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A closer look at the Carnell/Paterson Review

The Review was initiated by Minister Wyatt in May 2017 in response to the serious care failures at the Oakden Older Persons Mental Health Service, a service that was run by the South Australian Government.
The purpose of the Review was:

- to examine why, prior to its sanction in March 2017, Commonwealth aged care regulatory processes did not adequately identify the systematic and longstanding failures of care at Oakden that were reported on by South Australia's Chief Psychiatrist (Dr Aaron Groves) in April 2017, and
- to advise what improvements to the Commonwealth aged care regulatory system would increase the likelihood of immediate detection, and swift remediation by providers, of failures of care such as those at Oakden.

Kate Carnell AO and Professor Ron Paterson ONZM were appointed as independent reviewers. Both come with experience as regulators. Kate Carnell is a former member of the Accreditation Agency Board and Professor Paterson was the former NZ Health and Disability Commissioner and NZ Parliamentary Ombudsman.

Given the scope of its terms of reference, the Review, in effect, was a review of national aged care quality regulatory processes in Australia.

Although Oakden was the trigger for the Review, the reviewers would have been mindful of the other alleged care failures that were given extensive media coverage while the Review was underway.

Is Oakden reflective of aged care services in Australia?

On the one hand, the review concludes that overall, the limited data available suggests that residential care is, in general, of a high standard.

On the other hand, the review also finds that while it appears that the seriousness of the failures reported at Oakden are relatively rare, "the types of issues found at Oakden have much in common with the types of issues that arise for aged care consumers". Evidence cited in support of this assessment is that, of the 3,656 complaints received in 2016-17 by the Complaints Commissioner, 36% related to medication management, falls

prevention, and personal and oral hygiene. These were the categories of care failures identified at Oakden by the Chief Psychiatrist.

Drawing on this evidence, the review concludes that "most of the issues at Oakden were attributable to failures that any service could be vulnerable to", and that "Oakden is not unique because the characteristics and needs of its residents were not unique". At the same time, the Review acknowledges that "there will always be higher risk services, regardless of their quality of care. This is not because of their quality as services, but because of the population they serve".

The review also concluded that it was not possible to reconcile the findings of the Chief Psychiatrist with the Quality Agency's (virtually) contemporaneous findings that Oakden met all 44 expected outcomes. If the Agency got it so wrong with Oakden, the review concluded that "it could well be true elsewhere" and therefore "it is not possible to rely solely on the level of reported compliance with the accreditation standards".

By implication, the review seems to be putting in doubt the current accreditation status of other residential aged care services. Yet, given the severity and longstanding nature of the care failures at Oakden, questions must arise about the capacity of the Agency to undertake assessments and to take action, even using existing powers. Was there also in play a disposition to persevere with a faltering service and a reluctance to close a highly specialised service, noting that the service was owned, operated and accredited by another government?

Turning to the current regulations and regulatory processes, the Review identified the following inadequacies as a result of its Oakden analysis:

- Some of the expected outcomes are inappropriate. For example, "effective leadership cannot possibly be evidenced by documenting a corporate vision, values, philosophy, objectives and commitment to quality, which the current standards says. These things need to be evidenced, not merely written down". The Review also highlights that currently there are no regulations that explicitly target the use of restrictive practices.
- Accreditation needs to look deeply into a service, to understand the experience of residents. The review suggests that "there is uneven depth in the examination of services and that some surveyors lack sufficient skills or training, including in investigation".
- Some services are becoming adept at providing the Quality Agency with the information it wants to hear at the time of re-accreditation, and that this is actively encouraged by the system of planned re-accreditation visits.
- The current practice/goal of accrediting services for three years is inefficient and not risk-rated. Services tend to set a goal of seeking three-year accreditation as a proxy for being quality carers. Less than three years accreditation is seen as a penalty and a sign of an inferior service. The Review argues that not holding three-year accreditation should not be seen as criticism of a service, but recognition that there will always be higher risk services regardless of their quality of care because of the population they service.

It is not clear how the last dot point reconciles with the Review's conclusion that Oakden, with its highly specialised target population, is not unique because the characteristics and needs of its residents were not unique.

Putting this aside, the Review concludes that the current three-year accreditation regime should be replaced by ongoing accreditation and a risk-based system of more rigorous monitoring. CHA first raised the concept of ongoing accreditation when reporting on the piloting of an Innovation Hub in South Australia, and again in our comments on the development of a single set of standards for aged care.

The theme that accreditation is too paper based has been reprised many times since the Howard Government replaced Standards Monitors with accreditation. Students of Senate Estimates will recall the many examples since accreditation was introduced where recently re-accredited services have soon after experienced serious failures in care. This outcome was attributed by some to accreditation being too focussed on vetting governance and care system policies and procedures rather than assessing the quality of the care delivered.

Since accreditation was introduced, the system has been tweaked to increase the focus on care delivered. This has included the introduction of unannounced spot checks, interviewing residents and family members and, more recently, surveys of consumer experience. The Review's recommendation would take quality regulation further down the path of inspection of services delivered.

How does Australia's system compare with best practice?

As well as drawing conclusions based on the Oakden experience, the Review assessed the current regulatory system against international best practice. The Review concluded that Australia's system does not align with best practice in the following areas:

- Clarity of roles and powers: At the Commonwealth level, there is a lack of clarity about roles and powers because quality regulation is spread across the Quality Agency, the Complaints Commissioner and the Department of Health. Separating roles and powers is not considered best practice as it is not conducive to information sharing, effective risk rating and the coordination of responses.
- Separation of policy advice from regulation: Regulatory responsibility is not completely separated from either policy development or funding because monitoring compliance with the *Aged Care Act*, including enforcement action against breaches in care quality, rest with the Department of Health. Best practice is to have complete separation in order to avoid conflicting objectives.
- Regulation for appropriate standards: While Australia is aligned in mandating minimum standards of care through the accreditation system, and is moving towards greater consumer input in assessing quality, there are areas where reform is necessary to align with best practice. This could include sliding scale assessment against expected outcomes (rather than 'met' or 'unmet'), and further expansion of consumer input to assessment.
- Greater use of responsive regulation to encourage and enforce compliance: A responsive regulation model includes a greater emphasis on educating the sector on best practice; complements sanctions with rewards for positive behaviour in order to 'nudge' providers to go beyond compliance; and tailors regulatory enforcement and inspections on risk-based evidence.
- Clarity around jurisdictional responsibilities: While aged care is primarily the responsibility of the Commonwealth, there is a lack of clarity in relation to those services that are regulated as health services by the states and as aged care services - Oakden being a case in point. This has implications for overlapping responsibilities and information sharing, including around complaints and compulsory incident reports and the application of sanctions.
- Effective and regular review mechanisms: The Review notes that no specific review requirements of the regulatory system are built into either the *Aged Care Act* or the Quality Agency legislation.

What changes has the Review recommended?

The Review's assessment of Australia's regulatory system in the light of the Oakden experience and against international best practice, and no doubt the media coverage that accompanied the conduct of the Review, led it to recommend the following changes

to the current system.

1. Establish an independent Aged Care Quality and Safety Commission, headed by an Aged Care Commissioner, to centralise accreditation, overseen by a Board comprising a Commissioner for Care Quality, a Commissioner for Complaints, a Consumer Commissioner and a Chief Clinical Advisor.
2. The Commission will be required to develop and manage a centralised database for real-time information sharing.
3. All residential aged care services must participate in an expanded National Quality Indicators Program. Some 10% of aged care homes currently voluntarily participate in a limited Quality Indicators Program.
4. The Commission will implement a star-rated system for public reporting of provider performance.
5. The Commission will support consumers and their representatives to exercise their rights, including through the promotion of consumer rights by the Consumer Commissioner and by providers ensuring aged care staff undertake regular Older Persons Advocacy Network education.
6. Require providers to inform the Commission of all allegations and suspicions of a serious incident, the outcome of the investigation of each incident and action taken. The definition of 'serious incident' would be expanded to include, for example, assaults committed by a resident with a cognitive impairment.
7. Aged care standards will limit use of restrictive practices as a last resort, and require providers to record and report the use of restrictive practices to the Commission. Approval of the Chief Clinical Advisor would be required for the use of antipsychotic medications.
8. Introduce ongoing accreditation, with unannounced visits, to assure safety and quality of care.
9. Ensure that assessment against the standards is consistent, objective and reflective of current expectations of care by strengthening the capability of assessment teams, clearly define outcome measures against the standards, development of a clinical guidance framework, conduct of a Medication Management Review on admission, after hospitalisation or deterioration of behaviour, and a review of standards every five years.
10. Enhance complaints handling by increasing the powers of the Complaints Commissioner to name non-compliant providers, adapting the Australian Open Disclosure Framework for residential care, developing an online register of all complaints, and clarifying the role of visitors participating in the Community Visitors Scheme in reporting concerns.

In summary, implementation of the Review's recommendations would:

- Bring all regulatory functions together under a single independent Commission that would have access to more information, including more quality indicator data, increased provider reporting on how all serious incidents are handled, and reporting on the use of restrictive practices. This information would be combined with existing data such as complaints to create a centralised database for real time sharing of information to inform risk rating of providers.
- Move accreditation processes further from a focus on assessing governance and care system policies and procedures and more towards inspection of services delivered, achieved by replacing the current practice of notifying providers ahead of re-accreditation visits with unannounced re-accreditation visits, supplemented by expanded consumer experience surveys. Of relevance to this shift in emphasis, research by Klerks, Katelaars and Robben, and published in *Health Policy* in 2013, concluded that "unannounced inspections did not reveal more or different risks, but provided a better insight into the quality of the care delivered. Announced visits are the best option for the assessment of both the organisation and its preconditions for good care. Evidence was found that an unannounced inspection

service leads to a reduction of the regulatory burden."
- Replace the current three-year mandatory re-accreditation cycle with ongoing accreditation and a risk-based system of more rigorous monitoring.
- Support consumers and their representatives by developing a star-rated system for public reporting of provider performance, creating a Consumer Commissioner to promote consumer rights, introducing mandatory Medication Management Reviews, developing an online register of all complaints, and publicly naming non-compliant providers identified by the Complaints Scheme.

What has been the Government's Response?

In both a media release and a speech to coincide with the release of the Review, Minister Wyatt stated that "the overwhelming majority of facilities provide excellent care and are continually working to improve services, but our focus must be on those that are not delivering".

As an initial response to the Review, the Minister announced that the Government "will move as soon as possible to implement Recommendation 8 whereby the current practice of notifying providers ahead of re-accreditation visits will be removed, replaced by comprehensive unannounced visits conducted over at least two days." The Minister also announced that the government would consider the entire Review further in conjunction with other reviews such as the Tune Report.

However, what the Government has announced it will implement is not Recommendation 8. Implementation of Recommendation 8 in full would:

- introduce ongoing accreditation,
- eliminate re-accreditation visits, to be replaced by unannounced visits that would assess service performance against all standards,
- with the frequency and rigour of unannounced visits determined through a risk-based process drawing on the national database, rather than the current three-year accreditation cycle.

Implementation of Recommendation 8 in full would be more consistent with achieving the Minister's objective of putting the focus "on those that are not delivering".

The Government's initial step is a significant departure from what was envisaged by the reviewers. All that would change as a result of the Minister's announcement is that the advance notice required for a re-accreditation visit (currently known as 'site audits') would no longer apply. The current regime of unannounced visits to monitor performance, whereby each service is visited at least once a year, will continue.

It may be that the Government settled on one element of Recommendation 8 as its initial response because it could be implemented without legislative change, while at the same time being seen to be responding to community concerns pending further consideration of the Review's recommendations.

Some other observations

Resourcing

The Review's terms of reference did not require it to consider the cost of implementing its recommendations and their cost effectiveness, nor who would meet the costs. Full implementation of the recommendations has significant potential resourcing implications for government and providers, both in terms of initial systems development and ongoing administration.

The resource implications of the recommendations might be another reason why the Government initially has moved to implement only a modified version of Recommendation 8. Substituting announced for unannounced re-accreditation visits (site audits) should be Budget neutral. Indeed, the Department of Health has advised that this substitution will not result in any changes to cost recovery charges. Moreover, the Government is proceeding with the introduction of a levy for the current regime of unannounced visits, with enabling legislation to be tabled in the current Spring session of Parliament (subject to other priorities). This suggests that the Government intends to maintain unannounced visits as a part of the regulatory system.

Increased reporting by providers

The level of reporting to the new Commission required of providers under the recommendations would increase significantly. Namely:

- mandatory reporting of an expanded suite of quality indicators
- reporting on all allegations or suspicions of a 'serious incident', along with the outcome of an investigation, including findings and action taken
- reporting all uses of restrictive practices and seeking the Commission's approval for the use of antipsychotic drugs
- adoption of a modified version of the Australian Open Disclosure Framework.

The rationale for increased reporting is partly to prompt behaviour changes but also to inform a risk-based approach. The question is whether the cost of increased reporting will be offset by fewer visits by the Commission to good performing services under an ongoing accreditation regime, consistent with the Minister's objective of focusing on those that are not delivering. The risk is that the sector will end up with both increased reporting and no diminution, or indeed an increase, in Commission visits.

The practicality and effectiveness of the additional reporting also needs to be taken into account. For example, will the Commission have the resources to make effective use of all the reports of serious incidents and how they were dealt with from a risk-rating point of view, noting that in 2015-16 the Department received 2,862 notification of reportable assaults. This figure does not encompass the wider scope of reportable incidents to be included under the new arrangements.

Who picks up the pieces if a service's accreditation is revoked?

The Review recommends the creation of a new independent Commission to centralise accreditation, compliance and complaints handling and to distance it from the Department's policy and funding role. However, the Review does not address the management of decisions to revoke accreditation in the event that the Commission decides to use this ultimate sanction.

Revoking accreditation means the cessation of Commonwealth payments and effective closure of the service. Judging by history, it would be unusual for a government to leave this in the hands of an independent agency to decide on and manage given the resource intensive and sensitive resident relocation exercise that would be required in an environment where demand exceeds supply, lump sum deposits may be put at risk and public attention peaks.

A private market for the provision of accreditation services

In the 2015-16 Budget, the Government announced that it would consult with the aged care sector regarding options for establishing private market provision of accreditation services. This decision was taken in conjunction with a decision to increase cost recovery of accreditation services by introducing a levy for unannounced visits.

The rationale for the Review recommendation to put all regulatory functions under a single Commission in order to improve information sharing, risk-based analysis and better coordination runs counter to the creation of a private market. Introducing more accreditation service providers would perpetuate a version of the current separation of roles and powers that the recommendation is designed to overcome.

Reliance on the market

The Review took up the theme that "in an era when consumer choice and competition are frequently invoked as the best means to improve quality, some may question the role of government as a regulator of the sector."

This is an unhelpful interpretation of what the sector has been advocating through initiatives such as the Roadmap. That is, increased competition and greater consumer choice and control are a necessary partner and complement to regulatory processes for securing quality services, and not a substitute. Indeed competition in the provision of services is a central consideration for government industry and regulatory policy in all sectors of the economy.

Instead of basing its case for increased regulation in aged care because of inadequacies of the market, the Review should have argued that the market, properly regulated, is essential for high performing services. Otherwise, what is the point in the Review recommending star-rating systems and better informed consumers if consumers do not have choice of service providers, and competition between providers is dilute.

Conclusion

There is a risk that the Quality Agency's failure to detect and adequately respond to the serious and longstanding care failures at Oakden, with its challenging resident population and jurisdictional complexities, may be used to ramp up considerably the level of regulation across all aged care services at significant cost to the Commonwealth, providers and the provision of aged care services. There is also the potential that the new Commission will be looked upon to become an omnipotent and omniscient regulator of aged care.

Strengthening the capability and competence of assessment teams, better information sharing and updating current accreditation standards is a clear priority. The aim should also be to focus regulatory activity on higher risk services and services that, in the words of the Minister, are not delivering, and to be more responsive to services that are performing well.

As the Review acknowledges, "there will always be higher risk services, regardless of their quality of care. This is not because of their quality as services, but because of the population they serve." This is a pivotal consideration in the design of any quality assurance regime.

The recommendation to move to ongoing accreditation supplemented by risk-based monitoring is potentially a step in the right direction. Much will depend on what balance is struck between good performance and the rigour of monitoring, and what level of reporting is appropriate to demonstrate good performance and obviate the need for intensive and intrusive inspection of service delivery.

Disclosure statement: The author of this Update, Nick Mersiades, is a member of the Aged Care

Financing Authority. The opinions in this Update should not be read as being an expression of the views of the Aged Care Financing Authority.

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