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Ms Kate Carnell AO
Lead Independent Reviewer
C/- Ageing and Aged Care
Australian Government Department of Health

Dear Ms Carnell

Review of National Aged Care Quality Regulatory Processes

National Seniors welcomes the opportunity to contribute to the Review of National Aged Care Quality Regulatory Processes resulting from incidents at the Oakdon facility in South Australia.

The incidents occurring at Oakdon are but one example of the systematic failure of the aged care regulatory process to ensure quality care for older Australians residing in aged care facilities.

National Seniors believes it is timely to review these regulatory processes. While we acknowledge that aged care regulatory processes are not the only factor impacting care quality and safety, they represent an important part of the problem.

For the purposes of this submission, National Seniors will respond to the question – *Do you think that processes to accredit and monitor residential aged care services are effective?*

National Seniors does not believe that the current processes to accredit and monitor residential aged care services are effective. There are a number of issues in this regard.

The first issue relates to workforce. Accreditation and monitoring processes rely on a qualified and dedicated workforce to ensure that quality standards are applied in a consistent and judicious manner.

Quality assessors have significant impact on the success or failure of regulatory processes. The responsibilities placed on quality assessors is large as they have the difficult task of assessing if a facility meets acceptable standards of quality. While the Quality Agency determines if a service receives accreditation, it does so on the basis of the reports produced by quality assessors who perform the hands-on assessment of a service.

There are important questions that need to be asked about the skills and experience of quality assessors. Surveyors require appropriate skills and experience to carry out assessment processes adequately. Assessing compliance is a difficult process performed under difficult circumstances. Unless quality assessors are supported in

this, there is likely to be sub-optimal outcomes from accreditation and monitoring processes.

Limited time-frames, for example, are likely to place undue pressure on quality assessors when undertaking site audits. As the *Quality Agency Principles 2013*¹ state, the assessment team must give a service a written report with major findings of the site audit on the last day of the site audit:

2.16 Report of major findings

(1) On the last day of the site audit of the relevant service, the assessment team must give the approved provider of the service a written report of matters that the team considers are the major findings of the site audit.

This provides little time for the quality assessor to consider the evidence they have gathered during the site audit and could force the quality assessor to take short-cuts in order to meet strict deadlines.

It is worth repeating that the Quality Agency determines if a service receives accreditation, but only does so on the basis of the assessment team's report. If an assessment team must give the service a major findings report on the last day of a site audit (some 14 days before they are required to provide a final report to the Quality Agency), then it is unlikely that the major findings will divert from those in the final report given to the Quality Agency.

National Seniors is concerned that this might lead to a risk averse culture among quality assessors. An assessors job is to ensure that a provider is providing adequate quality of care. If an assessor finds that a provider is not delivering adequate care to residents, this is a serious accusation.

Given the short time-frame allowed, quality assessors may be reluctant of a negative finding toward a provider as it implies that residents will be subject to detrimental outcomes, when this may or may not be the case.

Quality assessors need to be better supported to do their work because the potential impacts on the providers means that they may be cautious when making negative findings against a provider.

This responsibility is likely to weigh heavily on assessors, who may act in a risk averse manner if they are unable to adequately substantiate negative findings in the short time frame provided. As the Quality assessor Handbook notes²:

When the expected outcomes of the applicable standards are not being met the Quality assessor must collect relevant and sufficient information about the impact of the failure on the safety, health and wellbeing of care recipient(s). Specific and relevant information about how a particular failure has placed or may place a care recipient at risk is required in order to make a finding of serious risk (see section 6.2.5).

¹ Commonwealth of Australia *Quality Agency Principles 2013*
<https://www.legislation.gov.au/Details/F2017C00136>

² Australian Government Australian Aged Care Quality Agency (AACQA) 2017. *Quality Surveyor Handbook*. May 2017 <https://www.aacqa.gov.au/publications/publications-providers-and-surveyors/QualitySurveyorHandbook.pdf>

Rather than taking a more considered view of provider failings, surveyors may be more inclined to give providers the benefit of the doubt in the hope that failings will be rectified.

In contrast, a service has 14 days from receiving the major findings report to respond to the findings³:

- (2) The approved provider may, within 14 days after receiving the report, give the CEO of the Quality Agency a written response to the report.

These timeframes appear unbalanced. They provide limited time for a quality assessor to make further inquiries or to give ample consideration to the evidence gathered yet gives the service provider ample time to develop a response to any concerns raised.

Extra time could enable assessors to contact resident representatives by phone to ensure that consumer voices are adequately represented. While notices sent to recipients invite them to contact the Quality Agency by phone if they wish to provide information to assist an assessment, this places the onus on the representative to make this contact. This could put off some representatives from contributing.

National Seniors believes that this issue warrants investigation by the review team.

Ideally, National Seniors believes that an assessor should have the capacity to make a follow-up unannounced visit before submitting their major findings. This will enable them to further investigate or corroborate any evidence collected, where there is suspicion the service fails to meet an expected outcome.

The issues above raise questions about the work culture and financial constraints under which assessment teams have to work. It is difficult to see how the accreditation process can work effectively without adequate funding for assessment processes and adequate support for surveyors.

National Seniors questions the conditions under which quality assessors operate. We are cognisant that many are highly skilled and experienced but are required to validate the quality of services, which are under significant resource constraints and make judgements about complex situations. The notion of 'quality of care' is sometimes difficult to assess in the absence of adequate time and resources.

National Seniors is also cognisant of the difficulty that quality assessors face in validating the performance of services, given the nature of the work. It can be difficult to objectively assess the quality of the care environment because of inconsistent expectations between aged care residents, representatives, staff and assessors.

A second issue National Seniors would like to raise relates to aspects of the inspection regime. National Seniors receives many complaints from members that the process used to assess compliance provides opportunities for providers to present their operations in a more favourable light than what they might be on a day-to-day basis.

We have heard from members that service providers can manipulate their arrangements in readiness for announced visits to ensure that they meet the accreditation standards. This includes changing staffing arrangements on the day of

³ AACQA 2017 *Op cit.*

the inspection to ensure that the number and quality of staff is adequate; making physical changes to the aged care setting to present the facility in a more favourable light; undertaking activities to ensure that paperwork is put in order in readiness for an audit; and ensuring that residents and carers who have a more positive experience of the facility are available for interview.

What is most concerning about this feedback is that this represents a temporary state of affairs. Our members claim this situation soon reverts once the inspection has been completed and accreditation approved.

In this regard, National Seniors is concerned that the minimum threshold used to gather resident input is too low. Currently there is only a requirement that at least 10 per cent of care recipients and/or their representative be interviewed. Contrast this with the Netherlands in which all residents and representatives must be interviewed unless they choose to opt out. National Seniors has been critical of this low threshold in the past⁴ and maintains this criticism on a number of grounds.

The low threshold is concerning because it is in direct contrast with the stated purpose of the accreditation process. According to the *Quality Surveyor Handbook*⁵ the focus should be on the care recipients.

The standards that aged care services must meet are concerned with quality of services and outcomes for care recipients. Providers create and maintain systems and processes for the benefit of care recipients, not for accreditation or quality review. In this way, the focus of Quality assessors should be firmly centred on those receiving care.

In focusing on the care recipient, the Handbook states that quality assessors should look for evidence of “the impact on care recipients of the care and services provided”. The Handbook claims that consumer input, through interview, is vital in the audit process because it raises “issues of concern and areas that need further attention during the audit”.

However, National Seniors would argue that sentiment and reality is largely divorced. How can consumer experiences be adequately ascertained when quality assessors only have to interview a minimum of 10 per cent of residents and/or representatives? According to the Handbook “...this 10 per cent can be made up of anyone who wants to speak to the team and anyone the team interviews as part of their audit.”

Some of these will be people who have been randomly selected as part of the process to identify a statistically significant and reliable sample of consumers, for inclusion in the Consumer Experience Report. The rest will be those who have sought out the assessment team.

Interestingly, though, the Handbook assumes that the assessment team will not always be able to interview enough of the randomly selected residents. It leaves open the possibility that an assessor will not always be able to obtain enough randomly selected residents, and would in theory have to rely on non-randomly selected residents to meet the requirement of interviewing a minimum of 10 per cent of residents and representatives.

⁴ National Seniors 2009. *Submission by National Seniors Australia to the Review of the Accreditation Process for Residential Aged Care Homes*. July 2009. <https://nationalseniors.com.au/sites/default/files/090701-NationalSeniors-Accreditation-Process-Residential-Aged-Care-Homes-Submission.pdf>

⁵ AACQA 2017 *Op cit*.

The concern here is whether the non-representative interviewees provide a more favourable or unfavourable view of a service. National Seniors has heard, for example, that more “friendly” consumers may be encouraged by services to be interviewed by quality assessors. While these are not part of the random sample and therefore cannot be included in a Consumer Experience Report, they nonetheless are factored into the assessment process.

This issue warrants further investigation by the review team.

The low threshold used for consumer input is also concerning because it stands in direct contrast with the concept of Consumer Directed Care (CDC). Under CDC, accreditation should move to a process in which assessment and monitoring of quality is more consumer centred. Given that aged care facilities exist to service the needs of older people who require care, it stands to reason that the regulatory process reflect this.

Every resident should have the opportunity to have their care arrangements and care outcomes independently assessed on an ongoing basis, as is done in the Netherlands.

National Seniors believes that an alternative approach could be taken to the current assessment and monitoring regime that shifts the focus to the consumer.

Every resident and/or representative should have contact with an independent quality assessor or team of quality assessors who have the responsibility to ensure that the facility they live in meets the resident’s care needs on an ongoing basis.

This could be achieved by ensuring that every resident and/or representative is provided with information when entering a facility about arrangements for independent assessment and monitoring. These arrangements could be as such.

1. Each consumer and/or representative should be contacted by a quality assessor after residing in the service for three months to perform an interview in which the surveyor assesses the quality of care and outcomes against the standards. This process should be repeated on an annual basis.
2. The resident and/or representative should also be provided with contact details for the relevant advocacy service. The advocate would have the ability to refer to the relevant quality assessor to arrange an interview at any time if the resident and/or representative had concerns about the quality of care received outside of the annual assessment process.
3. Quality assessors should also assess whether the service meets process level standards required to meet the care needs of residents. This could be repeated on an annual basis as is currently undertaken or could occur if there is evidence emerging that consumer outcomes are not being met.

The benefit of this more consumer focused process is that quality assessors will be required to attend facilities on a regular basis throughout the year as entry of new residents will be ongoing.

Greater contact with the facility will ensure greater oversight and an ability to build rapport with residents and service providers. This will mean that services will be required to maintain standards on an ongoing basis and quality assessors will have

more opportunities to assist service providers to improve the functioning of the service.

National Seniors has also had concerns raised about the benefits of unannounced visits. We are concerned there may be opportunities to avoid unannounced visits if a service does not wish this to occur. According to the *Quality Surveyor Handbook*⁶

If the person in charge does not grant access immediately and asks the assessment team to wait, for example until more senior staff or key personnel arrive, the team should do so.

While the Handbook states that consent is often given, “if access continues to be denied, the team will be advised by the senior manager to leave the site.” Furthermore “if consent is withdrawn ... [and] remains withdrawn, the team will be advised to leave the site.” While this means that a further unannounced visit must be performed, it provides a service with an opportunity to temporarily avoid an unannounced visit.

As such, National Seniors request that the review investigate how often this occurs and whether it is a cause for concern.

A second issue with unannounced visits is access to a resident’s representative. Clearly there would be no opportunity to advertise to representatives that an unannounced visit is taking place and therefore those residents relying on a representative to put forward their concerns might be disadvantaged by this process if the representative did not have an opportunity to do so. This can be particularly problematic if representatives are not able to make regular visits to a resident due to other commitments, such as employment.

This problem relates to another broader issue about the timing of both announced and unannounced site visits. National Seniors is concerned that the process for both announced and unannounced visits does not realistically enable assessment of services at all times. Residential aged care is a 24 hour, seven day a week activity yet both announced and unannounced visits generally occur between business hours of Monday to Friday, 9.00am to 5.00pm.

National Seniors members have raised concerns that unannounced visits do not occur at times when significant issues can exist, such as at night when limited staff are available to provide care.

Furthermore, we are concerned that restricting site audits to weekdays reduces the probability that representatives will be on site to give interviews or raise concerns, reducing the capacity to gain valuable consumer input about the performance of a service.

While there are clearly cost implications of undertaking full site audits outside of business hours, these could be minimised by giving greater flexibility to the assessment team to undertake activities that strengthen the audit process.

As discussed above, this could be done by increasing the timeframe for the review to enable assessors to conduct telephone interviews at times that are more convenient for representatives or by allowing the assessor to revisit the site in non-business hours to conduct evidence gathering activities to corroborate evidence.

⁶ AACQA 2017 *Op cit.*

While the issues raised above are not exhaustive they provide examples of ways that the accreditation and monitoring system may not currently be meeting the needs of care recipients.

National Seniors urges the review team to be prepared to consider all ideas and options on the table to ensure that the accreditation and monitoring regime operates in the interests of care recipients.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Henschke', written in a cursive style.

Ian Henschke
Chief Advocate