

SENATE COMMUNITY AFFAIRS REFERENCES
COMMITTEE

EFFECTIVENESS OF THE AGED CARE QUALITY ASSESSMENT AND ACCREDITATION FRAMEWORK

Submission

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ABOUT ACSA

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

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

Aged care providers make a significant \$17.6 billion economic contribution to Australia, representing 1.1% of GDP by producing outputs, employing people and through buying goods and services. The direct economic component is akin to the contribution made by the residential building construction and sheep, grains, beef and dairy cattle industries.²

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

ACSA CONTACTS

Patricia Sparrow, Chief Executive Officer

Aged & Community Services Australia
Level 9, 440 Collins Street
Melbourne VIC 3000
(03) 9607 1395
Patricia.Sparrow@acsa.asn.au

Darren Mathewson, Executive Director Strategy & Policy

Aged & Community Services Australia
19 Brisbane St
Hobart TAS 7000
(03) 6105 0246
Darren.Mathewson@acsa.asn.au

www.acsa.asn.au

¹ Australian Government, Department of Health, Report on the Operation of the *Aged Care Act 1997*, December 2016.

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

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

INTRODUCTION

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

The aged care industry takes its responsibility to ensure older Australians receive the highest quality of services very seriously. The number one priority for aged care providers is the safety, wellbeing and quality of life of those in their care. Abuse of older people, in any form, is not tolerated.

The purpose of this Inquiry is to examine the current aged care quality assessment and accreditation framework in the context of the incidents at the Makk and McLeay wards at the Oakden Older Persons Mental Health Service in South Australia.

In undertaking this Inquiry, the focus needs to be firmly on the actual and evidenced workings of the system rather than opinion and anecdote.

Broad-based, outcomes-focused regulation is needed. For example, Braithwaite et al (Regulating Aged Care, 2007³) found in their investigation of nursing home regulation in the USA, UK and Australia that simply creating new rules about how care ought to be provided does little to improve quality:

“With nursing home staff and inspectors alike, excessive demands for a task orientation distract attention from the outcomes that matter. The result is the creation of health bureaucracies and regulatory bureaucracies that miss the big picture” and “The pursuit of precision, either by protocols or by the proliferation of ever-narrower rules, causes an unreliability that is a symptom of a deeper and many-sided malaise of regulatory failure. This is especially depressing since the pursuit of precision usually fails in its own terms – it fails to deliver precision” (page 230).

REGULATORY PROCESSES

Regulatory processes are important to ensure that:

1. older people in aged care services are safe;
2. services are able to meet the needs of a rapidly ageing Australia;
3. the regulatory systems work as they are intended to;
4. the community has confidence in aged care services.

³ <http://johnbraithwaite.com/wp-content/uploads/2016/06/Regulating-Aged-Care-Ritualis.pdf>

OAKDEN

ACSA does not have full knowledge of why the current aged care quality regulatory processes did not work to ensure that the issues highlighted by the Oakden Report⁴ did not occur and, when they did occur, were addressed urgently.

ACSA suggests that the specific and unique situation with Oakden (i.e. state government ownership; joint funding; specialist mental health nature; accountability confusion) may have been an important factor that the Inquiry needs to consider.

INQUIRY TERMS OF REFERENCE

(a) the 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

The existing national aged care quality assurance framework provides a comprehensive framework covering accreditation, monitoring, review, investigation, complaints and compliance processes supported by advocacy services.

There are three Commonwealth entities with responsibilities to support the delivery of high quality aged care services – the Australian Aged Care Quality Agency; the Australian Department of Health and the Aged Care Complaints Commissioner. Other organisations can also have a role when things go wrong including the police and the Australian Competition and Consumer Commission.

In addition, aged care facilities are subject to (amongst other legislative requirements) workplace health and safety obligations to eliminate or reduce risks in facilities. This includes responsibilities for the safety of employees and other people in the workplace including residents and visitors.

Given this comprehensive framework, ACSA argues there is no need for more regulation unless based on clear evidence that an increase would improve resident outcomes. Having said that there is a need to ensure the right regulation is in place and operating efficiently and effectively while acknowledging that no amount of regulation will completely prevent errors that occur in a human services environment.

This Inquiry has the opportunity to focus on how existing regulatory processes and systems, particularly where there are issues of cross-jurisdictional regulation, can be managed better so that the issues highlighted by the Oakden Report do not occur or if they do occur, they are addressed with the urgency that is needed.

As noted above, ACSA considers the existing national aged care quality assurance framework provides a comprehensive framework and that there are a number of regulators whose prime responsibility is to ensure the provision of high quality aged care services as well as a number of other regulators whose responsibilities directly impact on the provision of high quality aged care services.

All these systems and regulators need to be working well to minimise overlaps in responsibilities and ensure there are no gaps.

⁴ Groves A, Thomson D, McKellar D and Procter N. (2017) The Oakden Report. Adelaide, South Australia: SA Health, Department for Health and Ageing

This term of reference extends further than aged care quality assurance by looking at for example medical care standards. Concerns about the standard of care provided by doctors and other health practitioners should be considered by the appropriate health practitioner body and is not something that an assessor from the Australian Aged Care Quality Agency would or should be able to make a decision about. The aged care quality assurance framework needs to focus on the quality of aged care provided rather than the professional standards of individual medical and nursing staff which are covered by other mechanisms.

- (b) the adequacy and effectiveness of complaints handling processes at a state and federal level, including consumer awareness and appropriate use of the available complaints mechanisms;*
- (c) concerns regarding standards of care reported to aged care providers and government agencies by staff and contract workers, medical officers, volunteers, family members and other health care or aged care providers receiving transferred patients, and the adequacy of responses and feedback arrangements*

It is important that where issues arise that the processes for making and responding to complaints and raising and responding to concerns are efficient and effective and non-bureaucratic.

This is not always the case now - in particular, there needs to be an assessment of the best way to address the particular issue for the particular care recipient. In some instances, mediation may be more appropriate and in others it would be better for an investigation to be undertaken.

There would be value for greater promotion of the role of the independent Complaints Commissioner as well as the availability of the advocacy services Government funds to support families and residents.

- (d) the adequacy of medication handling practices and drug administration methods specific to aged care delivered at Oakden*

ACSA does not have the knowledge to comment on the adequacy of medication handling practices and drug administration methods specific to aged care delivered at Oakden.

- (e) the adequacy of injury prevention, monitoring and reporting mechanisms and the need for mandatory reporting and data collection for serious injury and mortality incidents*

ACSA supports more effective communication and examination/analysis of data among relevant agencies. The sharing of information must be focussed on early identification of aged care providers that need to improve performance to meet the core consumer protection standards.

Relevant agencies should also use information and analysis of data to obtain an overview of how the system is working and to identify what is working well and what needs to be improved.

Improvements could be specific to one aged care provider or more generally through information and education to all aged care providers, care recipients and their families.

- (f) the division of responsibility and accountability between residents (and their families), agency and permanent staff, aged care providers, and the state and the federal government for reporting on and acting on adverse incidents*

In relation to the **reporting of adverse incidents**, there should be an environment where anyone, who observes or becomes aware of an adverse incident, is comfortable to report such an incident

and knows who to report it to in the expectation that the body/organisation will effectively deal with the report.

While the basic framework is in place, ACSA thinks it is essential that the division of responsibilities for **acting on adverse incidents** is clarified.

It is important that aged care regulation, including changes proposed, do not place responsibilities on aged care providers that go beyond their role. Take elder abuse as an example. There are longstanding and well respected authorities, including work safe authorities, the police and the judicial system, that are well placed to undertake investigations which determine whether abuse has occurred and if proven determine the consequences for the abuser, then establishing an additional reporting and investigative arm of the bureaucracy.

SUGGESTED IMPROVEMENTS TO THE EXISTING REGULATORY PROCESSES

In ACSA's submission to the Government's Review of the National Aged Care Quality Regulatory Processes, ACSA made the following suggestions for improvements to the existing regulatory processes with the aim of having a better system with more effective governance and greater transparency, to ensure the highest quality of care and services possible for all aged care recipients:

1. A single accreditation and monitoring system for aged care services; with clear regulatory responsibility and accountability to one certification body.
 - a. Recognition that the framework and processes used to monitor mainstream aged care services may not be appropriate or effective for specialist services such as mental health services; as evidenced by the outcomes at the Oakden Older Persons Mental Health Service in South Australia.
 - b. ACSA is of the view that a specialist mental health facility should be funded and accredited as a mental health facility and not as an aged care facility even where all patients in the facility are older Australians. If there is dual funding, ACSA considers specialist accreditation arrangements should be used with add-ons if needed for aged care.
2. Regulatory processes that are proportionate to the risk being addressed and that don't unnecessarily constrain the rights of care recipients.
 - a. Where issues arise, there needs to be an assessment of the best way to address the particular issue for the particular resident which could be mediation rather than investigation.
 - b. As reforms progress, regulations should be subject to ongoing consideration to ensure they are "right touch" and support the consumer choice and control reform agenda.
3. Appropriately trained staff undertake accreditation functions including how to deal appropriately and promptly when aged care recipients are not safe including:
 - a. Requisite skills that are relevant to the service they are reviewing.
 - b. Respect for the rights of care recipients to take risks and the professionalism of workers in the sector, who are responsible for enabling consumer choices consistent with 'dignity of risk'.
4. Quality Agency systems and processes should deal with all services consistently regardless of ownership type (e.g. government run, not-for-profit, private) and separately from the question of what will happen to the residents if care is unsafe and sanctions need to be applied or other compliance action is required.
 - a. Standards, systems and processes support aged care services to be delivered in appropriate ways for the residents they are serving (for example indigenous or homeless populations) without compromising safety.

5. A focus on the quality outcomes (including safety and wellbeing) for individuals rather than on systems and processes that prove compliance with the accreditation standards. The system needs to encourage a continuous improvement approach that is embedded in everyday practice.
 - a. ACSA supports the current process of developing a single set of consumer-focused quality standards that focus on outcomes for consumers rather than provider processes.
 - b. ACSA also supports the existing arrangements of on-site visits to residential aged care services including unannounced visits by the Quality Agency. ACSA does not support aged care providers paying for visits as this could be seen as providers influencing the outcome with the potential to undermine community confidence in the regulatory system.
6. A clear distinction between mandatory requirements (focused on the core consumer protection standards and what aged care providers are funded to deliver) and other expectations (focused on individual choice and market demand).
7. More effective communication and examination/analysis of data among relevant agencies:
 - a. In relation to care recipients who are at risk of abuse.
 - b. To share information with the aim of identifying earlier, aged care providers that need to improve performance to meet standards.
 - c. At a global level to indicate how the system is working and to identify what is working well and what needs to be improved.
 - d. Protocols that support the sharing of relevant and meaningful data rather than vexatious and unproven allegations.
8. Transparency and information/education for consumers about how the system works and their rights within it. Both Government and the industry have a responsibility to do this and support consumer and community confidence.
9. Clarity of reporting of suspected abuse to a body/organisation that can and will effectively deal with the report.
10. Regulation functions are clearly articulated and separated to ensure clarity of roles and responsibilities – policy and standard setting, monitoring and review, compliance, quality improvement. Operationally there should be transparency of process and information sharing under agreed protocol. This can be achieved within a variety of structural models. Changing the structure of regulatory bodies and processes will not ensure clarity or operational improvements are achieved.

LINK WITH OTHER REVIEWS

There are multiple aged care reviews occurring at the present time including Commonwealth and State reviews in response to Oakden as well as a number of other reviews.

It will be important for this Inquiry to take the outcomes of these into account when developing its recommendations.

A considered and coordinated response and approach to the recommendations and actioning of the various reviews and processes is needed.

All of the pieces must fit together into a sensible whole, which enables the provision of quality aged care and support with a firm but fair regulatory system protecting older people, while still allowing service innovation to flourish. This is how we can ensure an efficient and effective system for current and future generations of older Australians.

CONCLUSION

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

The aged care industry takes its responsibility to ensure older Australians receive the highest quality of services very seriously. The number one priority for aged care providers is the safety, wellbeing and quality of life of those in their care. Abuse of older people, in any form, is not tolerated.

The vast majority of aged care facilities in Australia provide quality care.

The outcome of this Inquiry should be evidence based enhancements to the aged care regulatory system and process which address the issues identified by the Oakden Report which are applicable across the aged care system.

Appropriate consultation on any recommended actions will be important to ensure they will improve safety, enhance services, support innovation and restore community confidence in aged care.

ACSA would welcome the opportunity to expand on this submission before the Committee either on its own or with its industry peak colleagues.