review of the Structure of Nursing Home Funding Arrangements, stage 1*, 1993.

RG Gregory, *Review of the Structure of Nursing Home Funding Arrangements, stage 2*, 1994.

Senate Community Affairs References Committee. *Report on Funding of Aged Care Institutions*, 1997.

Productivity Commission, *Nursing Home Subsidies*, Inquiry Report 1999.

## 2000s

L Gray, *Two Year Review of the Aged Care Reforms*, 2001.

Australian National Audit Office, P Nicoll & D Jackson, *Managing residential aged care accreditation: the Aged Care Standards and Accreditation Agency Ltd*, 2003.

WP Hogan, *Review of Pricing Arrangements in Residential Aged Care*, 2004.

Senate Community Affairs References Committee, *Quality and Equity in Aged Care*, 2005.

House of Representatives Standing Committee on Health and Ageing, *Future Ageing, Inquiry into long-term strategies to address the ageing of the Australian population over the next 40 years*, 2005.

Campbell Research and Consulting, *Evaluation of the impact of accreditation on the delivery of quality of care and quality of life to residents in Australian Government subsidised residential aged care homes: final report*, 2007.

Senate Standing Committee on Finance and Public Administration, *Residential and community aged care in Australia*, 2009.



National Health and Hospitals Reform Commission, *A healthier future for all Australians: final report: June 2009*, 2009.

Australian National Audit Office & S Lack, *Protection of residential aged care accommodation bonds: Department of Health and Ageing*, 2009.

## 2010s

Productivity Commission, *Caring for older Australians: inquiry report*, 2011.

Australian National Audit Office, *Managing Aged Care Complaints: Department of Health and Ageing*, 2012.

Australian Skills Quality Authority, *Training for Aged and Community Care in Australia*, 2013.

House of Representatives Standing Committee on Health and Ageing, *Thinking Ahead, Report on the inquiry into dementia: early diagnosis and intervention*, 2013.

Senate Community Affairs References Committee, *Care and management of younger and older Australians living with dementia and behavioural and psychiatric symptoms of dementia (BPSD)*, 2014.

Senate Community Affairs References Committee, *Adequacy of existing residential care arrangements available for young people with severe physical, mental or intellectual disabilities in Australia*, 2015.

Australian Law Reform Commission, *Elder Abuse—A National Legal Response*, 2017.

K Carnell & R Paterson, *Review of National Aged Care Quality Regulatory Processes*, 2017.

Productivity Commission, *Introducing Competition and Informed User Choice into Human Services: Reforms to Human Services, Inquiry Report*, 2017.

Senate Community Affairs References Committee, *Future of Australia's aged care sector workforce*, 2017.

D Tune, *Legislated review of aged care 2017*, 2017.

Australian National Audit Office, *Indigenous aged care: Department of Health, Australian Aged Care Quality Agency*, 2017.

Aged Care Strategy Taskforce, *A matter of care, Australia's Aged Care Workforce Strategy*, 2018.

House of Representatives Standing Committee on Health, Aged Care and Sport, *Advisory report on the Aged Care Amendment (Staffing Ratio Disclosure) Bill 2018*, 2018.

House of Representatives Standing Committee on Health, Aged Care and Sport, *Report on the Inquiry into the Quality of Care in Residential Aged Care Facilities in Australia*, 2018.

BT Lander, Independent Commissioner Against Corruption, *Oakden: a shameful chapter in South Australia's history*, 2018.

Senate Economics References Committee, *Financial and tax practices of for-profit aged care providers*, 2018

Senate Community Affairs Committee, *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, Final Report*, 2019

Current inquiry—Queensland Parliamentary Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, *Inquiry into aged care, end-of-life and palliative care and voluntary assisted dying*, 2018–2019 (report due 30 November 2019).

Current inquiry—Queensland Parliamentary Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, *Inquiry into Earle Haven Retirement Village*, 2019.