

**Submission  
No 147**

**INQUIRY INTO REGISTERED NURSES IN NEW SOUTH  
WALES NURSING HOMES**

**Organisation:** Aged Care Crisis

**Date received:** 27/07/2015

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23 July 2015

The Director  
General Purpose Standing Committee No. 3  
Parliament House  
Macquarie St  
Sydney NSW 2000

## **Re: Registered nurses in New South Wales nursing homes (Inquiry)**

Aged Care Crisis (ACC) welcomes the opportunity to respond to the registered nurses in New South Wales nursing homes (Inquiry).

ACC is an independent group of Australian citizens. Members of our group are engaged with the aged-care sector in a variety of ways – as health professionals, consumers of services and as volunteers. We have researched and analysed the current system over many years and proposed new pathways for reform. We have urged more involvement from local communities.

Our web site [www.agedcarecrisis.com](http://www.agedcarecrisis.com) seeks to provide a strong consumer voice to aged care. The by-line is *'where little voices can be heard'*. The site provides accessible information on many aspects of aged care, access to topical journal articles and an opportunity for site visitors to express their views and concerns.

ACC has raised aged-care issues, including the critical matter of adequate and skilled staffing, to many relevant inquiries and reviews.

There are a number of issues that we believe are inexplicably linked and directly related to nursing home staffing which we have outlined in this submission.

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# Introduction

Aged care is currently undergoing major changes following the Federal Government's decision to open the aged care sector up to the market. We believe that these changes will increase many of the pressures, which currently prevail within the sector. For example, staffing is the largest on-going expenditure faced by aged-care providers and pressures to reduce costs will undoubtedly affect staffing levels. There is evidence to suggest that nursing home managers are under pressure to meet their profit targets and reducing staff to do so, often placing vulnerable residents at risk<sup>1</sup>. When staffing is reduced and registered nurses are replaced by lower-skilled staff, care quality suffers.

## No reliable data

The major difficulty for the Committee and those making submissions is the absence of any reliable data in Australia about nursing home quality and staffing.

**There is no reliable data on:**

1. Nursing levels and skill levels in individual Australian nursing homes
2. Levels of frailty and illness of care recipients and consequent nursing requirements.
3. Recommended staffing hours and skill levels for nursing homes
4. Recommended maximum number of care staff and agency staff that a Registered Nurse can safely supervise
5. Reliable measures of care outcomes and quality of life on which any assessment of deficiencies in nursing can be based.

**Any assessment of the risk of changes to nursing requirements must therefore be based on international data from countries where similar policies have been pursued.**

Nursing home care is increasingly being provided by for-profit operators. Australian and international evidence (*See Appendix A*) suggests that care provision by for profit operators is of poorer quality than not-for-profit operators, largely because of poorer staffing. Robust staffing regulation is therefore critical to prevent operators from compromising care quality in their pursuit of profits.

## In summary

We ask that the NSW Government puts the interests of older people foremost and ensures that all aged-care residents remain under the direct supervision of a Registered Nurse at all times.

We cite the following comment from a not-for-profit group, to illustrate how residents can too easily become vehicles for profit making:

“... the (CEO) agreed full time RNs could reduce the number of clients requiring hospitalisation, but this did not help the aged care facility's bottom line ...”

Source: *Registered nurses not needed 24/7*, 18 Jul 2015 <http://www.dailyexaminer.com.au/news/top-nurses-not-needed-2472709039/>

<sup>1</sup> Staff cuts faulted in nursing home death (5 Aug 2012): <http://dandenong.starcommunity.com.au/uncategorized/2012-08-05/staff-cuts-faulted-in-nursing-home-death/>

# Key issues

## Staffing and care needs of aged-care residents

Australia has no federal legislated safe staffing ratios or mandated skills in aged care. The *Aged Care Act 1997* has little to say about staffing, with the most vital aspect of care provision summarised in just two lines:

“(b) to maintain an adequate number of appropriately skilled staff to ensure that the care needs of care recipients are met”

Source: Aged Care Act 1997 - Part 4.1 - Quality of care - 54-1 Responsibilities of approved providers - (b)  
[https://www.comlaw.gov.au/Details/C2014C00810/Html/Text#\\_Toc406164889](https://www.comlaw.gov.au/Details/C2014C00810/Html/Text#_Toc406164889)

The Federal Government’s legislation and regulatory framework for aged care<sup>2</sup> fails to specify any type of staffing level or skill mix. Nurses and carers frequently report that they are not able to care for residents properly, given the conditions and time restraints imposed on them.

The very old are generally the sickest and frailest in our society. They are also amongst the most difficult to diagnose, treat and nurse. Many residents have a high incidence of chronic disease associated with, diabetes, hypothyroidism, chronic renal disease, cardiovascular disease and Alzheimer’s, and have a high rate of hearing impairment and vision loss.

The Australian Medical Association (AMA) has repeatedly spoken out about “unacceptable” staffing in aged care, and has called on the Australian Government to make medical care a condition of accreditation for aged-care facilities. This has not occurred<sup>3</sup>.

A report commissioned by National Seniors<sup>4</sup> showed a worrying decline in care quality in nursing homes:

“... **MICHAEL O’NEILL (National Seniors):** If you look at some of the detail of these cases, a lot of them are around the adequacy of the care being delivered, and breaking that down further, it comes very much back to resourcing levels, to staffing levels and then within staffing levels the number of registered nurses, the qualifications of the staff there.

Source: *Aged care under strain* - ABC, *The 7.30 Report*, 14 Sep 2010 <http://www.abc.net.au/7.30/content/2010/s3011781.htm>

## Impact of reforms

If the requirement for nursing homes to have a registered nurse on duty 24/7 were to be removed, it would adversely impact the lives of the majority of residents in NSW nursing homes.

Leaving staffing decisions to aged care providers in accordance with the accreditation standards would adversely affect the care provided to residents in NSW nursing homes because the standards do not specify staffing requirements. The staffing accreditation states *‘there are appropriately skilled and qualified staff sufficient to ensure that services are delivered in accordance with these standards and the residential care service’s philosophy and objectives.’* There are state-based laws setting minimum

<sup>2</sup> Aged Care Accreditation in the Spotlight (23 Aug 2013): <http://www.abc.net.au/lateline/content/2013/s3832828.htm>

<sup>3</sup> Source: Plea for nurses at homes for the aged, 11 Apr 2009: <http://bit.ly/1gYFoVH>

<sup>4</sup> National Seniors is Australia’s largest organisation representing those aged 50 years and over

carer to child ratios for child care services. There is no reason why states should not set clear minimum staff-to-aged-care-recipient ratios.

Documents released under Freedom of Information<sup>5</sup> show that nearly one in five new nursing homes failed to meet quality standards last financial year. The revelation comes as the Federal Government looks to further cut red tape in aged care, including weakening the involvement of the aged care complaints scheme in complaints handling. These changes are being promoted as part of an "Innovation Hub" in South Australia<sup>6</sup> and include:

- **Reduction of audits:** Less frequent audits (eg, site audits reduced from once every three years to five years);
- **Self-regulation of complaints:** Complaints by residents or family member to the Aged Care Complaints Scheme will be referred back to the home in question for resolution, including those that identify serious risk to resident health and safety; and
- **Reduction of ACFI reviews:** reduced Aged Care Funding Instrument reviews by the department.

The Federal Government indicated that aged care accreditation will be privatised and providers will be allowed to shop around for a private accreditation service<sup>7</sup>. ACC is concerned that we could see a further reduction in care quality, as has occurred in New Zealand where private accreditors assess aged care services. A review of the New Zealand system found that providers would seek out more lenient accreditors to pass accreditation and care standards dropped as a result.

In short, federal regulation of the aged care sector is becoming more lenient, despite widespread failures in aged care quality.

## Risks to care residents receive

On 7 September 2012, Glen Rees CEO of Alzheimer's Australia wrote to Lynda O'Grady (Chair, Aged Care Financing Authority)<sup>8</sup> about the findings of their report *Consumer Engagement in the Aged Care Reform Process*, which looked at the stories of over 1,000 consumers who attended consultations. They found that consumers had serious concerns about staffing, restraints usage and reduced mobility due to lack of opportunity for physical activity.

Rees went on to refer to the *"increasing concern about the inappropriate use of antipsychotic medication"*. He pointed to the recent Lateline program<sup>9</sup> about medication saying that this was only one *"example of the poor quality of care individuals with dementia are receiving as a result of services in which staff are not adequately trained, supported or resourced to provide quality dementia care including responding appropriately to behavioural and psychological symptoms of dementia"*. Alzheimer's Australia also released a new report *Quality of Residential Aged Care: The Consumer Perspective*<sup>10</sup> highlighting the need for urgent action to improve residential aged care includes case studies of people being shackled, assaulted, sedated against their wishes and turned into "zombies".

**DIY Staffing:** In 2012, ACC became aware of one home operating with no staff rostered on for 10.5 hours per night, as well as failing a number of accreditation standards following a site audit. Families would not have been aware of the risk their family members may have faced as a result of no staff rostered on for considerable amounts of time. If the community had this information, they could make an informed decision and be given the opportunity of taking their loved ones home and caring for them in a safe environment.

<sup>5</sup> Documents relating to the South Australian Innovation Hub released under FOI - [Disclosure log: 14/15 – 065 (19 Dec 2014)] <http://bit.ly/1LJsUOI>

<sup>6</sup> SA nursing homes trial increased autonomy amid reports of lowering standards (ABC News, 20 Feb 2015) <http://ab.co/1Jvwmqg>

<sup>7</sup> Media release (12 May 2015) - "Supporting greater choice for older Australians": <http://bit.ly/1fyNV0w>

<sup>8</sup> Letter from Alzheimer's Australia to ACFA (7 Sep 2012): <http://bit.ly/1S6gm7T>

<sup>9</sup> Families count cost of dementia drugs prescriptions (ABC Lateline, 16 Aug 2012): <http://www.abc.net.au/lateline/content/2012/s3569736.htm>

<sup>10</sup> Alzheimer's Australia, Paper Number 37 - Quality of Residential Aged Care: The Consumer Perspective (November 2013): <http://bit.ly/1KsqKmb>



The following is an extract from the Agency site audit report:

### 1.6 Human resource management

*This expected outcome requires that "there are appropriately skilled and qualified staff sufficient to ensure that services are delivered in accordance with these standards and the residential care service's philosophy and objectives".*

#### Team's findings

The home does not meet this expected outcome

There are no staff rostered for duty at the home between the hours of 8pm to 6:30 am, and therefore residents are not being supervised at this time. As a result, recurring incidents of residents absconding, wandering and falling have occurred. The home does not have a system for identifying or monitoring appropriately skilled and qualified management to ensure care and services are delivered in accordance with the Accreditation Standards.

Aged Care Crisis wrote to the (then) Minister questioning the astonishing revelations of no staff rostered to look after residents<sup>11</sup>. We asked that if the Minister was not prepared to set safe or minimum staffing ratios or skill levels in aged care homes, to at least apply transparency about how homes are staffed, so that family members and the community are equipped to make informed decisions about aged care placement for their loved ones. This did not happen.

The Australian Physiotherapy Association was also critical of the ACFI in improving care services. It produced a survey in 2014, which monitored the effect of the ACFI and members' experiences and found that it *"creates financial incentives to treat residents, which encourage rorts and over-servicing"*<sup>12</sup>. Many family members have also taken their concerns of insufficient care and staffing to politicians<sup>13</sup>, including the impact of ACFI and accreditation on their family members in care.

In 2012, the Coroner investigated a death where a resident died on Black Saturday, 7 Feb 2009, after walking into a closed courtyard through an unlocked door that didn't allow her to get back inside<sup>14</sup>. It was 46.4 degrees Celsius outside and there was no cover in the courtyard. The resident was not discovered missing for some three hours. The inquest heard that the home began trialling a reduction in staff levels that day, with only two personal care assistants on duty from 1pm to 3pm. At the time, records show that the home had 112 beds. The Department of Health and Ageing had reminded providers of their obligations to support residents during heat wave conditions via mail/fax. The coroner in handing down his findings stated: *"I further find that given the anticipated conditions about which Noble Manor had adequate prior warning, management failed to make appropriate plans to protect Mrs Ambrose and that this failure contributed to her death"*<sup>15</sup>.

In May 2015, the Coroner is also investigating another heat related death of an elderly woman after she died of burns in 'horrific circumstances' in a nursing home<sup>16</sup>.

In November 2011, Beryl Watson died after a three-week respite stay at a NSW nursing home<sup>17</sup>. The NSW coroner<sup>18</sup> commented around the "sub-optimal nursing care" provided and expressed concern that *"a small number of nurses were required to care for a large number of residents"*.

<sup>11</sup> No staff for 10.5 hours per day: <http://www.agedcarecrisis.com/yoursay/4611-no-staff-for-105-hours-per-day>

<sup>12</sup> Australian Physiotherapy Association ACFI Survey 2014: <http://bit.ly/1JHmK9>

<sup>13</sup> Federation Chamber, Constituency Statements, Ageing, Byrne, Anthony, MP, 5 Jun 2014: <http://bit.ly/1KsqZxy>

<sup>14</sup> Nursing home heat death avoidable: coroner: (2 Aug 2012): <http://bit.ly/1eqPz3m>

<sup>15</sup> Coroner's report: finding into death with inquest of Joan Ambrose: <http://bit.ly/1GRcWdk>

<sup>16</sup> Elderly nursing home resident died of burns in 'horrific circumstances', coroner to investigate (ABC, 8 May 2015): <http://ab.co/1D19C4x>

<sup>17</sup> Death of Beryl Watson after stay at Kempsey nursing home sparks call for aged care accreditation overhaul (Jul 2014): <http://ab.co/1y8dhre>

## Aged care workforce

Older, sicker and frailer residents are now dependent on a workforce mainly made up of inexperienced carers, some of whom have undertaken poor quality training and/or obtained “quickie” certificates in aged care<sup>19</sup>. A 2013 audit of registered training organisations (RTOs) offering aged care qualifications found that nearly 90% were non-compliant with at least one of the national training standards required of programs to attain qualifications under the Australian Qualifications Framework<sup>20</sup>. Some RTOs were offering Certificate III qualifications in just eleven weeks.

The Aged Care Workforce 2012<sup>21</sup> report outlined the shift in the ageing workforce. There are three levels of care staff working in aged care: registered nurses, enrolled nurses and personal carers (PCs)<sup>22</sup>. Personal carers now constitute the majority of the aged-care nursing workforce and are unlicensed and unregulated. Between 2003 and 2012 the number of full-time equivalent (FTE) direct care staff employed in nursing homes increased by almost 25%. However, registered nurse employment decreased by 14% over the same period.

**Decline of Registered Nurses:** There are now 2,326 fewer FTE RNs working in aged care than there were in 2003, while the number of residential aged care places has increased by 23%. The dependency level of residents has also increased with over 80% of residents assessed as high care according to the *AIHW Residential aged care and aged care packages in the community 2012-2013* report<sup>23</sup>.

Full-time equivalent direct care employees in the residential aged care workforce, by occupation: 2003, 2007 and 2012 (estimated full time employment (FTE) and %)

Occupation	2003	2007	2012
Nurse Practitioner	n/a	n/a	190 (0.2%)
Registered Nurse	16,265 (21.4%)	13,247 (16.8%)	13,939 (14.7%)
Enrolled Nurse	10,945 (14.4%)	9,856 (12.5%)	10,999 (11.6%)
*Personal Care Attendant	42,943 (56.5%)	50,542 (64.1%)	64,669 (68.2%)
Allied Health Professional			1,612 (1.7%)
Allied Health Assistant	5,776* (7.6%)	5,204* (6.6%)	3,414 (3.6%)
Total number of employees (FTE) (%)	76,006 (100%)	78,849 (100%)	94,823 (100)

Source: King D, Mavromaras K, Wei Z, et al. *The Aged Care Workforce 2012*, Canberra: Australian Government Department of Health and Ageing 2012 Table 3.3 page 10; \* In 2003 and 2007 these categories were combined under 'Allied Health'

**Revolving door of unfamiliar staff for aged care residents:** PCs have been identified as more likely than other aged-care staff to leave the workforce. In Australian aged care, the casualisation of the workforce has been increasing, with 23.4% of personal carers being employed casually in 2007, as compared with 20.5% in 2003<sup>24</sup>. Personal carers are a subset of workers, who have limited educational levels, are cheaper to employ, yet are very often performing the work of nurses and involved in end-of life care delivery.

**Remote locations and small homes:** In regional and rural areas, access to a GP is often limited, highlighting the need for a registered nurse to be in the nursing home at all times.

<sup>18</sup> Inquest into the death of Beryl Joyce Watson (Findings 2014): <http://www.coroners.justice.nsw.gov.au/Documents/watson%20beryl%20findings.pdf>

<sup>19</sup> Aged care training courses under fresh scrutiny, Australian Ageing Agenda, 23 Jan 2015: <http://bit.ly/1fx4Wbt>  
When 'qualified' is no guarantee of competence, The Australian, 6 Sep 2014: <http://bit.ly/1qGp5Nj>  
Quickie aged-care courses fall short of national standards, Sydney Morning Herald, 11 Jan 2014: <http://bit.ly/1LLX42h>

<sup>20</sup> Australian Skills Quality Authority (2013) Training for aged care community care in Australia: A national strategic review of registered training organisations offering aged care community care sector training

<sup>21</sup> The Aged Care Workforce, 2012 - Final Report: <http://bit.ly/1HT0POy>

<sup>22</sup> \*PCs includes personal carers, personal care attendants (PCAs), personal care workers (PCWs), assistants in nursing (AINs), Certified Nursing Aide (CNA), nursing assistant, care assistant, and other unlicensed workers working in aged care

<sup>23</sup> Residential aged care and aged care packages in the community 2012-2013 (AIHW): <http://bit.ly/112LWJE>

<sup>24</sup> Martin, B., & King, D. (2008). Who cares for older Australians? Barton: A.C.T.: Commonwealth of Australia. Ageing workforce census 2007

**Adequately trained staff:** It is also of considerable concern that the sector now relies, to a large extent, on the employment of inexperienced carers, some of whom have poor English language skills and who are unable to communicate effectively with residents. ACC believes that all those employed to care for frail vulnerable people should be able to fully understand the training they are given and the instructions from supervisors. They must also be able to read and understand case notes and care plans and accurately write these themselves, when required.

**Missing - doctors and geriatricians in aged care:** Aged-care residents, particularly those in high care, need ready access to a doctor. Yet there is a shortage of doctors who regularly visit aged-care homes. Ideally, residential aged care facilities should have access to a team of doctors with an interest in aged care working under the supervision of a geriatrician. They should be responsible for the care received and supervise and intercede when problems occur. ACC notes that the Australian Medical Association has been vocal about these deficiencies<sup>25</sup> and therefore adds a further voice to stress the importance of this issue.

While providing evidence at a coroner's inquest, one concerned clinician, Dr Tideman, made the point that support for nursing home residents by general practitioners in South Australia is simply inadequate. Dr Tideman expressed the view that:

“... It's deplorable, in my view; absolutely deplorable that we are not in this State able to provide good general practitioner services that don't rely on locum services to our residential aged care. And therefore the acute setting – the acute hospitals, like my hospital – then becomes the first line for sick elderly patients who do not need to be in a hospital and, in fact, care can be compromised by them coming into a hospital ...”

Source: Dr Tideman speaking at Finding of inquest by Mark Johns, State Coroner (SA) 3 Jun 2010: <http://bit.ly/1mBhJ4> (Pg 5, Recommendations, 5.1)

Some GPs have withdrawn their services describing them as a “very unsafe environment” and commented publicly on their staffing concerns:

“... A GENERAL practitioner has withdrawn her services from an --- aged-care facility after referring a patient's death to police.

Jenny Bromberger, who works exclusively in aged care, said she could no longer work at the (nursing home) ---- because of concerns over "patient neglect".

She said the facility, ---- was so understaffed she had visited several times in the evening and had "struggled to find any staff member at all".

"It's a very unsafe environment," she said. "I've resigned because I've been concerned that my capacity to deliver ethical medical care is compromised."

In a letter to residents explaining her decision to withdraw, Dr Bromberger said:

"I have concerns about the level of nursing care and I believe that there is inadequate clinical input from RN (registered nursing) staff.

"I have discovered medication errors and have visited on two occasions in the last three weeks, in the morning, to find that only one RN was in the building which cares for 150 residents."

Source: Doctor Jenny Bromberger blasts Marycrest at Kangaroo Point (6 Dec 2009): <http://bit.ly/1pgJDU>

<sup>25</sup> More aged care beds welcome, but medical care for older Australians ignored – 1 Aug 2010: <http://bit.ly/1S3UD08>



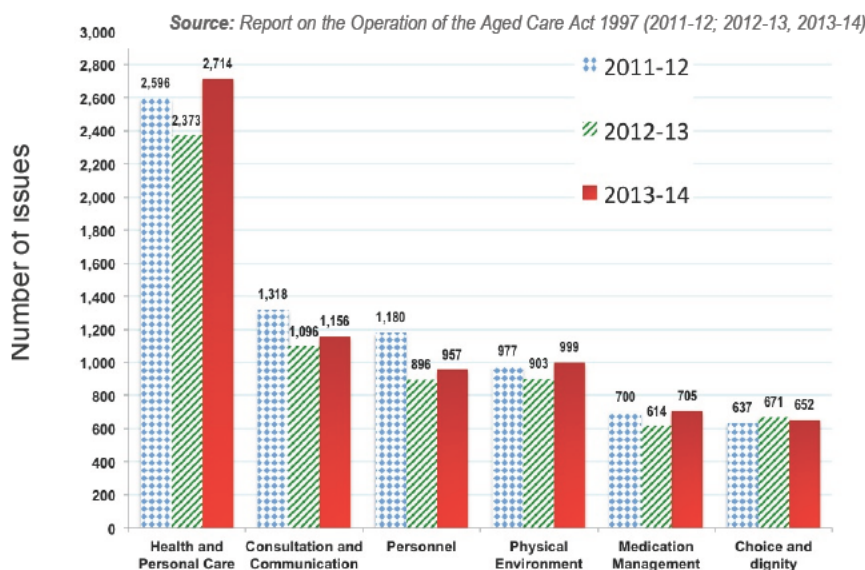
Prior to the introduction of the **Aged Care Act 1997**, a fixed percentage of funding received by owners of aged-care homes was dedicated to care, including the salaries of nursing staff<sup>26</sup>. Funding could not be diverted to non-care staff, capital maintenance or profit. This requirement was removed in the late 1990s under the **Aged Care Act 1997**, leaving decisions about expenditure on staffing up to providers<sup>27</sup>.

## Complaints in aged care

In the absence of any useful data to assist the community in making informed choices about aged care, the community are left with complaint figures, which are highly sanitised and drip-fed once every twelve months in annual reports.

The most commonly reported complaints examined by the Scheme incorporate multiple issues. Health and Personal Care issues account for the majority of complaints. The top six issues raised between 2011 and 2014<sup>28</sup> comprised the following:

1. **Health and personal care:** eg, infections, infection control, infectious diseases, clinical care, continence management, behaviour management and personal hygiene
2. **Consultation and communication:** eg, internal complaints process, information, family consultation and failing to advise enduring powers of attorney or guardians
3. **Physical environment:** eg, call bells, cleaning, equipment, safety and temperature
4. **Personnel:** eg, number of staff and training / skills / qualifications
5. **Medication management** eg, access and administration
6. **Choice and dignity:** eg, the care recipient is treated with dignity and respect to live without exploitation, abuse or neglect



In August 2013, Adrian Nye, a former senior Victorian public servant whose mother died in a nursing home, spoke out around a system he says is failing Australia's most vulnerable elderly. Adrian Nye's mother was in a nursing home, which was given full accreditation at the same time she developed such serious leg infections, she spent four months in hospital.

<sup>26</sup> Pensioners respond to nursing home crisis: (APSF, 3 April, 2000): <http://bit.ly/bGVC14>

<sup>27</sup> Aged care deregulation by stealth (The Australian, 8 March, 2000): <http://bit.ly/aLnU06>  
Nurses in the Aged Care System (Dr Wynne) – re: **Deregulation**: [www.corpmedinfo.com/nh\\_nurses.html](http://www.corpmedinfo.com/nh_nurses.html)

<sup>28</sup> Annual Report on the Operation of the Aged Care Act 1997: 2011-2012, 2012-2013, 2013-2014: <http://bit.ly/1D4sQpJ>

In his view, the accreditation process and complaints scheme was inadequate:

“ ... But for something as grave as an allegation of gross negligence leading to a wound that puts your mother in an acute hospital for four months with severe pain effects and a risk to life, something more than Kumbaya is required. ”

Source: *Aged Care Accreditation in the spotlight* (ABC Lateline, 23 Aug 2013): <http://www.abc.net.au/lateline/content/2013/s3832828.htm>

## Fear of retribution

Many of those who are dissatisfied with their care, or the care of a loved family member, fear that making a complaint will jeopardise their well-being or that of their relative. Staff who report deficiencies within the system or draw attention to incidents of neglect or abuse, are frightened that they might lose their employment<sup>29</sup>, have the number of shifts reduced, or suffer other punitive consequences. ACC is aware of several incidents where this has occurred.

One experienced Registered Nurse's account of working in a nursing home *I am sorry 'Mary' I could not help you*<sup>30</sup> illustrates the difficulties for staff working in aged care, and provides an insight as to why many good staff leave aged care.

Another example is Ms Clark, an 89-year-old resident who spoke out about care quality at the Productivity Commission's *Caring for Older Australians Inquiry*. Ms Clark said she could not complain to the Accreditation Agency because the nursing home would know she had done so. Ms Clark also indicated that others in the facility were also frightened.

“ ... **MS CLARK:** Well, for me it's not hard, but for most of the residents, it is hard. They will not make a complaint because they're afraid of being thrown out and they will be regarded in disfavour, if you like, by the staff. They will not complain.

... "Anyway, I make complaints, but the thing is, nothing gets changed. I've been chairman of the residents' committee and I resigned the other day because whatever you put forward, they say they're going to address this, they're going to address that. Nothing changes..."

**MS MACRI:** Were you able to sit down with the auditors and have a chat to them quite independently?

**MS CLARK:** No, I wasn't. I don't know why. I think we were able to put our names forward if we wanted to see anybody but I didn't because I knew that if they got any negative feedback, then they would know it came from me, because nobody else would speak out. So I backed out of that unfortunately. I don't intend to do that again.

**MS MACRI:** That's a bit sad, isn't it?

Source: *Productivity Commission Inquiry - 2nd day transcript - Canberra, 6 Apr 2011* <http://bit.ly/1SjKK1>

<sup>29</sup> Death in a five star nursing home (ABC Background Briefing, 21 Sep 2014): <http://ab.co/Z3RSCH>

Aged-care whistleblower sacked for 'talking to the media' (The Australian, 20 Jul 2015): <http://bit.ly/1GtNIBn>

<sup>30</sup> I am sorry 'Mary' I could not help you (ACC): <http://agedcarecrisis.com/yoursay/4715-i-am-sorry-mary-i-could-not-help-you>

## Recommendations

All NSW nursing homes which look after residents classified with high care needs should have at least one registered nurse on duty at all times. The number of registered nurses should be increased to reflect the number and level of care of residents.

The state based *Public Health Act 2010*<sup>31</sup> should be amended accordingly until the federal *Aged Care Act 1997* is amended to specify all nursing homes with high care residents should be staffed at all times by at least one registered nurse.

The definition of “high care” could be the same as that currently defined in the *Quality of Care Principles 2014* Part 2, Division 1 subsection 7(6)<sup>32</sup>.

We also ask that the committee consider a long-term plan and work with the Federal Government towards objectives, which include:

- Set up processes for collecting accurate information about nursing homes including a record of failures in care and of staffing
- Create an independent process to evaluate this accurately and make the data publicly available and easily accessible.
- Ensure that funding is based on care needs and that funding is directly spent on care provision, including staffing number and skill mix
- Create a community support organisation to assist elderly residents and their families so that they become effective customers in this increasingly free market. It is clear from an increasing number of examples that a free market system is not effective unless customers can hold it to account.

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<sup>31</sup> *Public Health Act 2010*: <http://www.legislation.nsw.gov.au/maintop/view/inforce/act+127+2010+cd+0+N>

<sup>32</sup> *Quality of Care Principles 2014*: [https://www.comlaw.gov.au/Details/F2014L00830/Html/Text#\\_Toc390951198](https://www.comlaw.gov.au/Details/F2014L00830/Html/Text#_Toc390951198)

# Appendix A

**The overseas evidence:** The overwhelming evidence is that staffing levels are markedly reduced and failures in care increased the when aged-care providers are primarily focussed on growth and profitability.

## The USA

Data from the USA as far back as 1986<sup>33</sup> clearly shows that staffing is compromised and there are more failures in care in corporate, for-profit chains than in not-for-profit facilities. Private equity owned facilities have even lower levels of staffing and more failures in care<sup>34</sup>. The situation deteriorates even further the longer the facilities are owned by private equity.

In the USA, for-profit facilities, particularly those owned by multistate chains, are more likely to reduce spending on care for residents and to divert spending to profits and corporate overhead. While the research findings do not necessarily apply to an individual nursing home - some for-profit nursing facilities give excellent care and some not-for-profit nursing facilities give poor care - the general rule is documented in study after study: not-for-profit nursing facilities generally provide better care to their residents.

Consistently, research in the quality of nursing home care since the Institute of Medicine report has reported that not-for-profit nursing facilities have higher nurse staffing levels and fewer health care deficiencies than their for-profit counterparts.

In 2011, the first-ever analysis of the ten largest for-profit nursing home chains reported that between 2003 and 2008, compared to all other ownership groups,<sup>35</sup> facilities owned by the top ten for-profit chains had:

- The lowest staffing levels;
- The highest number of deficiencies identified by public regulatory agencies; and
- The highest number of deficiencies causing harm or jeopardy to residents.

In 2011, the **Government Accountability Office (GAO)** reported<sup>36</sup> that nursing facilities acquired between 2004 and 2007 by the top ten private equity firms:

- Had more total deficiencies than not-for-profit facilities;
- Reported lower total nurse staffing ratios; and
- Showed capital-related cost increases and higher profit margins, compared to other facilities.

In 2010, the **GAO** reported<sup>37</sup> that compared to other nursing facilities, *Special Focus Facilities* (i.e., those identified by CMS as among the poorest performing facilities nationwide):

- Are more likely to be part of a chain and for-profit, compared to other facilities;
- Have fewer registered nurses per resident day; and
- Are ranked lower on CMS's Five-Star System.

In 2009, the **GAO** reported<sup>38</sup> that compared to other nursing facilities, *Special Focus Facilities*, which have more deficiencies and more serious deficiencies than other facilities, are:

- More likely to be for-profit;
- More likely to be part of chain; and
- Have almost 24% fewer RNs/resident/day and fewer nursing staff at all levels/resident/day.

<sup>33</sup> For-profit enterprise in health care - implication (Institute of medicine) 1986: <http://www.nap.edu/catalog/653/for-profit-enterprise-in-health-care>

<sup>34</sup> Non-Profit vs. For-Profit Nursing Homes: Is there a Difference in Care? (Center for Medicare Advocacy): <http://bit.ly/1SjCMLJ>

<sup>35</sup> Nurse Staffing and Deficiencies in Largest For-Profit Nursing Home Chains & Chains Owned by Private Equity Companies <http://1.usa.gov/1HTGnPU>

<sup>36</sup> US Government Accountability Office - report (July 2011): <http://www.gao.gov/assets/330/321067.pdf>

<sup>37</sup> US Government Accountability Office - report (March 2010): <http://www.gao.gov/new.items/d10197.pdf>

<sup>38</sup> US Government Accountability Office - report (Sep 2009): <http://www.gao.gov/products/GAO-09-689>



## Appendix A

In September 2007, an investigative report in *The New York Times*<sup>39</sup> found that:

- Nursing facilities owned by private equity firms were 41% more profitable than other nursing homes;
  - One facility it focused on, in the year after its takeover by a private equity firm, cut the number of registered nurses in half and cut spending on nursing supplies, activities for residents, and other supplies, leading to poorer resident care.

A study by *LeadingAge New York*<sup>40</sup>, the association that represents not-for-profit nursing facilities in New York State, found that not-for-profit facilities:

- Performed better on most measures than for-profit facilities in the state;
- Had fewer residents using antipsychotic drugs or with physical restraints;
- Had lower hospitalization rates, and more discharges to home;
- Had more nursing staff and fewer survey deficiencies and spent more money per day on nursing costs and food.

A review and meta-analysis of 82 studies comparing quality of care in for-profit and not-for-profit nursing facilities reported that nearly all the studies found higher quality, higher staffing, and fewer pressure sores in not-for-profit facilities. Not-for-profit facilities had better outcomes on four key measures of quality:

- "More or higher quality staffing;"
- Lower prevalence of pressure ulcers;
- Lower prevalence of restraints; and
- Fewer government-cited deficiencies.

The authors estimated that if all nursing homes in the United States were operated on a not-for-profit basis:

- 7,000 residents with pressure sores would not have them;
- Residents would receive 500,000 more hours of nursing care each day.

## The UK

**The UK:** Although much more information is available in the UK, the analysis is different from that in the USA. Like our Australian Aged Care Quality Agency, their Care Quality Commission (CQC) is not considered an effective regulator, or collector and analyser of data. However, they are far better than the equivalent Australian model. The crisis for aged care in the UK has been the extent to which private equity has dominated the for-profit sector. Strategies in extracting profits left the UK's largest nursing home chain Southern Cross, in a parlous financial state, which ended in bankruptcy. This had a significant impact on standards of care.

Private equity companies are not listed on the share market. Their shares are not traded and they do not have to report publicly to shareholders. There is consequently little transparency and less accountability. Private equity became of intense interest in the UK in 2011 after the collapse of Southern Cross care chain<sup>41</sup>.

These trends have raised a new dilemma in health and care policy - how to deal with the prospect of 'market failure' where a provider is no longer able or willing to continue service provision. This issue was ignored until the Southern Cross care chain crisis forced it into the policy agenda<sup>42</sup>.

The Department of Health in the UK, recently introduced a statutory scheme called 'Market Oversight'<sup>43</sup> - its purpose is to assess the financial sustainability of those care organisations that local authorities would find difficult to replace should they fail and become unable to carry on delivering a service.

<sup>39</sup> At many homes, more profit and less nursing - New York Times (Sep 2007): [http://www.nytimes.com/2007/09/23/business/23nursing.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2007/09/23/business/23nursing.html?pagewanted=all&_r=0)

<sup>40</sup> New York State nursing homes (2012): <http://www.leadingagency.org/linkservid/28BC5086-F1AD-8EB8-EA3B26AE93ECEF0/showMeta/0/>

<sup>41</sup> Southern Cross wakes us up to the business of caring (The Guardian, 11 Jul 2011): <http://www.theguardian.com/commentisfree/2011/jul/11/southern-cross-business-of-caring>

<sup>42</sup> Dealing with market failure (16 Mar 2015): <http://www.sochealth.co.uk/2015/03/16/dealing-with-market-failure/>

## Appendix A

**Update March 2015:** The failure of Southern Cross care home chain was different because the private equity partners themselves did not fail. They made vast profits but left a chaotic situation. The company that took over the management of Southern Cross's care homes, Life Style Care, is now also in administration so putting more pressure on the care of those residents<sup>44</sup> and staff that look after them.

## In Australia

**In Australia:** Australia collects little information on aged care service provision and publishes even less. Accreditation data reported by the Agency is inaccurate because it seems to report only raw data and does not take obvious variables into account. In 2008, ACC evaluated a year of accreditation results<sup>45</sup>. We found that the method of reporting adopted by the Agency did not reflect the overall number of failures leading to a false perception of the incidence of failures (1.6% instead of 7%). When we excluded rural facilities we found that for profits had between 3 and 5 times as many failures as the different types of not-for-profits but there was insufficient information to evaluate the reasons for this.

We wrote to the (then) Minister about our concerns around the misleading figures of homes identified with non-compliances tabled in the annual *Report on the Operation of the Aged Care Act 1997(2007-2008)* and the response to ACC<sup>46</sup> conceded to the "lack of clarity" on the reporting methodology and the department would "review how the figures might be represented in future reports".

A tentative re-evaluation of the 2015 report by the Aged Care Funding Authority reveals that the most profitable group of nursing home providers made 18% more income and spent 16% less on providing care than those, which were less profitable. While these figures do not consider the variable of remoteness, they are interesting in the questions they raise. If we had data on staffing and on quality of care, then we would know whether the increasing funding spent by the worst financially performing providers translates into better care. An examination of publicly available information reveals that corporate entities listed on the share market are, in fact, meeting their financial targets. We can perhaps attribute this to an increasing number of high care residents who attract the highest government subsidies as well as a reduction in staffing costs. Some of these entities, in generating more profit to fuel acquisitions or IPOs, appear to be restructuring nursing - including nursing rosters.

In 2014, Baldwin et al from the University of Technology evaluated the incidence of sanctioned nursing homes in Australia and found that for-profit nursing homes were sanctioned more than twice as often as not-for-profit homes over a 13-year period<sup>47</sup> and that there is virtually no debate regarding those differences. The report stated:

*"The findings confirm the international literature on the relationship between residential aged care service location, ownership type and the likelihood of sanctions. In the light of the predicted expansion of residential aged care services, policy makers should give consideration to structural elements most likely to be associated with a failure to meet and maintain service standards".*

*"The international literature is quite clear about the fact that not-for-profit services provide better quality care than for-profits,"* the (author of the study) told *Australian Ageing Agenda*.

*"However, there is very little debate about that in Australia, virtually no debate".*

*"Everybody thinks services are all the same and I think this research indicates that they are not the same."<sup>48</sup>*

<sup>43</sup> Care Quality Commission (CQC): Market Oversight of adult social care: <http://www.cqc.org.uk/content/market-oversight-adult-social-care>  
CQC: Market Oversight in adult social care: [http://www.cqc.org.uk/sites/default/files/20150327\\_market\\_oversight\\_guide\\_public.pdf](http://www.cqc.org.uk/sites/default/files/20150327_market_oversight_guide_public.pdf)

<sup>44</sup> Southern Cross saga continues as successor care home firm collapse hits Richmond residents (Liberal Democrats, 6 Mar 2015)

<sup>45</sup> Aged Care Report Card: <http://www.agedcarecrisis.com/aged-care-report-card>

<sup>46</sup> Letter from Minister to ACC: <http://bit.ly/1S6a15x>

<sup>47</sup> Baldwin, R., Chenoweth, L., dela Rama, M.J. & Liu, Z. 2014, (Faculty of Health, University of Technology, Sydney, New South Wales, Australia). 'Quality failures in residential aged care in Australia: The relationship between structural factors and regulation imposed sanctions', *Australasian Journal on Ageing* <http://www.ncbi.nlm.nih.gov/pubmed/24854338>

<sup>48</sup> For-profit providers more likely to be sanctioned: study (Australian Ageing Agenda, 8 Oct 2014): <http://bit.ly/1et9uyF>

# References and Links

Below are a series of links to supporting articles which illustrate the significance of the issues raised in this submission.

- (13 Feb 2015) Researchers warn of two-tier aged care (Australian Ageing Agenda) <http://bit.ly/1HSguQg>
- (1 Mar 2015) Analysis: two-tiered system emerging for aged care (SMH): <http://bit.ly/1BML3qH>
- (23 Feb 2015) Aged care quality arrangements (ABC Radio) <http://bit.ly/1U0NJ9G>
- (15 Jan 2015) Profits rise, quality called into question in aged-care industry (Crikey) <http://bit.ly/1U2zGRY>
- (2015) Baldwin, R., et al., *Residential Aged Care Policy in Australia – Are We Learning from Evidence?* Australian Journal of Public Administration. doi: 10.1111/1467-8500.12131 University of Technology Sydney, <http://onlinelibrary.wiley.com/doi/10.1111/1467-8500.12131/abstract>
- (13 Sep 2014) Low staffing levels in ACT nursing homes put elderly at risk (The Canberra Times) <http://bit.ly/1LJ9Bou>
- (13 Sep 2014) Sad plight of the neglected elderly in aged-care facilities (SMH): <http://bit.ly/1HSiZCh>
- (2014) Baldwin, R., Chenoweth, L., dela Rama, M.J. & Liu, Z. 2014, (Faculty of Health, University of Technology, Sydney, New South Wales, Australia). 'Quality failures in residential aged care in Australia: The relationship between structural factors and regulation imposed sanctions', *Australasian Journal on Ageing* <http://www.ncbi.nlm.nih.gov/pubmed/24854338>
- (26 Mar 2014) Up to 80 per cent of dementia patients in aged care facilities restrained with psychotropic drugs: report <http://www.abc.net.au/news/2014-03-26/alzheimers-psychotropic-drugs/5345322>
- (26 Mar 2014) *The Use of Restraint and Psychotropic Medication in People with Dementia, Alzheimer's Australia* <http://bit.ly/1VH2Jet> Consumer stories: *Alzheimer's Australia report shows misuse of psychotropic medications in people with dementia* <http://bit.ly/1Ip2jUu>; (News release) <http://bit.ly/1KrDDtY>
- (2014) Felicity C. Veal, et al Pharmacological management of pain in Australian Aged Care Facilities <http://ageing.oxfordjournals.org/content/early/2014/06/13/ageing.afu072.full>
- (25 Aug 2013) Care crusade: many who have been let down by the aged care system are being further frustrated by the official channels of complaint (SMH) <http://bit.ly/1OubvHa>
- (2013) Dr Bernoth, et al., 'Two dead frankfurts and a blob of sauce': The serendipity of receiving nutrition and hydration in Australian residential aged care <http://www.ncbi.nlm.nih.gov/pubmed/25632710>
- (22 July 2013) *Deregulation of the aged-care sector has led to staff cuts and lower standards of care for the elderly and frail* (The Courier Mail) <http://bit.ly/1U0NN9j>
- (8 Aug 2011) Media release (Aged Care Crisis): 'Caring for older Australians': an opportunity lost <http://bit.ly/14TEZJm>
- (19 Jun 2011) Media release (AMA): *Medical care in aged care homes would free up more hospital beds* <https://ama.com.au/ausmed/medical-care-aged-care-homes-would-free-more-hospital-beds>
- (21 Jan 2011) Media release (ANF): PC report fails residents, families, nurses and AINs [http://anmf.org.au/media-releases/entry/media\\_110121](http://anmf.org.au/media-releases/entry/media_110121)
- (15 Aug 2010) Media release (AMA): More aged care beds welcome, but medical care for older Australians ignored: <http://bit.ly/1S3UD08>
- (22 Jan 2010) ABC radio - National Interest: Australia's ageing aged care system: <http://ab.co/112Dvhx>
- (29 May 2009) Australia's ageing aged care system (ABC Radio National - Peter Mares): [www.abc.net.au/rn/nationalinterest/stories/2009/2583237.htm](http://www.abc.net.au/rn/nationalinterest/stories/2009/2583237.htm)
- Regulating nursing homes: The challenge of regulating care for older people in Australia (John Braithwaite, BMJ 2001): [http://www.anu.edu.au/fellows/jbraithwaite/documents/Articles/Regulating\\_Nursing\\_2001.pdf](http://www.anu.edu.au/fellows/jbraithwaite/documents/Articles/Regulating_Nursing_2001.pdf)
- Behind open doors – A Construct of Nursing Practice in an Australian Residential Aged Care Facility: [PhD -Anita De Bellis, Lecturer, Flinders University, South Australia]: <http://theses.flinders.edu.au/uploads/approved/adt-SFU20061107.122002/public/02whole.pdf>

**Appendix A**

- (22 Jul 2013) University of Tasmania study finds strong sedatives prescribed at high rate in nursing homes ABC News <http://bit.ly/136ALLo>
- (17 Aug 2013) Premature deaths linked to drugs in nursing homes, ABC Lateline <http://www.abc.net.au/news/2012-08-17/dementia-patients-dying-as-anti-psychotic-drugs-over-prescribed/4204536>
- (14 Aug 2013) Aged care workers cite abuse and neglect of nursing home patients, ABC Lateline <http://www.abc.net.au/news/2013-08-13/aged-care-understaffed-as-nursing-home-patient-numbers-rise/4884056>
- (6 Jan 2014) Aged care drug abuse that points to scandal - *The Age, Comment, Amanda Vanstone (Former Howard government minister)* <http://www.theage.com.au/comment/aged-care-drug-abuse-that-points-to-scandal-20140105-30bni.html>
- (31 Jan 2010) High-quality care for the elderly is a human rights issue (The Age) Beth Wilson, Health Services Commissioner for Victoria: <http://bit.ly/1U0PBz4>