

# Quality and safety for aged care residents

Submission to the inquiry into the quality of care in residential aged care facilities in Australia

February 2018



## About VCOSS

The Victorian Council of Social Service (VCOSS) is the peak body of the social and community sector in Victoria. VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups, and individuals interested in social policy. In addition to supporting the sector, VCOSS represents the interests of vulnerable and disadvantaged Victorians in policy debates and advocates for the development of a sustainable, fair and equitable society.

This submission was prepared for VCOSS by Brooke McKail with input from VCOSS members.

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VCOSS acknowledges the traditional owners of country and pays its respects to Elders past and present.

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# Introduction

VCOSS welcomes the opportunity to provide input to the House of Representatives Committee on Health, Aged Care and Sport inquiry into Quality of care in residential aged care in Australia.

VCOSS is the peak body for social and community services in Victoria. Aged care is an area of significant interest and relevance to our membership; not-for-profit services delivered two-thirds of aged care services in 2015-16.<sup>1</sup> With almost a quarter of a million people using Australia's government-funded aged care services every day, a strong aged care system is important to Australia's future.

Older Australians deserve a residential aged care system where they are treated with dignity and respect, where their care needs are met, and where they can maintain their autonomy, capacity and wellness as much as possible. The system will need to adapt to meet the changing needs of its resident population. For example, people in residential aged care are getting older, frailer and more likely to be experiencing dementia than in the past. More than half of the residential aged care population now live with dementia.<sup>2</sup>

VCOSS supports an aged care system that helps people live a good life and where they can maintain a sense of control over their life, contributing to overall wellbeing. The current aged care system is beginning to reorient itself towards greater choice and control for residents, through the adoption of person-centred policies and giving older people more control to pick and choose their services, especially "in home" care.

However, this submission draws on VCOSS' members first hand experiences assisting and supporting older people, their families and carers in the aged care system. Many members reported that older people in residential aged care continue to lack autonomy and control over their lives. Provider policies can act to stifle choice and fail to promote wellness. Staff shortages and poor training can lead to neglect and a failure to provide basic care to older people.

A robust quality framework should be developed to provide strong protections to help prevent harm to people, and ideally to promote high quality service delivery. It should reflect the experiences of residents, by involving them in quality processes.

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<sup>1</sup> Department of Health, *2015-16 Report on the operation of the Aged Care Act 1997*, 2016.

<sup>2</sup> Dementia Australia, *Key facts and statistics*, updated January 2018, <https://www.dementia.org.au/statistics>

# Recommendations

## Use better residential aged care models

- Improve data collection, analysis and reporting about the nature of incidents in residential aged care
- Undertake a broader inquiry into alternative models of aged care that support older people's autonomy and capacity
- Revise the residential aged care funding model to improve equity, support consumer choice, and maximise wellness

## Strengthen regulatory frameworks

- Establish a serious incident response scheme requiring providers to report incidents of assault or neglect, the incident investigation outcome and any resulting actions
- Consider strategies to involve residents in accreditation and quality improvement processes, including increasing minimum participation requirements, and better information sharing with residents and families
- Explore alternative methods for seeking feedback from people with dementia or who need other communication mechanisms
- Implement the recommendation of the Australian Law Reform Commission that aged care legislation should regulate the use of restrictive practices in residential aged care
- Appoint a Senior Practitioner to provide leadership, expertise and accountability in the use of restrictive practices in residential aged care.

## Help residents exercise choice and enforce their rights

- Publish objective ratings, against national standards, for all residential aged care providers to help people make informed choices
- Incorporate a 'Trip Advisor' style review function within the My Aged Care website
- Increase funding for independent advocacy services for older people to provide equal access, including those from rural and regional areas
- Foster an environment where families, friends and community are welcomed into residential aged care facilities

## Build a skilled and high quality workforce

- Ensure providers support all residents to undertake advance care planning and appoint a substitute decision-maker
- Introduce staff-to-resident ratios to improve the quality of care provided to older people
- Investigate options for registration of personal care workers

# Use better residential aged care models

## Understand mistreatment in residential aged care

### Recommendation

- Improve data collection, analysis and reporting about the nature of incidents in residential aged care

Several recent reviews have highlighted the abuse and mistreatment of older people in residential aged care facilities across Australia. The Australian Law Reform Commission (ALRC) inquiry into elder abuse heard many instances of abuse by paid care workers and residents, as well as by family members. They included institutional abuse where the “routines, systems and regimes of an institution result in poor or inadequate standards of care... and denies, restricts or curtails the dignity, privacy, choice, independence or fulfilment of individuals.”<sup>3</sup>

VCOSS members also reported many instances of this kind of mistreatment, abuse and neglect in residential aged care. They emphasised the importance of focusing on the spectrum of mistreatment, from indignities (for example the use of infantilising language, referring to residents as ‘naughty girls’) through to serious incidents of assault and deaths. Restrictive practices also remain common, including use of medication as a restraint or behaviour management strategy, especially for people with dementia.

Management policies and culture that focus heavily on avoiding risk can also lead to a loss of choice and autonomy for residents. VCOSS members provided examples of residents being prevented from walking around the facility by themselves or forced to use a walking aid, despite there being no physical or medical need for one.

The extent of mistreatment in residential aged care in Australia is unknown. The available data is likely to be a substantial underestimate. Data from the Aged Care Complaints Commissioner only reflects complaints that are reported, and is only available for broad thematic areas, such as “clinical care”, or “choice and dignity”. No information is available about the number of complaints about particular providers, or how those complaints were resolved.

Organisations like Senior Rights Victoria also collect information about the phone calls they receive to their elder abuse phone line. However, VCOSS members noted that they do not retain information when calls are made anonymously, so again, this data source is likely to be a significant underrepresentation.

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<sup>3</sup> ALRC, *Elder Abuse – A National Legal Response*, pp 110.

## Review the model of care

### Recommendation

- Undertake a broader inquiry into alternative models of aged care that support older people's autonomy and capacity

Residential aged care is often the option of last resort for people, who would prefer to remain in their homes. VCOSS members report residents often only enter aged care because they fear becoming a burden to family or carers. At the same time, they fear losing their identity and autonomy.

VCOSS members report the existing model of care is flawed, realising many of the fears expressed by older people. It often fails to provide older people with choice and does little to encourage them to live as full a life as possible.

Australia should undertake a broader investigation into the aged care model, looking at alternative models that could better support older people's autonomy and capacity.

For example, to address the lack of choice residents can experience in the 'traditional' aged care system, some providers are moving to 'household models,' where smaller groups of 15-20 residents share their own kitchen and living areas. Residents are in control of their own routines, can help themselves to food at any time rather than waiting for set mealtimes, and work with staff to fill social and leisure time, rather than waiting for pre-planned activities.<sup>4</sup> However, VCOSS members report that adoption of these models are not universal across providers.

A range of other more innovative models are also being explored in Australia and overseas. For example, the Homeshare program based in Melbourne matches older people living in their own home with people willing to provide some care and household maintenance in return for accommodation. A program in the Netherlands has gone further, trialing intergenerational living by offering free accommodation to students within an aged care facility, in return for 30 hours of socialising with the older residents each month.

Other countries are also trialing intergenerational learning, which includes placement of childcare centres within aged care centres.<sup>5</sup> Closer to home, Playgroups Victoria has run playgroups at aged care facilities. Workers report people with dementia become more lucid and engaged chatting with toddlers, and children can learn a lot from engaging with older people. Intergenerational activities show older people that they are valued as individuals that still possess lifelong skills, rather than just being passive recipients of care.

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<sup>4</sup> Residents feel 'at home' with new care approach, <https://www.agedcareguide.com.au/talking-aged-care/residents-feel-at-home-with-new-care-approach>,

<sup>5</sup> The Conversation, 'Combining daycare for children and elderly people benefits all generations,' January 5 2017 <https://theconversation.com/combining-daycare-for-children-and-elderly-people-benefits-all-generations-70724>

## Change the funding model

### Recommendation

- Revise the residential aged care funding model to improve equity, support consumer choice, and maximise wellness

VCOSS members reported that the current residential aged care funding model disadvantages some vulnerable older people and risks pushing them into poverty. In particular, the system offers significant incentives for up-front payment, disadvantaging families and older people with low-incomes and without the means to meet high up-front costs.

The funding model can also result in perverse incentives. Necessarily, people requiring higher levels of care receive higher levels of payment. However, there is no incentive to providers to increase people's strength, confidence and physical condition. In this respect, aged care providers are rewarded when the health and wellbeing of their residents deteriorates, undermining efforts to build a culture that maximises the wellness of residents.

A 2017 review of the residential aged care funding model found it is no longer fit for purpose.<sup>6</sup> The review stated the profile of aged care facilities has changed in the decade since the existing funding instrument was introduced, and it no longer adequately reflects the care needs of residents.

A revised funding model should be based on principles of equity, supporting consumer choice and maximising wellness. The model should also be flexible (enabling people to move more easily between different types of care) and support the specific needs of population groups, including rural and regional communities, Aboriginal and Torres Strait Islander people and people with culturally and linguistically diverse backgrounds.

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<sup>6</sup> McNamee J, Poulos C, Seraji H et al. *Alternative Aged Care Assessment, Classification System and Funding Models Final Report*. Australian Health Services Research Institute, University of Wollongong, 2017.

# Strengthen regulatory frameworks

A strong regulatory framework should promote high quality, person-centered services and monitor outcomes for residents. It should not focus solely on compliance.

The existing residential aged care regulatory system is fragmented across several compliance bodies. For example:

- The Aged Care Quality Agency (ACQA) accredits providers and assesses against quality standards. They conduct one unannounced assessment against quality standards each year. When ACQA finds non-compliance in one or more areas, they can notify the Department of Health.
- The Aged Care Complaints Commissioner can receive complaints about an aged care service provider. As well as working with the provider to manage the response, the Commissioner can refer issues to ACQA or the Department of Health.
- The Department of Health receives reports of incidents and on-compliance with standards. It has responsibility for a range of policy, funding and compliance functions.

There is evidence the existing regulatory framework is not working as well as it could. For example, in 2017, the South Australian Government conducted a review into the Oakden Older Persons Mental Health Service, a Commonwealth regulated residential aged care facility. The review found serious and long-standing failings in the quality of care delivered and the service was closed.<sup>7</sup> However, the facility had met all expected outcomes of the aged care quality standards as recently as 2016.

Some VCOSS members also suggested the focus of regulatory frameworks is complying with policies and meeting clinical targets (such as number of falls or infection control) instead of the quality of care of residents. Accreditation reports reflect the existence of policies and maintenance of processes, not actual outcomes. VCOSS members warn against repeating mistakes of other sectors. For example, a Victorian review of the Vocational Education and Training sector identified a key issue was quality assurance audits focused too heavily on compliance with contractual requirements and paper-based performance measures such as financial sustainability and record-keeping, and not enough on the quality of services provided.<sup>8</sup>

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<sup>7</sup> A Groves, D Thomson, D McKellar and N Proctor, *The Oakden Report*, for the Department for Health and Ageing (SA), 2017.

<sup>8</sup> Deloitte Touche Tohmatsu, *Department of Education and Training Review of Quality Assurance in Victoria's VET system*, 2015, pp 6.

## Monitor serious incidents

### Recommendation

- Establish a serious incident response scheme requiring providers to report incidents of assault or neglect, the incident investigation outcome and any resulting actions

Recent inquiries, including the ALRC Inquiry into Elder Abuse and the Review of the National Aged Care Quality Regulatory Processes recommended the establishment of a serious incident response scheme. VCOSS supports the establishment of such a scheme.

Existing arrangements for 'reportable assaults' are flawed; they only pertain to the most serious assaults (as assessed by the provider), there is no requirement for providers to report on their response or the outcomes of an investigation, and they do not capture where the assault was committed by another resident with a cognitive impairment.

The serious incident response scheme should include incidents of violence between residents, and require providers to report on the outcome of the investigation into the incident and what action was taken.

The ALRC suggests that the Aged Care Complaints Commissioner is the most appropriate fit for the scheme, in the absence of an independent regulatory agency with responsibility for standards, accreditation and complaints handling.

## Include resident voices in accreditation processes

### Recommendations

- Consider strategies to involve residents in accreditation and quality improvement processes, including increasing minimum participation requirements, and better information sharing with residents and families
- Explore alternative methods for seeking feedback from people with dementia or who need other communication mechanisms

Resident voices and perspectives are an important part of assessing quality of care and identifying where a service is failing to meet expected standards. The accreditation process can be improved by strengthening the role of consumers and better valuing their contribution.

Currently, consumer experience is considered by ACQA in its accreditation of providers. A minimum of 10 per cent of residents and their representatives, including family and friends, must be interviewed as part of the accreditation process. Some VCOSS members recommend this minimum should be substantially increased.

VCOSS members reported that residents and families are often not made aware that accreditation processes are taking place, or provided opportunity to participate. Consultations may need to be held outside business hours, or remotely, to allow participation of family members and carers who are working.

VCOSS members also highlighted the challenges of seeking feedback from residents, especially people with dementia or who are non-verbal. Some providers are exploring alternative models for seeking input from residents, for example through visual cues and depictions.

From mid-2018, consumer outcome statements will also be included in the quality accreditation process. This is a welcome addition to the quality framework.

### Strengthen regulation of restrictive practices

#### Recommendation

- Implement the recommendation of the Australian Law Reform Commission that aged care legislation should regulate the use of restrictive practices in residential aged care

A restrictive intervention includes any intervention used to restrict the rights and freedom of movement of a person and can include the use of chemical, physical or mechanical restraint or seclusion. Restrictive practices impinge on people's human rights, and if used inappropriately are a form of abuse.

VCOSS believes that restrictive practices should only ever be used as an absolute last resort, when a person's safety is at immediate and serious risk, and when all other strategies have been considered. Appropriate facility design, adequate and skilled staffing and flexible and responsive practices can eliminate the need for restrictive practices, by addressing the reasons for problematic behaviour.

Current laws and regulation of restrictive practices are ill-suited and incomplete (for example, relevant laws include the Victorian Charter of Human Rights and Responsibilities, the Aged Care Act, the tort of false imprisonment and the writ of habeas corpus) and fail to provide a comprehensive framework for the use and oversight of restrictive practices.

VCOSS supports the Australian Law Reform Commission's recommendation that:

Aged care legislation should regulate the use of restrictive practices in residential aged care. Restrictive practices should be the least restrictive and used only:

- a) As a last resort after alternative strategies have been considered
- b) To the extent necessary and proportionate to the risk of harm
- c) With the approval of a person authorised by statute to make the decision
- d) As prescribed by a person's behaviour support plan
- e) When subject to regular review.<sup>9</sup>

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<sup>9</sup> ALRC, *Elder Abuse – A National Legal Response*, pp 142.

## Lead a reduction in use of restrictive practices

### Recommendation

- Appoint a Senior Practitioner to provide leadership, expertise and accountability in the use of restrictive practices in residential aged care.

In Victoria, a Senior Practitioner has a legislative role in monitoring and evaluating the use of restrictive interventions in disability support and care services.

The role of the Senior Practitioner is to:<sup>10</sup>

- Evaluate and monitor the use of restrictive interventions in disability services
- Develop guidelines and standards
- Provide education and information to disability service providers
- Develop links to professionals and academic institutions to facilitate knowledge and training in clinical practice
- Research restrictive interventions and compulsory treatment.

The Senior Practitioner can:<sup>11</sup>

- Visit, talk to and inspect any disability service.
- See any person who is subject to any restrictive intervention or compulsory treatment.
- Investigate, audit and monitor the use of any restrictive interventions or compulsory treatment.
- Direct a disability service provider to discontinue a restrictive practice.

Appointing a similar role to monitor the aged care system would help provide leadership, expertise and accountability in reducing the use of restrictive practices in residential aged care.

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<sup>10</sup> Victorian Department of Health and Human Services, *About the Senior Practitioner in Victoria*, 2014.

<sup>11</sup> Victorian Department of Health and Human Services, *About the Senior Practitioner in Victoria*, 2014.

# Help residents exercise choice and enforce their rights

## Provide objective quality information

### Recommendations

- Publish objective ratings, against national standards, for all residential aged care providers to help people make informed choices
- Incorporate a 'Trip Advisor' style review function within the My Aged Care website

Information about a service is important for residents when choosing a facility or considering moving. Often the only information available to prospective residents is marketing material provided by the facility themselves, whether or not the service has 'complied' with accreditation requirements and any sanctions for previous non-compliance. This is of limited use; it fails to provide information about outcomes for residents, and is difficult to compare across services.

A more transparent and comprehensive consumer information and rating system would help people make informed choices about their care. VCOSS members suggested a system could be modeled on the early childhood education and care sector, where services are assessed and rated against seven areas of the relevant national standards. They are given a rating against each area, and an overall rating based on these results. Authorised officers use a combination of observation, discussions with staff and sighting documents to assess the service against the standards.<sup>12</sup>

VCOSS members also reported that residents and their families and carers are often reluctant to complain about poor treatment directly to service providers, because they fear retribution. Changing this culture of fear requires a commitment to seeking and receiving feedback and complaints. The development of a 'Trip Advisor' style function through My Aged Care would be a welcome strategy to challenge this culture and increase the information available to prospective residents.

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<sup>12</sup> Australian Children's Education and Care Quality Authority, *Guide to Assessment and Ratings for Services*, 2014.

## Expand older people's advocacy services

### Recommendation

- Increase funding for independent advocacy services for older people to provide equal access, including those from rural and regional areas

Independent advocacy is a crucial safeguard for older people in residential aged care. Advocacy organisations can help identify violence, abuse or neglect, build people's capacity to understand their rights and help people make complaints. Advocates can also help address the power imbalance between residents and staff.

There are few advocacy services specifically funded to support older people, especially people in residential aged care.

Additional funding is needed for existing advocacy services, and to ensure services are available and accessible to people from different backgrounds, including Aboriginal and Torres Strait Islander older people, people from culturally and linguistically diverse backgrounds, and people with diverse gender and sexual identities.

## Encourage family, friend and community involvement

### Recommendation

- Foster an environment where families, friends and community are welcomed into residential aged care facilities

Family and friends can play an important role in the care and support of older people in residential aged care. Family and friend involvement has been linked to improved physical and emotional wellbeing among aged care residents.<sup>13</sup> Frequent visitors to facilities can also act as a protective factor against abuse and mistreatment.

However, VCOSS members report that some providers are less encouraging of family and friend involvement than others. Simple strategies that should be encouraged in all services include:

- Establish friends and families groups to connect people with an interest in a high quality service
- Expand and support initiatives such as the Community Visitors Scheme, where volunteers make regular visits to people who are at risk of loneliness or social isolation.
- Encourage people from the general community to visit aged care facilities with appropriate safeguards (for example, by establishing a playgroup that meets regularly at the service).

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<sup>13</sup> Australian Centre for Evidence Based Aged Care, *Constructive staff/family relationships in residential aged care*, La Trobe University, 2009.

## Encourage residents to undertake advanced care planning

### Recommendation

- Ensure providers support all residents to undertake advance care planning and appoint a substitute decision-maker

Advance care planning involves planning for future care and medical treatment, so a person's preferences and values can guide clinical decisions if they become too unwell to make decisions themselves. It is usually related to preferences about end-of-life care.

Ideally people will begin to discuss advance care planning before they enter residential aged care. Leaving it until entry may mean they have already lost some decision-making capacity or ability to communicate their preferences.

However, if people have not already undertaken advanced care planning, residential aged care staff should ensure people are provided with information and supported to make informed decisions about their future care and treatment. Residents should also be supported to appoint a substitute decision-maker, if they wish to do so, and advised of the implications if they become incapacitated and no substitute-decision maker is in place.

This is likely to require ongoing training and education for aged care workers and health professionals around the importance of aged care planning.

# Build a skilled and high quality workforce

## Introduce minimum staffing ratios

### Recommendation

- Introduce staff-to-resident ratios to improve the quality of care provided to older people

Insufficient staffing levels can lead to mistreatment of residents. For example, residents may be left without assistance to get to the toilet, or in wet clothing or linen, because staff are too busy to assist promptly. The Australian Nursing and Midwifery Federation reports that about 80 per cent of residential care workers surveyed considered staffing levels were insufficient to provide an adequate level of care to residents.<sup>14</sup>

Legislation requires providers to “maintain an adequate number of appropriately skilled staff to ensure that the care needs of recipients are met.”<sup>15</sup> Unlike in other settings, including schools and hospitals, there is no further requirement for providers to meet any worker to resident ratios.

The Victorian Government in 2015 introduced nurse-to-patient ratios in public high-care residential facilities and wards (operated by hospitals and excluding private and not-for-profit facilities), requiring:

- one nurse to every 7 residents in the morning shift
- one nurse to every 8 residents in the afternoon shift
- one nurse to every 15 residents on the night shift.<sup>16</sup>

Early childhood education and care services (ECEC) provide another example of ratio in practice. To support high quality care for children, the National Quality Framework sets out minimum ratios for educators to children in ECEC services.

The Commonwealth Government should follow the example set by Victoria, and introduce nurse to resident ratios to improve the quality of care provided to older people.

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<sup>14</sup> Australian Nursing and Midwifery Federation, *ANMF National Aged Care Survey Final Report*, 2016.

<sup>15</sup> Aged Care Act 1997.

<sup>16</sup> Victorian Department of Health and Human Services, *Safe Patient Care (Nurse to patient and midwife to patient ratios) Act 2015; Implementation Guide*. 2015.

## Consider a registration scheme for personal care workers

### Recommendation

- Investigate options for registration of personal care workers

The staffing profile of the residential aged care sector is changing. The proportion of enrolled and registered nurses has decreased in recent years, and the proportion of personal care attendants has increased.

Personal care attendants have less training than nurses; approximately two-thirds of personal care attendants have a Certificate III in Aged Care compared to a Diploma of Nursing for enrolled nurses and a bachelor degree for registered nurses. Inquiries show that many training providers are offering minimalist 'fast-track' Cert III courses that are failing to meet quality benchmarks, and are of less than 15 weeks duration.<sup>17</sup> As a result, personal care attendants are not always well equipped when they enter the aged care workforce.

VET providers should work with the community sector, aged care providers and consumers to ensure the training they offer remains fit-for-purpose. In addition, VCOSS members recommended development of additional training for personal care attendants in areas including diversity, identifying elder abuse and dignity of risk.

Most personal care attendants, unlike nurses, are not members of a registered profession. Victoria is currently designing a scheme for registration of disability workers providing personal care who are engaged by NDIS providers. The scheme will likely incorporate a criminal history, working with children and reference check, providing a basic level of screening to prevent workers who have committed violence, abuse or neglect from continuing to work in disability services. The requirement to abide by ethical standard of practice and the threat of being deregistered for professional misconduct should deter workers from committing violence, abuse and neglect.

The residential aged care sector could investigate the development of a similar scheme of registration for personal care workers.

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<sup>17</sup> Australian Skills Quality Authority, *Report; Training for aged and community care in Australia*, 2013.

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