



**Australian Government**  
**Aged Care Quality and Safety Commission**

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# **AN OPTIONS PAPER ON THE REGULATORY POWERS OF THE AGED CARE QUALITY AND SAFETY COMMISSION**

**Advice from the Aged Care Quality and Safety Advisory Council**

**December 2019**

## Executive summary

The legislated functions of the Aged Care Quality and Safety Advisory Council (Advisory Council) are to provide advice to the Commissioner in relation to the Commissioner's functions and, at the request of the Minister, to provide advice to the Minister about matters arising in relation to the performance of the Commissioner's functions.

The Minister for Aged Care and Senior Australians, Senator the Hon Richard Colbeck Formally sought advice from the Advisory Council in October 2019, under paragraph 38(b) of the *Aged Care Quality and Safety Commission Act 2018*, on additional powers the Aged Care Quality and Safety Commission should have to achieve its objectives further to those that will transfer from 1 January 2020.

The advice from the Advisory Council is presented in this options paper framed around eight areas identified for transformational change. The options include work already underway, as well as reforms which would require consideration of legislative change and resourcing.

In preparing the options paper, the Advisory Council has given consideration to the findings of the Interim Report of the Royal Commission into Aged Care Quality and Safety (October 2019). The Advisory Council recognises that learnings from the failures in the standard of care that have been evidenced to date through the Royal Commission are critical to ensure that the aged care regulatory system meets community expectations. In framing the advice, the Advisory Council has also had regard to the recommendations of the Carnell *Inquiry into events at Earle Haven* (October 2019) in identifying and developing priorities for change.

In developing the options outlined in this paper, the Advisory Council has focused on options that move the Commission beyond a traditional regulatory model which has relied on responding after harm has occurred, to one which strengthens accountability for quality and safety and recognises providers as a key part of the solution. The advice notes the need for the Commission to adopt a more proactive approach to engage with those providers at risk of failure and strengthen the level of regulatory supervision *before* harm occurs.

To achieve this objective means equipping the Commission with the right levers to influence provider behaviour, putting in place systems for earlier detection of possible failure, and adopting a more nuanced set of regulatory tools that are adjusted to risk and hold the provider to account. Earlier detection requires, among other things, investment in IT infrastructure and enhanced data analytics capability. Risk-calibrated regulation would be supported by expanding the Commission's toolkit to include enforceable undertakings, infringement notices and appropriate penalties to enable the Commission to escalate its response when a provider is not getting the quality and safety message.

The Advisory Council considers that the work underway to implement public ratings for aged care services should be a high priority on the Commission's work plan. This is critical to better inform consumer choice, build a more transparent system and create impetus for a more strongly performing market. Options for strengthening consumer engagement are also critical to culture shift and an important extension of the Commission's powers.

The Advisory Council also considers that further public value could be achieved by ensuring that providers themselves make available key information to consumers on performance and the actions they are taking to improve performance. The conversation on service quality needs to shift from being about satisfying the regulator to focusing on meeting the needs of consumers. To do this, provider processes for quality assurance must have a greater focus on the involvement of consumers and their representatives.

Home services for aged care consumers are generally acknowledged to present particular challenges in relation to regulation. Increasing effective detection and response to failures in the home services market is recognised as a priority in the options paper. The Commission currently has limited risk detection tools for this segment of the market. Investment in more sophisticated IT enablers and data analytic capability (also required for residential aged care services) is necessary to enable detection of possible harms that are not observable through quality assessment activities. Such capability will also support the application of differentiated regulatory responses in the home services market depending on how care is organised and level of risk to consumers.

The Advisory Council also holds the view that the Commission should work with others to promote improvements in providers' clinical governance and to support systemic learning. This includes promoting evidence of better practice and making better use of feedback on performance and complaints to assist providers to identify and examine their own risks and take action to prevent repeat adverse incidents.

There are eight areas identified for transformational change to regulatory design and practice to equip the Commission to achieve its regulatory objectives.

## **1. Modernise regulatory practices with new technologies and the use of data**

### *1.1 IT architecture and data intelligence management*

Invest in staged development of business to government IT architecture and data management for the Commission to increase internal efficiency and provide for capture and analysis of large volumes of data, creation of regulatory intelligence, and targeting of regulatory resources based on risk.

## **2. Strengthen prudential oversight and governance**

### *2.1 Single regulator of prudential, quality and safety*

Transfer the monitoring of prudential standards to the Commission and establish a specialist financial and prudential standards and monitoring capability to better detect and manage the risks of quality and financial failure.

### *2.2 The right mix of powers to regulate prudential risk*

Review the balance of powers to regulate prudential and financial risks at all levels from provider approval, to ongoing suitability to operate in the system and mechanisms appropriate to self-exit from the system.

### *2.3 Pro-active case management of providers at risk of failure*

Reframe regulatory intervention to heighten supervision and engagement of a provider *before* quality and safety problems are realised. This approach would be supported by proactive case management policy that outlined the approach to regulatory supervision and feedback based on performance and risk.

### *2.4 Improve engagement and accountability of boards*

Develop and implement an integrated strategy to improve the engagement and accountability of boards and governing bodies. Measures could include introduction of an annual declaration by the board or governing body (against the Aged Care Quality Standards or alternatively against Standard 8 for Organisational Governance).

### *2.5 Requirements for suitable persons as key personnel*

Review and strengthen the provisions that would disqualify certain individuals from participating as key personnel.

## **3. Enhance consumer input and engagement**

### *3.1 Expanded consumer engagement by the Commission*

Expand the (narrowly defined) consumer engagement function of the Commission to provide explicit authority for the Commission to directly engage with consumers of Commonwealth funded aged care services rather than having to access them via a provider.

### *3.2 Accreditation requirements for consumer engagement*

Re-purpose accreditation to *face the consumer* and increase the likelihood of consumer-focussed service-wide improvements against the Aged Care Quality Standards.

### *3.3 Responsive complaints processes*

Undertake a review of the Commission Rules and processes for dealing with complaints to simplify complaints processes and align with principles of accessibility, responsiveness and fairness.

## **4. Increase transparency and performance reporting**

### *4.1 Public ratings on the performance of the sector*

Prioritise the work underway to publish performance ratings for aged care services and reports of performance assessments against the Standards.

### *4.2 Provider publication of information and indicators of quality and safety*

Amend legislation to stipulate provider publication of key information to increase transparency about quality and safety for consumers.

### *4.3 Open and transparent dealings with regulators and other 'relevant persons'*

Increase accountability for approved providers and key personnel /persons in charge at a service to be open and transparent in dealings with regulators and other 'relevant persons' (such as advocates and people acting lawfully on behalf of consumers). This should be linked

to infringement notices and a financial penalty that can be issued to persons for failure to comply with the obligation.

## **5. Strengthen regulation of home services**

### *5.1 Lift the bar on market entry*

Strengthen risk-based requirements for provider approval and market entry that can better differentiate the regulatory oversight to fit the type of service and level of risk to consumers.

### *5.2 Consider accreditation of certain segments of the home services market*

Consider accreditation for different segments of the home services market as an additional quality assurance for higher risk services or simply as a market differentiator.

### *5.3 Improve risk detection methodologies*

Improve risk detection methodologies supported by sophisticated intelligence management and analytic capability.

### *5.4 Adopt a code of conduct for the unregistered aged care workforce*

Adopt a national code of conduct to help protect the public by setting minimum standards of conduct and practice for all unregistered aged care workers.

## **6. Expand the range of enforcement powers**

### *6.1 Expand enforcement powers to include enforceable undertakings*

Add enforceable undertakings to the current range of enforcement actions.

### *6.2 Infringement notices*

Introduce infringement notices and civil penalties as a way of deterring and dealing with contraventions that do not meet thresholds for broader compliance action.

## **7. Promote research and best practice**

### *7.1 Promoting an evidence-enabled aged care*

Consider the role of the Commission and others to support dissemination of research and promotion of better practice as well as systematic learning from adverse events.

### *7.2 Incentivise performance through different regulatory treatments*

Differentiate regulatory treatments that can incentivise better practice by recognising segments of the market (i.e. trusted providers) for whom accreditation may be maintained with lower levels of regulatory involvement

### *7.3 Promote leadership capability of key personnel*

Consider how government could provide impetus to leadership development in aged care.

## **8. Collaborate for systemic change**

### *8.1 Drive behaviour change through targeted regulatory campaigns*

Invest in new skills, capability and dedicated resourcing to apply behavioural insights and intensive campaign management to enable the Commission to take on problems at their source in partnership with others with influence, to bring about change.

### *8.2 Understand aged care within the broader context*

Clearly identify and articulate regulatory intent across different service systems to avoid unintended operational impact or legislative duplication, create greater regulatory efficiency and effectiveness, and minimise the burden on aged care providers.

### *8.3 More eyes on quality*

Explore opportunities to strengthen links with public advocates, treating doctors and health professionals who may be in a position to observe the quality of care and services, and ensure that they know how to raise a concern with the Commission and are protected when they do so.

## Introduction

The purpose of the *Aged Care Quality and Safety Commission Act, 2019* is specifically to establish a regulatory framework that:

- protects and enhances the safety, health, well-being and quality of life of aged care consumers;
- promotes aged care consumers' confidence and trust in the provision of aged care services; and
- promotes engagement with aged care consumers about the quality of care and services provided by aged care service providers.

The transfer of certain compliance, enforcement and associated functions to the Aged Care Quality and Safety Commission (the Commission) from the Department of Health (the Department) in 2020 will improve regulatory governance and provide greater clarity of the regulatory model for providers and consumers of care. It will support more effective triage of poor performance into voluntary and enforceable compliance pathways. In the future this will allow the Commission to shift to enforceable regulatory responses when risks are unresolved or escalate, rather than continue to apply the same limited treatments.

However, the *Royal Commission into Aged Care Quality and Safety Interim Report: Neglect (October 2019)*<sup>1</sup> (the Interim Report) and the *Inquiry into Events at Earle Haven* report (November 2019)<sup>2</sup> (the Earle Haven Report) have both highlighted areas of market failure, regulatory failure or community outcry about unacceptable risks that are not being effectively dealt with in the current regulatory framework. There are opportunities to further consider the range of contemporary tools and approaches available to the Commission to improve regulatory effectiveness and outcomes for consumers beyond existing legislative provisions. It is further anticipated that the recommendations of the final report of the Royal Commission into Aged Care Quality and Safety (Royal Commission) will be instrumental in guiding the Government's future regulatory reform.

This paper has also had regard to the recent report *Independent Review of the APS: Priorities for Change, 2019*,<sup>3</sup> (the APS Review). The report is a call to action for the APS to "put the interests of the Australian people at the heart of all it does". This means the focus must be much more on the Australian people and much less on the internal business of the regulator, guided by a deep spirit of service to others. This is the mindset driving the work of the Commission and this focus underpins the priorities for change listed in this paper.

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<sup>1</sup> Royal Commission into Aged Care Quality and Safety Interim Report: Neglect, October 2019. <https://agedcare.royalcommission.gov.au/publications/Pages/interim-report.aspx>

<sup>2</sup> Inquiry into Events at Earle Haven, November 2019. <https://www.health.gov.au/resources/publications/inquiry-into-events-at-earle-haven>

<sup>3</sup> Commonwealth of Australia, Department of the Prime Minister and Cabinet, APS Review: Priorities for change, March 2019 <https://www.apsreview.gov.au/resources/priorities-change>

There are eight areas identified for transformational change to regulatory design and practice to equip the Commission to achieve its regulatory objectives. The priority areas are to:

1. Modernise regulatory practices with new technologies and the use of data
2. Strengthen prudential oversight and governance
3. Enhance consumer input and engagement
4. Increase transparency and performance reporting
5. Strengthen regulation of home services
6. Expand the range of enforcement powers
7. Promote research and best practice
8. Collaborate for systemic change

The paper has avoided an easy assumption that the answer is a more directive deterrence style of regulation, irrespective of whether or not it would be effective. The Commission is seeking the *right response to particular failures*—learning from experience and the external scrutiny of the current system and refocusing regulation on delivering real improvement for consumers. This is consistent with the Commission’s risk-based regulatory approach<sup>4</sup> and intent to use the full range of its regulatory functions in prevention, detection and deterrence to respond to the performance, motivational diversity, and behaviour of providers.

The actions under each priority area are summarised at [Appendix A](#) which provides an easy reference for the areas of focus in this paper.

## The integrated aged care regulator

With the passage on 5 December 2019 of the *Aged Care Legislation Amendment (New Commissioner Functions) Act 2019*, the following regulatory functions will transfer from the Department of Health (the department) to the Commission on 1 January 2020:

- Compulsory reporting
- Provider approvals
- Quality compliance
- Prudential compliance
- Home care investigations

Following the integration of transferred functions, the Commission becomes the single independent regulator of quality and safety for Commonwealth subsidised aged care providers. The Commission will have regulatory functions spanning provider entry, education and information, quality monitoring, complaints resolution, compliance and enforcement, and will become the primary point of contact for providers and consumers in relation to quality of care and services.

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<sup>4</sup> The Aged Care Quality and Safety Commission Regulatory Strategy 2019.  
<https://www.agedcarequality.gov.au/sites/default/files/media/ACQSC%20Regulatory%20Strategy%202019.pdf>

This integration provides the Commission with an expanded authority with enforceable consequences for providers, and the opportunity to more closely align its responses with the risks and issues, and outcomes sought. The Commission's expanded functions also drive a greater focus on the regulation of providers in shaping regulatory responses. This perspective offers new approaches for the Commission in interventions at a provider level and in actions to lift the performance of the sector as a whole.

## Improving outcomes and managing risk

Learning from the failures in the standard of care that have been evidenced to date through the Royal Commission hearings is critical to ensure that the aged care regulatory system meets community expectations and promotes quality and safety for consumers. The Interim Report has shown instances of individual, organisational and regulatory failures to prevent harm to consumers. A high-performing aged care system needs **all** three elements to be focused on improving outcomes and managing risks to the safety, health and wellbeing of consumers.<sup>5</sup>

Providers have significant responsibilities and accountabilities. They are required to:

- manage risks in service delivery at the point of care for individual consumers, where service staff apply relevant practice standards, monitor their effectiveness and solve quality problems to improve outcomes for consumers;
- manage risks systemically in the organisation, monitored by senior managers who seek feedback and in response, improve management systems, care policies, practices, and culture to ensure and sustain improvements and share organisational learning; and
- oversee risk at the level of approved provider and governing body, setting a culture of quality and safety to ensure that consumers are central to the business of the organisation, that staff are supported to provide high-quality care and that systems and reporting are resourced and effective.

The Commission's focus should be on holding providers to account for addressing all the above requirements and taking effective action when they fall short of this. What this means for regulatory practice is that the Commission should use all levers to strengthen provider accountability for managing risks (prevention, detection, learning and correction) and promoting quality care for consumers. This includes promoting system-wide learning and making better use of evaluative feedback loops through information on performance and complaints to assist providers to identify and examine their own risks for a stronger performing market.

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<sup>5</sup> Organisation for Economic Co-operation and Development (OECD) 2010, Risk and Regulatory Policy: Improving the Governance of Risk.

## Further regulatory powers and improved practices to support the Commission's objectives

The following options are suggested to address particular problems highlighted in the *Royal Commission into Aged Care Quality and Safety Interim Report: Neglect* (October 2019) and the *Inquiry into Events at Earle Haven* report (November 2019).

### 1. Modernise regulatory practices with new technologies and the use of data

#### What is shaping our thinking

- The Commission faces the same challenges as regulators nationally and internationally to effectively detect harm, manage new service models and understand the regulatory implications of new players.
- Under-investment in digital and data infrastructure will risk leaving the Commission with manual processing and inadequate systems that do not support effective risk-based regulation.
- The APS Review<sup>6</sup> and the Government's Digital Transformation Strategy, 2018<sup>7</sup>, have highlighted the need to modernise regulatory practices through digital technologies that provide for efficient capture and analysis of large volumes of information, consumer feedback on a greater scale, and customised information on performance.
- The Review of National Aged Care Regulatory Processes, 2017 (The Carnell Paterson Review)<sup>8</sup> recommended the development of information systems and data management to undergird a risk-based approach to the allocation of regulatory resources.
- Global experience in the use of data analytics in regulation points to a significant opportunity to reprioritise time, effort and resources for complex, multivariate analyses of large data repositories, to underpin the Commission's capacity to provide effective oversight of risk.

#### What we think is needed

##### ***1.1 IT architecture and data intelligence management***

1.1 Invest in staged development of business to government IT architecture and data management for the Commission to increase internal efficiency and provide for capture and analysis of large volumes of data, creation of regulatory intelligence, and targeting of regulatory resources based on risk.

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<sup>6</sup> Commonwealth of Australia, Department of the Prime Minister and Cabinet, APS Review: Priorities for change

<sup>7</sup> Digital Transformation Strategy Vision 2025 We will deliver world leading digital services for the benefit of all Australians <https://dta-www-drupal-20180130215411153400000001.s3.ap-southeast-2.amazonaws.com/s3fs-public/files/digital-transformation-strategy/digital-transformation-strategy.pdf>

<sup>8</sup> Review of National Aged Care Regulatory Processes, 2017. K Carnell and R Paterson.

<https://www.health.gov.au/sites/default/files/review-of-national-aged-care-quality-regulatory-processes-report.pdf>

Digital age business enablers and interfaces with stakeholders can reduce the effort needed to maintain or improve regulatory outcomes.<sup>9</sup> By making sense of huge amounts of data to predict trends and identify potential risks in ways that were not previously possible through manual analysis, regulators can discover and use patterns that can help make informed decisions. It can also help regulators analyse data about their interactions with the sector.<sup>10</sup> This requires a significant investment in IT infrastructure.

The Commission needs analytic and predictive capability to optimise monitoring and enforcement efforts as well as to stay ahead of emerging risks. Many of the Commission's activities are resource intensive "on the ground" efforts so there is a need to better understand risks and look at new and innovative ways of targeting higher risk operational and delivery processes particularly for the home services sector. This should move the regulator away from being locked into one-size-fits-all deployment of resources (such as the annual unannounced visit), and enable more flexible use of regulatory methods and resources to monitor compliance based on an understanding of the level of assessed risk to quality and safety.

The Commission's strategic, operational and case level regulatory decisions need to be supported by digital technologies and data analytic capabilities that are not currently available to the Commission. Such technologies could modernise regulatory practice of the Commission by providing for efficient capture and analysis of large volumes of information about providers and larger scale consumer feedback.

Much time is currently spent on tasks which involve highly automatable data collection and processing. Many individual pieces of information about a provider are handled manually in processes currently managed by the Commission and the Department. This includes financial and prudential reporting, material changes to key personnel, management structure and third parties, quality indicator data, mandatory reporting (and further development of the serious incident response scheme).

Investment in automation and digitisation using new technologies and business tools would streamline the interface between the Commission, regulated entities and those the Commission aims to protect - consumers. Such tools can relieve the Commission of the low-level operational business processes involved in handling and administering information and allow the Commission to shift into, focus on and become more expert in the analysis of information leading to the formation and application of regulatory intelligence.

## **2. Strengthen prudential oversight and governance**

### **What is shaping our thinking**

- The Earle Haven report highlighted that the regulatory system was slow to respond to warning signs and enforcement action ultimately had limited public value in circumstances where the relationship between the provider and the operator of the

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<sup>9</sup> Deloitte Insights. The Regulator's new toolkit. Technologies and tactics for tomorrow's regulator. <https://www2.deloitte.com/tr/en/pages/public-sector/articles/the-regulators-new-toolkit.html>

service was already highly contested with too little regard for the quality and safety of services to consumers.

- The Earle Haven report was critical that the current regulatory system failed to appreciate and act on the mounting risks of financial and contractual arrangements, and enforcement action was too late to deter failure with serious consequences for service continuity to consumers.
- Emerging models of home-based care and different profiles and iterations of service and contractual configurations reinforce the need for the Commission to have a sharper focus, supported by appropriate legislative requirements and powers, on ensuring that the approved provider has a strong and robust governance structure.
- Findings from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, including that “too often, boards did not get the right information about emerging non-financial risks; did not do enough to seek further or better information where what they had was clearly deficient; and did not do enough with the information they had to oversee and challenge management’s approach to these risks’.<sup>11</sup>
- The other broad lesson from the history of regulation is that the policy advice and funding agency should be separate from the independent regulator or the body that administers the law.<sup>12</sup>

## What we think is needed

### ***2.1 Single regulator of prudential, quality and safety***

2. 1 Transfer the monitoring of prudential standards to the Commission and establish a specialist financial and prudential standards and monitoring capability to better detect and manage the risks of quality and financial failure.

From 1 January 2020, after transfer of identified regulatory functions from the Department to the Commission, these two agencies will still share responsibility for regulatory oversight of provider performance and risk to consumers. The Department maintains responsibility for monitoring providers through the receipt and assessment of annual financial reports and prudential statements while the Commission will take forward responsibilities for enforcement of prudential standards. The corporate governance practices of providers will continue to be the subject of both the Prudential Standards (monitored by the Department) and the Aged Care Quality Standards (monitored by the Commission). The Department and the Commission are establishing shared governance and arrangements in a Memorandum of Understanding to describe the different roles in the regulatory oversight of provider governance from 1 January 2020.

The transfer to the Commission of responsibility for monitoring prudential standards was contemplated by the Department and the Commission in planning the 2020 legislative changes but was not progressed because the Department has carriage of the risk to government if an approved provider does not maintain sufficient liquidity to ensure that they can refund (in accordance with the Act and the Fees and Payments Principles)

<sup>11</sup> A keynote address by ASIC Chair James Shipton at the Australian Institute of Company Directors, Essential Director Update, Sydney, 2 October 2019

<sup>12</sup> Productivity Commission, 2011, Caring for Older Australians.

refundable deposit and bond balances (including entry contributions) and maintain a prudent margin to provide a buffer against unexpected developments. The information on number and value of the refundable deposits, accommodation bonds and entry contributions held, whether refunds were paid on time, and whether they complied with prudential standards, allows the Department to monitor the risk of prudential failure.

However, the function of monitoring financial and prudential risk would enable the Commission to adopt a more proactive approach to case management and regulatory supervision where warning signs against prudential standards were evident. A provider's governance, financial stability, viability and management are directly associated with the provider's ability to provide high quality care. Failures in quality and safety will also impact as non-financial sources of risk for governing bodies.

Further maturation of an integrated risk-based regulator would see the Commission take on the monitoring and oversight of prudential compliance (underpinned by high level capability) so that the one regulator was responsible for both detection and enforcement of prudential compliance and that this was undertaken in an *integrated risk model* using data from a range of sources. This would ensure a more comprehensive understanding of the relationships between quality and safety risks, management and corporate governance. It would also ensure that the Commission was better equipped to proactively oversee these risks with strong regulatory signals to the market.

## **2.2 The right mix of powers to regulate prudential risk**

2.2 Review the balance of powers to regulate prudential and financial risks at all levels from provider approval, to ongoing suitability to operate in the system and mechanisms appropriate to self-exit from the system.

Following transfer of the Provider Approval functions to the Commission in 2020, the powers to seek information about the finances and suitability of providers (reflecting the current powers in Division 9 of the Aged Care Act) will sit with both the Commissioner and the Secretary.

The Commission will need the powers to regulate not only presenting quality issues but also to assess and enforce the financial management policy components where they are likely to lead to lower quality or unsustainable care such as seen in the case of Earle Haven. This requires the right balance of enforcement powers to regulate entry to the Aged Care system, ongoing suitability to operate in the system and mechanisms appropriate to self-exit from the system. The power to sanction should be more than just limiting access to the system (via commonwealth subsidies); it should also include legislated infringement notices and financial penalties where appropriate.

The Earle Haven Report has recommended a range of priority reforms to aged care prudential arrangements to provide greater oversight of financial and commercial arrangements. The Department has already commenced action in this area with providers notified of the need to update any changes to arrangements in relation to key personnel and third-party contractual arrangements which may impact their suitability as a provider. This information should feed into the systematic risk-based approach.

### **2.3 Pro-active case management of providers at risk of failure**

2.3 Reframe regulatory intervention to heighten supervision and engagement of a provider *before* quality and safety problems are realised. This approach would be supported by proactive case management policy that outlined the approach to regulatory supervision and feedback based on performance and risk.

To better prevent the type of collapse in aged care service delivery that was experienced at Earle Haven, the Commission should have a sharper focus and adopt a more proactive approach to case management to engage with those providers where there are red flags related to governance and oversight of the service. This approach would be supported by case management policy that outlined the approach to regulatory supervision and feedback based on performance and risk.

The Australian Securities and Investments Commission (ASIC) is focusing on examining director and officer oversight of non-financial risk<sup>13</sup> and is applying a regulatory approach that is increasingly using escalating levels of supervision.

Active case management of providers and more pro-active contact based on provider risk and the regulator's level of concern would mean heightened pre-emptive engagement, quality assessment and monitoring. Feedback to the approved provider would aim to highlight where the regulator has concerns so that problems can be addressed *before* they cause significant harm. This means ensuring appropriate resourcing to undertake a mixture of proactive regulatory contact with providers as well as performance assessments and follow ups where issues are evident.

For example, active case management of an approved provider may, in some instances, prompt a referral to independent advisory or support services. To support improvements to governance practices, the investment has already been made by the Commonwealth government in the provision of accounting and business advisory services to approved providers of residential and home care services to review and assess their organisation, provide advice, business management and financial strategies to support their operation.

In cases where an approved provider is not operating to the expected standards in the market, escalating engagement and a range of enforcement actions should include legislated financial penalties on directors or key personnel where it is appropriate. This includes mechanisms to manage poor performers out of the sector where self-exit from the system is the best outcome.

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<sup>13</sup> Corporate Governance Taskforce Director and Officer Oversight of Non-financial risk report.  
<https://asic.gov.au/regulatory-resources/corporate-governance/corporate-governance-taskforce/>

## **2.4 Annual declaration by the board or governing body**

2.4 Develop and implement an integrated strategy to improve the engagement and accountability of boards and governing bodies. Measures could include introduction of an annual declaration by the board or governing body (against the Aged Care Quality Standards or alternatively against Standard 8 for Organisational Governance).

The board or governing body of an aged care organisation has ultimate responsibility for the governance of that organisation. In addition to its fiduciary and other corporate duties to act in good faith and comply with all relevant laws, the organisation's governing body is accountable for overseeing the delivery of safe and quality care and services. This means that among its other obligations, the board must ensure that there is the right culture and effective organisation-wide governance systems relating to care and services, including clinical governance where clinical care is provided.

The Commission should develop an integrated strategy to engage with boards and governing bodies. The board or governing body needs to step back and consider quality and safety risk exposure holistically and prioritise the resolution of root causes of problems. Requiring the board or governing body to make an annual declaration of assurance following self-assessment against the Standards could focus directors' attention on how they ascertain to their satisfaction that consumers are central to the business of the organisation, that staff are supported to provide high quality care, and that systems and reporting are resourced and effective. This measure, which is used in the regulation of hospitals and health services in Australia, would raise awareness, challenge tacit acceptance of risk and help set a quality and safety agenda for governing bodies.

Further, the information provided in the declaration would assist the Commission to understand how the governing body ensures that there is an effective quality system and defined cultural expectations and regularly measured progress towards achieving its strategy for consistently high quality care.

It would also provide a basis for the Commission to assess Standard 8 - Organisational Governance by cross-checking the declaration of assurance against what is found to be happening "on the ground" through its quality assessment and monitoring functions. It would support a more tailored conversation with the approved provider when areas for improvement have been identified.

## **2.5 Requirements for suitable persons as key personnel**

2.5 Review and strengthen the provisions that would disqualify certain individuals from participating as key personnel.

Key personnel including practice managers and directors of nursing in a service have significant influence at organisational and practice levels to apply (intra-service) regulation to meet the needs of consumers. The experience of the Aged Care Quality and Safety Commission is that failures in provider governance and leadership can be due to key personnel not being up to the job.

*The Aged Care Act, 1997* defines key personnel at Section 8-3A as including:

- person(s) responsible for the executive decisions of the entity includes Directors under the *Corporations Act 2001* or a member of the entity's governing body.
- persons with authority or responsibility for (or significant influence over) planning, directing or controlling the activities of the entity,
- responsibility for the nursing services provided by the service; and
- any person who is responsible for the day-to-day operations of the service, whether or not the person is employed by the entity.

The current regulation of this area sets a fairly low bar. It prevents disqualified individuals from holding such positions. Individuals are disqualified from holding key personnel positions if they have been convicted of an indictable offence, are insolvent under administration, or of unsound mind (mentally incapable of performing duties). Consideration should be given to strengthening the provisions in an expanded fit and proper person declaration that would disqualify a broader range of individuals from participating as key personnel.

Alongside this, it is noted that it is already open to the Secretary (or in 2020, the Commissioner) to revoke approval of approved provider status if the provider (including key personnel) is considered no longer to meet the 'suitability' requirements under Section 8-3 of the *Aged Care Act, 1997*.

### **3. Enhance consumer input and engagement**

#### **What is shaping our thinking**

- The Royal Commission has highlighted instances where the regulatory system has not adequately considered and acted on the concerns of consumers and families.
- The Interim Report also raised issues related to the barriers preventing some consumers from being able to speak up and participate in a true partnership with providers in planning and delivering their care and services. These barriers include the information, status and power imbalances and fear of retribution that many exist in the relationship between consumers and some aged care providers.
- The Carnell Paterson Review criticised the sporadic involvement of consumers in quality and safety and the constraints on sampling for consumer experience interviews. The report recommended consumer experience reporting online so that consumers, their families and carers can provide information year-round, and samples increased to 20 per cent of consumers or their representatives to ensure that findings can be reliably generalised and/or significant variation in views and experiences identified.
- The importance and value of involving the consumer, carer and family in care planning and decision-making, and providing person-centred care, is recognised in the Aged Care Quality Standards. Consumer participation can occur at the individual, service and system level.

- The Commission can learn from the approaches of other jurisdictions nationally and internationally experimenting with better engagement portals for citizens utilising services.<sup>14</sup>

## **What we think is needed**

### **3.1 Expanded consumer engagement by the Commission**

3.1. Expand the (narrowly defined) consumer engagement function of the Commission to provide explicit authority for the Commission to directly engage with consumers of Commonwealth funded aged care services rather than having to access them through a provider.

Consumers are entitled to expect that the Commission is listening and responding to their feedback. It follows that the Commission should have explicit authority and a funded program of work to directly engage with consumers of Commonwealth funded aged care services separate from the Commission's contact with approved providers.

This will enable the Commission to reach a greater number of consumers directly (especially consumers of home services) and assist the Commission to focus on areas of risk in its regulatory and education functions. A stronger consumer engagement function for the Commission would also increase public confidence in the regulatory system.

Further, on establishment of the Commission in 2019, the education functions of the former Australian Aged Care Quality Agency were expanded beyond aged care providers to include aged care consumers, their representatives, and the public. Building the Commission's capacity to undertake a wider range of education and engagement activities about matters relating to its functions could empower consumers through supporting their knowledge, capacity and confidence to act.

### **3.2 Accreditation requirements for consumer engagement**

3.2 Re-purpose accreditation to *face the consumer* and increase the likelihood of consumer-focussed service-wide improvements against the Aged Care Quality Standards.

Concerns have been raised that accreditation and quality assessment processes have become about "just" satisfying the regulator (or "ritualistic compliance") rather than supporting systemic organisational analysis and driving necessary change and improvement.

However, it does not follow that accreditation has little value. There is evidence that accreditation can support systematic organisational analysis and ongoing improvement by a service, with consumers, staff and managers reflecting on the performance of the organisation, acting on learnings and making changes. There is huge potential to turn accreditation to face the consumer and increase the likelihood of consumer-focussed service-wide improvements against the Aged Care Quality Standards. To do this, existing accreditation processes need to be re-purposed to focus on the involvement of consumers and their representatives.

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<sup>14</sup> Commonwealth of Australia, Department of the Prime Minister and Cabinet, APS Review: Priorities for change

This includes requiring providers to:

- conduct consumer experience interviews to seek structured feedback on the consumer experience of quality of care and services;
- involve consumers in the provider's self-assessment of the service against Quality Standards;
- share and ideally jointly develop with consumers the provider's plan for continuous improvement of the service with respect to quality and safety;
- communicate with and provide feedback to consumers about the outcomes of re-accreditation and compliance monitoring visits.

### **3.3 Responsive complaints processes**

3.3 Undertake a review of the Commission Rules and processes for dealing with complaints to simplify complaints processes and align with principles of accessibility, responsiveness and fairness.

The Royal Commission has heard that the complaints system can be hard to access, slow to react and unresponsive to the concerns of the complainant. This is a core function of the Commission and fundamental to achieving its objectives, however the Aged Care Quality and Safety Commission Rules, 2018 (Commission Rules) are prescriptive in terms of process, and the language does not align with community expectations.

Undertaking a review of the Commission Rules and processes for dealing with complaints would allow the Commission to simplify complaints processes to align principles of accessibility, responsiveness and fairness to build greater trust and confidence in the system. This review would include a more systematic approach for connecting the insight gained from complaints back into the aged care industry (known as feedback or reflective practice).

This would help support the Commission's objective of promoting confidence in aged care service delivery. It would also ensure that insight and learning from consumer feedback can form a greater component of the information and education available to the sector as a whole and drive consumer-focussed improvements in care.

## **4. Increase transparency and performance reporting**

### **What is shaping our thinking**

- The Royal Commission Interim Report has criticised the system for a lack of fundamental transparency in communication, reporting and accountability.
- While providers are subject to defined mandatory reporting obligations to government, there are no requirements for providers to publish information themselves relating to quality and safety performance.
- Too often it becomes apparent that significant matters relating to quality and safety at a service have not been disclosed to consumers and not made known to the Commission during monitoring activities.

- A theme in the recent report *The Independent Review of the APS: Priorities for Change, 2019*<sup>15</sup> recognises that relationships and respect of the community and trust in the regulator is underpinned/dependant on commitments to greater transparency and willingness to be held to account, regular release of the valuable data and research the APS gathers and produces, and best practice approaches to engaging meaningfully with the public.
- Greater investment in information for consumers and their families, especially around the expected standards for care and services, will better equip consumers and their families to make informed choices about their services, participate in issues of quality and safety, partner with their services in the planning and delivery of care, and orientate aged care organisations to support such information and partnerships.

## What we think is needed

### 4.1 Public ratings on the performance of the sector

4.1 Prioritise the work underway to publish performance ratings for aged care services and reports of performance assessments against the Standards.

The development of more sophisticated supporting IT infrastructure (See *1.1 IT architecture and data intelligence management*), and a renewed focus on impacts and outcomes rather than inputs and process, present an opportunity to rethink how the Commission designs and delivers on public reporting. The Independent Review of the APS: *Priorities for Change, 2019*<sup>16</sup> articulates the risk, which is applicable to the Commission, of being perceived by stakeholders to be a closed book, reflecting a risk-averse culture and excessive concern to avoid providing inaccurate or misleading information. Sharing more of its information publicly will help the Commission to deliver better outcomes and earn public trust.

The Commission is currently working with the Department to develop a publicly reported rating system for quality and safety of residential aged care service. This is on track for implementation from 1 July 2020 on the MyAgedCare website. The ratings will provide a trusted source of information for consumers about quality and safety to drive improvement and support consumer choice.

The first phase of ratings design is based on, and integrated with, outcomes of the Commission's regulatory pathway for quality and safety so that the public information is mutually supportive and reinforces other regulatory actions (such as sanctions) that the Commission is taking to drive improvement under new Aged Care Quality Standards. The published rating will be a strong public signal from the regulator about the level of quality and safety at a service.

The model should mature over forward years to include other inputs such as from the proposed serious incident response scheme (being designed to expand on the current compulsory reporting obligations). The ratings could also be applied to differentiate the performance of home services in due course.

<sup>15</sup> Commonwealth of Australia, Department of the Prime Minister and Cabinet, *APS Review: Priorities for change*

<sup>16</sup> Commonwealth of Australia, Department of the Prime Minister and Cabinet, *APS Review: Priorities for change*

Complementing the above initiative is the delivery of simplified plain English reports to be published along with the existing Consumer Experience Reports. This information will link to the MyAgedCare site so that when viewing the performance rating, the underpinning assessment information is available via a “view latest assessment report” tab.

The Commission has implemented quarterly publication of sector performance data relating to its regulatory and complaints functions and is also publishing monthly information identifying services where there has been a finding of serious risk or a direction given pursuant to a complaint. Greater transparency of information about a range of regulatory activities and public reporting on performance will drive the right behaviour by providers and support greater choice by consumers.

#### **4.2 Provider publication of information and indicators of quality and safety**

4.2 Amend legislation to stipulate provider publication of key information to increase transparency about quality and safety for consumers.

The Aged Care Quality Standards require open disclosure as an element of organisational wide governance systems and although there are defined mandatory reporting obligations to government, there are no requirements for providers to publish information about their own performance such as accreditation status or plans for continuous improvement.

Further public value could be achieved by ensuring that providers themselves provide key information to consumers on performance and the actions they are taking to improve performance. Legislation should require an approved provider to:

- display the service’s accreditation certificate in the aged care service and publish its current accreditation status on the service’s website.
- make available to consumers the approved provider’s plan for continuous improvement<sup>17</sup> under the Aged Care Quality Standards, in relation to a service.
- publish the latest feedback from consumers in the Consumer Experience Report
- publish performance against a minimum set of quality indicators (complementing the government’s own data collection of these measures).
- publish other key information relevant to quality and safety such as staffing models.

This would bring this type of information closer to the point of care for consumers, enhance trust between providers and consumers and strengthen the feedback loop at an organisational level to evaluate and improve service delivery. Consumers themselves will come to expect this of providers and ask questions when this is not happening.

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<sup>17</sup> Under Section 2.28 of the Quality Agency Principles, the approved provider must have a plan for continuous improvement that explains how the approved provider will comply with its obligations of continuous improvement in relation to the service.

### **4.3 Open and transparent dealings with regulators and other ‘relevant persons’**

4.3 Increase accountability for approved providers and key personnel /persons in charge at a service to be open and transparent in dealings with regulators and other ‘relevant persons’ (such as advocates and people acting lawfully on behalf of consumers). This should be linked to infringement notices and a financial penalty that can be issued to persons for failure to comply with the obligation.

The Royal Commission has been critical of cases where a lack of openness and transparency with consumers and their families was evident. Under the Aged Care Quality Standards, service providers are expected to demonstrate open disclosure in line with a culture of open communication and transparent processes. This includes organisation-wide systems to support communication with consumers about incidents, including explaining what happened, apologising and outlining the steps the organisation is taking to address any immediate impacts and prevent it from happening again.

However all too often it is evident that significant matters relating to quality and safety at a service have not been disclosed to consumers and not made known to the Commission during monitoring activities. In some instances, an adverse event is only brought to the Commission’s attention through other processes such as coroner’s inquiries.

There need to be positive obligations on the provider and key personnel /persons in charge at a service to be open and transparent in dealings with regulators and other ‘relevant persons’ (such as advocates and people acting lawfully on behalf of consumers) in relation to care and services. This may enable better advocacy and consumer protection mechanisms for more vulnerable consumers.

The Care Quality Commission model in the United Kingdom is of interest. Providers are subject to an explicit duty of candour in dealing with the regulator. Introduction of a similar provision in Australia could be linked to infringement notices and a financial penalty that can be issued to persons for failure to comply with the obligation.

## **5. Strengthen regulation of home services**

### **What is shaping our thinking**

- The consumer preference for care at home is increasing significantly.
- The Royal Commission Interim Report has criticised waiting times for home care packages arising from a gap between demand and supply.
- Emerging models of home-based care, the range of different service profiles, and changes in service configuration create specific challenges for the Commission to understand these arrangements and how they are governed to support quality and safety
- The accumulation of unspent funds by home service providers is a prudential risk that could indicate potential underservicing and/or over assessment of consumer needs.
- There is some evidence of sharp practice and overcharging or under-delivery of services (noting that the extent of these practices requires further assessment).

- Growing dissatisfaction as judged from increasing home care complaints is outstripping growth in services and frequently relates to fees and charges or communication around fees and charges.
- Levels of non-compliance particularly with new expectations under the Aged Care Quality Standards are expected to trend upwards placing further pressure on Commission resources.
- The Commission has a limited range of risk detection tools. It is funded for quality reviews undertaken at the service every three years. However, the response is largely one-size-fits-all due to the lack of a systematic way of categorising service types and risk.
- The Royal Commission has released a Consultation Paper<sup>18</sup> that sets out key design considerations for the future aged care system. Such fundamental questions about the system design will influence the way that the regulatory framework responds.

### **5.1 Lift the bar on market entry**

5.1 Strengthen risk-based requirements for provider approval and market entry that can better differentiate the regulatory oversight to fit the type of service and level of risk to consumers.

It is likely that any changes to the service offerings and delivery of models for aged care of the kind canvassed in the Royal Commission’s December 2019 consultation paper would require changes in the way aged care services are regulated.

Entry to the aged care system is a critical regulatory lever. It makes sense to apply a risk-based approach from the first opportunity, namely on application for entry to the market. Depending on the way care is organised, this could mean a tiered approach to approval for market participation, with higher levels of scrutiny of providers who are applying to deliver the higher risk and more complex types of care and services.

More effective vetting of providers seeking to enter the home care market should set a higher bar for entry for those services that present a higher risk for aged care consumers. This risk treatment would then determine the risk category (verifiable over time) and the type of compliance monitoring and oversight required by the Commission.

Options for differentiating the risk at entry to the scheme could consider:

- the type of service being provided e.g. personal and clinical care would necessarily be higher risk than gardening or home maintenance, or;
- the level of service package e.g. a level 4 package would be higher risk than a level 1 package.

The Commission is currently constrained in differentiating the regulatory treatment by service type because of the design of the home care funding packages (requiring an approved provider to be able to provide all services), and a lack of clarity in the regulatory

<sup>18</sup> Aged Care Program Redesign: Services for the Future, Consultation Paper 1, Dec 2019. Royal Commission into Aged Care Quality and Safety.

data about what services are being provided to individual consumers. The Commission Rules prescribe that a quality review is undertaken at the service every three years. This approach is largely one-size-fits-all due to the lack of a systematic way of categorising service types and risk.

The Department has recently updated the provider approval forms and operating procedures to update information on material changes and key personnel. Setting the right bar for entry could also be supported through a recoverable fee.

The Commission should also introduce “nudge” and behavioural insights to the regulation of home services provider approval. One such option would be to communicate that provider approval *may* be subject to an interview. This could be effective in deterring applicants with little starting capability and minimal interest in investing to meet the required standards of care and services. It need only be deployed on a risk basis to a sample of providers who are proceeding to a later stage of processing their application.

### **5.2 Consider accreditation of certain segments of the home services market**

5.2 Consider accreditation for different segments of the home services market as an additional quality assurance for higher risk services or simply as a market differentiator.

Accreditation as a regulatory mechanism could be applied to all providers or to some higher risk services offered by particular providers. Accreditation is aimed at assuring consumers that the organisation accredited is competent and has the capacity to manage the function accredited. It promotes the proactive efforts of providers to meet quality expectations and focus on service and organisation level performance. Accreditation would provide an additional tool in home care regulation because the consequence of poor performance is that accreditation can be varied or revoked based on an assessment against the Quality Standards.

Options for phased implementation may include introducing accreditation as a mandatory requirement for certain forms of care or making accreditation available as an option for providers seeking to differentiate themselves in the market. Accreditation would attract a fee for service under the Government’s charging framework. A contestable market in accreditation for home care could be considered, given the similarities with service types in NDIS and some health practice accreditation schemes.

### **5.3 Improve risk detection methodologies**

5.3 Improve risk detection methodologies supported by sophisticated intelligence management and analytic capability.

The Commission’s risk detection tools are currently limited to unannounced assessment contacts and three-yearly quality reviews undertaken at the service. However, the lack of a systematic way of categorising service types and risk prevents any tailoring of the response. While information from complaints and other intelligence sources is used to prioritise visits, this is largely reactive. The 2019-20 budget measure to develop a risk-profiling and information sharing tool for home services will assist but is in early development.

Investment in IT architecture and data intelligence management for the Commission would increase internal efficiency, and provide for efficient capture and analysis of large volumes of public comments. (Refer priority 1 of this paper). The Commission's strategic, operational and case level decisions for regulation of home services need to be supported by sophisticated intelligence management and analytic capability that is not currently available.

For the regulator, there is minimal visibility of actual service delivery and difficulties reaching a sufficient number of consumers to confirm the quality of care. The Commission would benefit from more direct engagement with home services consumers, for example through surveys, rather than doing this through approved providers. The Commission should also be resourced to undertake a risk-based program of sampled visits to consumers' own homes when performing its regulatory functions. This authority was given to the Commission in 2019 but has not been operationalised.

#### ***5.4 Adopt a code of conduct for the unregistered aged care workforce***

5.4 Adopt a national code of conduct to help protect the public by setting minimum standards of conduct and practice for all unregistered aged care workers.

Most aged care workers practise in a safe, competent and ethical manner. However, there is a small proportion who present a serious risk to the public because they are incompetent or impaired, or engage in exploitative, predatory or illegal conduct such that if they were a registered practitioner, their registration would be cancelled and their right to practice withdrawn. While there are powers to cancel the registration of a registered health professional, in aged care there are limited avenues to deal with incompetent or unethical behaviour by aged care workers who are not registered. There is also an unacceptable risk of unregistered caregivers moving from one care setting to another without safeguards (such as when previous abuse has occurred).

A national code of conduct could help protect the public by setting minimum standards of conduct and practice for all unregistered aged care workers. Precedents for such an arrangement exist in adjacent sectors. The Council of Australian Governments (COAG) has endorsed a national code of conduct for unregistered health care workers. It will set national standards against which disciplinary action can be taken and if necessary a prohibition order issued, in circumstances where a health care worker's continued practice presents a serious risk to public health and safety. The NDIS Quality and Safeguards Commission also has a Code of Conduct which sets out the expected behaviours of workers and providers who deliver NDIS supports.

Options for oversight of such a scheme in aged care, which could be applicable to both home services and residential services, should include consideration of how this can join up to streamline safeguarding across the unregistered workforce in health, aged care and disability service settings and to ensure that unsuitable individuals do not move between systems and continue to expose vulnerable people to potential harm.

## 6. Expand the range of enforcement powers

### What is shaping our thinking

- The Commission has a strategic intent to promote an aged care system that develops safer systems of care, inculcates a culture of safety and quality, and learns from mistakes, while providing the oversight that can assure the community that aged care services are operating as they should, including working on continuous improvement.<sup>19</sup>
- The current regulatory regime for aged care has a limited range of punitive sanctions available – which are primarily directive - in response to failures in care. The range of available sanctions cannot be easily tailored to a wide range of provider circumstances.
- Restrictions on subsidies are not always effective in promoting sustainable improvements in care and services.
- The Regulatory Powers Act (Standard Provisions), 2014 provides a broader range as an accepted baseline of powers required for an effective monitoring, investigation or enforcement regulatory regime.

### **6.1 Expand enforcement powers to include enforceable undertakings**

#### 6.1 Add enforceable undertakings to the current range of enforcement actions.

Enforceable undertakings are commitments by providers that are enforceable through a court order. They are 'offered' by a provider where the regulator has identified a concern or non-compliance. The details of the undertaking are negotiated by the regulator and provider and must be accepted by the regulator. They can allow for a range of actions that can include positive obligations such as taking certain actions, undertaking research, consumer engagement, publishing findings for the benefit of the wider sector and public information.

Enforceable undertakings can go beyond what is currently available with existing sanctions with the purpose of understanding, correcting and preventing the original non-compliance and its underlying causes. In this way they can influence sector improvements other than those of the regulated providers themselves. Cases can be published to support system-wide learning.<sup>20</sup>

Enforceable undertakings are a good fit for responsive risk-based regulation. While the Commission does not currently have these powers, they could be made available with minor legislative changes to enliven the Standards Provisions Act. They would provide the Commission with an enforcement method in a responsive hierarchy of sanctions, tailored to address the level and nature of non-compliance as well as the characteristics of the service.

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<sup>19</sup> Aged Care Quality and Safety Commission Regulatory Strategy, 2019.

<https://www.agedcarequality.gov.au/sites/default/files/media/ACQSC%20Regulatory%20Strategy%202019.pdf>

<sup>20</sup> Enforceable Undertakings in Action, February 2010 Richard Johnstone, Christine Parker,

[https://law.unimelb.edu.au/data/assets/pdf\\_file/0010/1557118/Final\\_EU\\_Working\\_Paper\\_17\\_Feb\\_20101.pdf](https://law.unimelb.edu.au/data/assets/pdf_file/0010/1557118/Final_EU_Working_Paper_17_Feb_20101.pdf)

Enforceable undertakings would, for example, be an effective enforcement tool for the (proposed) Serious Incident Response Scheme because this enforcement power would enable the Commission to hold an approved provider to account for actions taken to address root causes of serious incidents at a service and strengthening the accountability of a provider for sustainable improvements in care. They may also be more satisfying for consumers who have a stake in seeing that a harm is redressed and will not happen again (for example, through modifying work processes and practices and introducing systematic safeguards to prevent future occurrences).

## **6.2 Infringement notices**

6.2 Introduce infringement notices and civil penalties as a way of deterring and dealing with contraventions that do not meet thresholds for broader compliance action.

Infringement notices are an efficient way of dealing with non-compliance but are not currently available to the Commission. An infringement notice is a notice given to a person or provider setting out details of an alleged breach of the law, the penalty amount, and the period within which to pay the penalty amount. They can be useful for dealing with an issue or instance of poor care that does not meet thresholds for broader compliance action. Areas of potential application could include breaches by providers of reporting obligations and other obligations including in dealings with the regulator.

Infringement notices do not require significant legislative amendment as they can be regulated by referring to the Regulatory Powers (Standard Provisions) Act 2014 within the Commission Act or Aged Care Act.

A civil penalty is a financial penalty imposed by a court under a 'civil penalty order'. Civil penalties can be effective tools to deter people from breaching the law. They can be applied to different regulatory requirements under legislation such as approved provider responsibilities or conditions of approval, provision of false or misleading information, record keeping, failure to comply with a notice. The different legislative requirements have varying maximum civil penalty units, with more serious requirements having higher civil penalty units.

Civil penalties are limited in application to some parts of the Aged Care Act, and were included to move to alignment with the Regulatory Powers Act. However, their use has not been applied and is not well understood by the regulators or sector. There is room to consider a more comprehensive application of civil penalties throughout the legislation, applying to obligations of key individuals as well as providers.

## 7. Promote research and best practice

### What is shaping our thinking?

- The Royal Commission evidence highlighted significant gaps between what is known in terms of evidence to inform better practice and what has been happening in service delivery.
- Unlike the health care system, aged care does not have a supporting infrastructure around teaching and dissemination of evidence informed practice.
- The Australian Government funds the Australian Institute of Health and Welfare (AIHW), which uses data and information to produce high-quality reports and other information products which are used to improve the delivery of health and welfare for Australians. It maintains the dedicated aged care website, GEN
- We can learn from other sectors and initiatives which aim to narrow the gap between research and practice change.

### What we think is needed

#### ***7.1 Promoting an evidence-enabled aged care***

7.1 Consider the role of the Commission and others to support dissemination of research and promotion of better practice as well as systematic learning from adverse events.

The Commission has an overarching function to promote the provision of quality care and services. This is primarily delivered through information and education on matters related to functions of the Commission.

Government has funded research packages focused on ageing, aged care and dementia, including through the National Health and Medical Research Council. Commencing in 2019-20, the 10-year Ageing, Aged Care and Dementia Mission is funded through the Medical Research Future Fund. Government also recently announced the establishment of an Aged Care Workforce Research Centre. The proposed objectives of the Centre include: aged care research through the provision of funding across the continuum of research development, evaluation and commercialisation; and uptake of new research by the aged care workforce through effective education and training.

The Australian Government also provides base and contract funding to the Australian Institute of Health and Welfare (AIHW), which uses data and information to produce high-quality reports and other information products which are used to improve the delivery of health and welfare for Australians. It maintains the dedicated aged care website, GEN.

The Commission has partnered with AIHW in 2019 to undertake a feasibility study to consider how joined up data can be used to better understand the evidence and identify variances in safety, health and wellbeing outcomes for consumers of aged care services. The Commission is not currently funded for this work and there are opportunities to upscale a more comprehensive partnership reporting on outcome measures for aged care using the AIHW as a clearing house and drawing on the expertise of this agency in reporting on performance.

Translation of research to practice remains a challenge. Brokerage is one option. In the UK the National Institute for Health Research brokers a translation network *Enabling Research in Care Homes (ENRICH)* initiative and *Research Ready Care Home Network*<sup>21</sup> which aims to see more research being conducted in, and disseminated through, care homes. It brings together care home staff, residents and researchers to facilitate the design and delivery of research and narrows the gap between research and practice change.

A second gap is in innovation through systematic learning, as undertaken in other risky enterprises. Other high-risk industries have systematised error reporting and dissemination of learning to produce a safety culture that offers lessons for aged care and clinical governance. The challenge for aged care is to shift from a blame culture to a learning culture, to learn from adverse events.<sup>22</sup> Again, consideration could be given to a potential role for the Commission as a resourced clearing house. Alternatively, or in addition, this role could be performed by one or a consortium of provider peak organisations.

Further work is also needed to refresh options for recognising and promoting better practice initiatives at service level including use of communities of practice, case studies and new technologies to enhance access to these better practice examples through the Commission's education and engagement functions.

## **7.2 Incentivise performance through different regulatory treatments**

7.2 Differentiate regulatory treatments that can incentivise better practice by recognising segments of the market (i.e. trusted providers) for whom accreditation may be maintained with lower levels of regulatory involvement.

The regulatory system has been criticised as one-size-fits-all and not promoting quality beyond minimal levels of compliance. Different levels of regulatory oversight could be more explicitly linked to the Commission's level of trust and confidence that the approved provider has capacity and motivation to manage risk and has a culture and systems in place to continuously improve outcomes for consumers.

Accreditation can also be applied in differentiated models that allow for future consideration of new developments and roles for government.

Future consideration should be given to:

- regulatory treatment calibrated to provider performance that can incentivise better practice by recognising segments of the market for whom accreditation may be maintained with lower levels of regulatory involvement;
- a contestable market in accreditation audits;
- application of accreditation to segments of the home services market where it could be an effective lever for promoting quality and supporting market choice

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<sup>21</sup> Enabling Research in Care Homes (ENRICH) initiative and Research Ready Care Home Network <https://enrich.nihr.ac.uk/>

<sup>22</sup> Designing safer health care through responsive regulation, Judith Healy and John Braithwaite, *Med J Aust* 2006; 184 (10): S56. | | doi: 10.5694/j.1326-5377.2006.tb00364.xPublished online: 15 May 2006, <https://www.mja.com.au/journal/2006/184/10/designing-safer-health-care-through-responsive-regulation>

### **7.3 Promote leadership capability of key personnel**

7.3 Consider how government could provide impetus to leadership development in aged care. An example of this is the Australian Aged Care Leadership Capability Framework.<sup>23</sup>

Many leadership positions in aged care require specialist qualifications, but they also require the broader range of management and leadership capabilities and behaviours in a challenging sector. A common language and shared understanding of expected behaviour for aged care leaders would enhance development of capability in these roles.

The evidence at Royal Commission hearings to date has been that organisational leadership and culture is critical to the delivery of person-centred care. The Royal Commission has heard that the values and attitudes of those who lead organisations affect staff at all levels of operation and fundamentally influence the quality of care and the dignity and respect accorded to older people receiving care.

Key personnel such as the practice manager and director of nursing/clinical manager in a service have significant influence on organisational and practice levels to apply regulation to meet the needs of consumers. They interpret legislative requirements, develop strategies, manage the interfaces between the organisation and the Commission and other regulatory authorities, develop forms of strategic response including training, role differentiation, supervision and monitoring, and translate the intent and expectation for those delivering care.<sup>24</sup> It is a complex and taxing job.

Further, if role performance at the practice manager level is interpreted rigidly in terms of compliance, then success in responding to specific regulatory items (the Charter of Aged Care Rights, for example) can be reduced to getting the paperwork right, which displaces the core purpose underlying the regulation. Organisational pressures and the challenges and complexity of dealing with the role can make technical compliance an attractive strategy for dealing with care demands. This causes ritualistic compliance or mis-attention to the intent of the regulation. The leaders set this tone which can lead to overreliance on routinised work and reporting practices right through the organisation and can be a handbrake on problem solving and innovation.

Consideration should be given to how government could provide impetus to leadership development in aged care. An example of this is the Australian Aged Care Leadership Capability Framework.<sup>25</sup> The Framework is behaviourally-based, and the capabilities are illustrated by sets of indicative behaviours appropriate to three broad leadership levels from front-line staff to the CEO. Whilst this goes beyond the Commission's current education functions and funding, there is a gap to be filled here.

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<sup>23</sup> In 2014 Aged and Community Services Australia (ACSA), Leading Aged Services Australia (LASA) and the Community Services and Health and Industry Skills Council with funding from the Australian Government Department of Industry released the Australian Aged Care Leadership Capability Framework.

<sup>24</sup> The Organisation of Risk: How do dementia care providers adapt to regulation? Ashley Carr and Simon Briggs, 2018 Cognitive Decline Partnership Centre.

<sup>25</sup> In 2014 Aged and Community Services Australia (ACSA), Leading Aged Services Australia (LASA) and the Community Services and Health and Industry Skills Council with funding from the Australian Government Department of Industry released the Australian Aged Care Leadership Capability Framework.

## 8. Collaborate for systemic change

### What has informed our thinking

- The Review of the APS has identified that the APS's impact, influence and success in the years and decades ahead will rely heavily upon meaningful, lasting relationships. Such relationships are essential if the APS is to deliver on government priorities and serve the public.
- The Royal Commission has provided examples of gaps where poor integration of health and aged care services impedes timely access to aged care supports, and overlaps where responsibilities for outcomes are shared such as minimising the use of chemical restraint. This has underscored the need for action to strengthen the interface between aged, primary and acute care.
- It is apparent that Australia's most pressing public policy challenges increasingly manifest at the boundaries of Commonwealth and state responsibilities, in areas such as health, aged care and disability.
- Evidence from other jurisdictions that streamlining the user's end-to-end journey, through human-centred design and digitisation, significantly improves experience while reducing costs.

### What we think is needed

#### ***8.1 Drive behaviour change through targeted regulatory campaigns***

8.1 Invest in new skills, capability and dedicated resourcing to apply behavioural insights and intensive campaign management to enable the Commission to take on problems at their source in partnership with others with influence, to bring about change.

The Commission has a strategic intent to make better use of targeted campaigns that deploy the right combination of the Commission's functions to tackle important problems. A campaign uses problem-solving and behavioural insights approaches to tailor responses using the regulatory tools available to the Commission and the influence of others to address a problem.

To tackle complex quality and safety challenges including improving clinical governance in aged care, the Commission needs to work with and through other stakeholders in the organisations it regulates, rather than seeing the regulatory influence as a bilateral relationship with a provider. Partnering with other groups to deliver messages, for example in the case of clinical care, could involve primary health networks (PHNs), health professionals including doctors, voluntary groups (which are often a very significant proportion of an aged care service), consumer advocates and other regulators. This not only increases the authority of the message but also uses a wider range of potentially influential individuals or organisations to reach more people with targeted information.

As the Independent review of the APS points out, such an approach requires "a fundamental shift in mindset and approach, with the APS bringing greater confidence in its role and contribution, and greater humility in how it partners with others. The partnerships will be many and varied - including with state, territory and local governments, civil society,

business, communities, service providers, and the Australian public. They will be typified by the highest standards of ethics and integrity”.<sup>26</sup> Embracing this approach will boost the Commission’s ability to design and deliver innovative, fit-for-purpose campaigns for behaviour change solutions.

Campaign approaches have the potential to address issues at the edges and interfaces of current systems where there is no clear ownership of a problem. For example, aged care is one of the seven key priority areas identified by the Australian Government to guide the work of PHNs. PHNs may be well positioned to partner with relevant stakeholders in the aged care sector to create a more holistic system of care and to influence and support aged care providers through their regional approach to primary care.

## **8.2 Understand aged care within the broader context**

8.2 Clearly identify and articulate regulatory intent across systems to avoid unintended operational impact or legislative duplication, create greater regulatory efficiency and effectiveness, and minimise the burden on aged care providers.

Greater attention needs to be given to the overlapping stakeholder and regulatory domains in aged care. The recent APS Review has highlighted that progress on society’s most complex problems will not occur without all levels of government and all sectors of society collaborating more effectively, leveraging government’s convening power, and working across sectors.<sup>27</sup> Other Commonwealth, state and local governments play roles in the aged care setting including setting parameters for care providers, as do professional standards councils and health professional regulatory authorities, regulating the various roles and responsibilities of their workforce. A case in point is the separate quality and safety standards relating to NDIS participants who reside in residential aged care. Other examples include overlapping regulatory domains in areas such as food safety, building certification, medication management, workplace health and safety, to name a few.

The interface with other services accessed by people receiving aged care services, including primary health care services, acute care and disability services, is also relevant to regulatory design and practice. This should take into account how people transition from other care environments or between aged care settings. Regulatory scrutiny and action across and between sectors is uneven and this is difficult to avoid. It tends to cluster where multiple systems interact at critical transitions in individual care pathways. This also affects the care experience for consumers and prompts the need for a more co-ordinated approach, especially as consumers are looking to play an increasing role in choosing and directing their care.<sup>28</sup>

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<sup>26</sup> Commonwealth of Australia, Department of the Prime Minister and Cabinet, APS Review: Priorities for change

<sup>27</sup> Submission - Save the Children Australia to Commonwealth of Australia, Department of the Prime Minister and Cabinet, APS Review: Priorities for change

<sup>28</sup> The Organisation of Risk: How do dementia care providers adapt to regulation? Ashley Carr and Simon Biggs 208. Cognitive Decline Partnership Centre.

### **8.3 More eyes on quality**

8.3 Explore opportunities to strengthen links with public advocates, treating doctors and health professionals who may be in a position to observe the quality of care and services, and ensure that they know how to raise a concern with the Commission and are protected when they do so.

The current regulatory regime struggles to detect covert, harmful behaviour or normalised behaviour that is undisclosed such as undetected harms that impact a consumer's dignity or autonomy. The risk is magnified in home services where there is not a care setting with other people around. The system needs to extend the "eyes on quality" by encouraging others (participants and observers) to speak up when something is not right to improve safeguards for vulnerable populations receiving care.

The reality is that the Commission, with finite resources, can never assess (let alone oversee) more than a small proportion of the episodes of care and services in scope for its regulatory activities. Working with and through others will allow the Commission to expand its oversight by using other stakeholders as influencers, informants and agents for change.

Whistle-blowers play an important role in identifying and calling out misconduct and harm to consumers and the community. From 1 July 2019, the whistle-blower protections in the Corporations Act have been expanded to provide greater protections for whistle-blowers. This will include requiring public companies, large proprietary companies, and corporate trustees of superannuation funds to have a whistle-blower policy from 1 January 2020. These obligations would apply to aged care providers subject to the Corporations Act.

To encourage whistle-blowers to come forward with their concerns and protect them when they do, the Commission may need to provide guidance to specify their legal rights and protections as whistle-blowers.

## Conclusion

The transfer of certain compliance, enforcement and associated functions to the Commission from the Department in January 2020 will improve regulatory governance and provide greater clarity about the regulatory model for providers and consumers of care. It will support more effective triage of poor performance into voluntary and enforceable compliance, and make available to the Commission new approaches to intervening at a provider level and in taking action to lift the performance of the sector as a whole.

The Commission's regulatory intent is to be proportionate and responsive to risk and to the performance and behaviour of providers. Its aim is to utilise the full range of integrated functions and powers available to it through consumer engagement, education, the provision of information about performance, complaints resolution, compliance monitoring and (from 2020) enforcement.

The Commission is seeking a fit for purpose suite of tools and regulatory approaches informed by contemporary regulation and insights from evidence outlined in the Royal Commission Interim Report and the Earle Haven report at individual, interpersonal and community levels.

This paper has identified and analysed priorities for new tools and approaches that have the potential to improve the Commission's regulatory effectiveness, and outcomes for consumers. The tools and approaches discussed are aimed at driving optimal and sustained behavioural change by providers, promoting system-wide learning, and harnessing consumer engagement for a stronger performing market.

## OPTIONS TO EXPAND THE REGULATORY POWERS OF THE AGED CARE QUALITY AND SAFETY COMMISSION

| Priority  | Current state (2020)   | Problem   | Solutions   | Mechanism   |
|---|--|---|---|---|
| <p><b>1. Modernise regulatory practices with new technologies and the use of data</b></p> | <p>The Commission has risk based regulatory strategy and is developing new business processes to respond to a range of sources of intelligence on provider performance and risk and information co-ordination within the Commission</p> <p>Provider information required by the regulator includes: Financial and prudential reporting, material changes to key personnel, and management structure, and third parties, quality indicator data, and mandatory reporting.</p> <p>Respective budget measures have projects underway to develop risk profiling and information tools for residential and home care services.</p> <p>Government funds significant aged care research and the AIHW plays an important role in aged care data and reporting.</p> | <p>Regulatory burden and inefficiency of many individual pieces of information about a provider handled manually in the regulatory system.</p> <p>Lack of IT enabled approaches for processing high volume public comments and consumer feedback.</p> <p>Intelligence management tools, technologies and capabilities are not currently available to analyse large volumes of information to effectively target operational and delivery processes based on risk</p> <p>Future requirements for periodic reporting for expanded Quality Indicators and proposed serious incident reporting are not well supported by current IT architecture.</p> | <p>1.1 Invest in business to government IT architecture and data management for the Commission to increase internal efficiency, and provide for efficient capture and analysis of large volumes of data to better inform risk-based regulatory responses.</p> | <p>Investment in IT architecture and innovation</p> |
| <p><b>2. Strengthen prudential oversight and governance</b></p>                           | <p>The board or governing body of an aged care organisation has ultimate responsibility for the oversight of culture and systems for delivery of safe and quality care and services</p> <p>Corporate governance practices are the subject of the Prudential Standards (monitored by the Department) and the Aged Care Quality Standards (monitored by the</p>  | <p>Monitoring and enforcement of financial risks and prudential compliance remains split across Commission and Department with risk of gaps in detection of problems and weak regulatory signals to the market</p>  | <p>2.1 Transfer the monitoring of prudential standards to the Commission and establish a specialist financial and prudential standards and monitoring capability to better detect and manage the risks of quality and financial failure.</p>                  | <p>Legislative amendment to transfer functions</p>  |

| Priority | Current state (2020)  | Problem  | Solutions   | Mechanism   |
|----------|---|--|---|---|
|          | <p>Commission -specifically Standard 8 Organisational Governance).</p> <p>From 1 January the Department maintains responsibility for monitoring providers through the receipt and assessment of financial annual financial reports and prudential statements while the Commission will take forward responsibilities for enforcement of prudential standards.</p> <p>Key personnel are disqualified from holding key personnel positions if they have been convicted of an indictable offense, are an insolvent under administration, or of unsound mind (mentally incapable of performing duties).</p> | <p>Monitoring existing Aged Care prudential arrangements does not give sufficient assurance of the financial and commercial arrangements of providers and the provider's ability to provide high quality care</p>                | <p>2.2 Review the balance of powers to regulate prudential and financial risks at all levels including provider approval, ongoing suitability to operate in the system and mechanisms appropriate to self-exit from the system.</p>   | <p>Legislative amendments and policy approaches</p> |
|          |   | <p>Regulatory system slow to respond to warning signs of failures in provider governance and enforcement action can be too late to deter failure</p>   | <p>2.3 Reframe regulatory interventions to heighten regulatory supervision and engagement of a provider <i>before</i> quality and safety problems are realised. This approach would be supported by proactive case management policy that outlined the approach to regulatory supervision and feedback based on performance and risk</p>      | <p>Regulatory practices</p>                         |
|          |   | <p>Too often, boards do not get the right information about emerging non-financial risks; not do enough to seek further or better information and not do enough to set expectations of culture and systems for quality care.</p> | <p>2.4 Develop and implement an integrated strategy to improve the engagement and accountability of boards and governing bodies. Measures could include introduction of an annual declaration by the board or governing body (against the Aged Care Quality Standards or alternatively against Standard 8 for Organisational Governance).</p> | <p>Legislative amendment</p>                        |
|          |   | <p>The values and attitudes of those who lead organisations affect staff at all levels of operation and fundamentally influence the</p>  | <p>2.5 Review and strengthen the provisions that would disqualify certain individuals from participating as key personnel</p>   | <p>Legislative amendment</p>                        |

| Priority  | Current state (2020)  | Problem  | Solutions   | Mechanism  |
|---|---|--|---|--|
|   |   | quality of care and the dignity and respect accorded to older people receiving care. There is a low bar for disqualification of key personnel and instances where they have not been up to the job.  |   |  |
| <b>3. Enhance consumer input and engagement</b> | Commission has core functions for consumer engagement (to develop and promote best practice models for the engagement of approved providers with consumers) and a dedicated complaints resolution function.<br><br>The Commission must meet with at least 10% of the consumers (or their representatives) at a service during a re-accreditation audit. In home services quality reviews have no minimum requirement. | Intermittent involvement of consumers in quality and safety and constraints on sampling for consumer experience interviews.<br><br>Narrowly defined consumer engagement function of the Commission.<br><br>Education activities were not funded for expanded Commission remit and remain largely focused on providers. | 3.1 Expand the (narrowly defined) consumer engagement function of the Commission to provide explicit authority for the Commission to directly engage with consumers of Commonwealth funded aged care services rather than having to access them via a provider. | Authority through legislative amendment<br><br>Investment in consumer engagement methodologies and education |
|   | Engagement in quality assessment processes is through the provider who must notify the consumer of how they can contact the Commission to provide input to the performance assessment.  | Loss of confidence that accreditation adequately considers the concerns of consumers and families.<br><br>Cases of “ritualistic compliance” to satisfy the regulator rather than supporting culture of safety and quality and real improvements.   | 3.2. Re-purpose accreditation to <i>face the consumer</i> and increase the likelihood of consumer-focused service-wide improvements against the Aged Care Quality Standards   | Amendments to the Commission Rules   |
|   |   | Commission Rules are prescriptive in terms of complaints process, and the language does not align with community expectations.   | 3.3 Undertake a review of complaints processes to focus on accessibility, responsiveness and fairness   | Amendments to the Commission Rules<br>New complaints resolution practices                                    |
| <b>4. Increase transparency and</b>             | The Commission is currently working with the Department to develop a publicly reported rating system for  | Criticism that the system lacks fundamental transparency in communication, reporting and   | 4.1 Prioritise the work underway to publish performance ratings for aged  | Policy approaches  |

| Priority   | Current state (2020)  | Problem  | Solutions   | Mechanism   |
|--|---|--|---|---|
| <b>performance reporting</b>                     | quality and safety of residential aged care service. This is on track for implementation from 1 July 2020 on the MyAgedCare website.  | accountability.  | care services and reports of performance assessments against the Standards  |   |
|  | The Commission has published new quarterly sector performance trends, and a monthly register of non-compliance with serious risk to consumers and where directions are given about a complaint.<br><br>The Aged Care Quality Standards require open disclosure as an element of organisational wide governance systems. | No requirements for providers to publish information for consumers about their own performance such as accreditation status or plans for continuous improvement                              | 4.2 Stipulate provider publication of key information to increase transparency about quality and safety for consumers. This could include accreditation status, feedback from consumers in the Consumer Experience Reports, quality indicators, and other key information such as staffing models   | Legislative amendment   |
|  |   | No individual accountability or consequences for key personal to be open and transparent with consumers and their families, the regulator and relevant persons such as consumer advocates.   | 4.3 Increase accountability for approved providers and key personnel /persons in charge at a service to be open and transparent in dealings with regulators and other 'relevant persons' (such as advocates and people acting lawfully on behalf of consumers).<br><br>This should be linked to infringement notices and a financial penalty that can be issued to persons for failure to comply with the obligation. | Legislative amendment<br><br>New enforcement authority through Regulatory Powers Act (Standard Provisions), 2014 for infringement notices |
| <b>5. Strengthen regulation of home services</b> | The Commission Rules prescribe that a quality review is undertaken at the service every three years.<br><br>Increase in complaints from home services and referrals from the public are used as regulatory intelligence   | Demand for home services is a key driver for growth<br><br>Emerging models of home-based care, different profiles and iterations of service configuration create specific challenges for the | 5.1 Strengthen risk-based processes for provider approval and market entry that can better differentiate the regulatory oversight to fit the type of service and level of risk to consumers.  | Policy approaches<br><br>Possible Legislative amendment   |

| Priority | Current state (2020)  | Problem  | Solutions  | Mechanism   |
|----------|---|--|--|---|
|          | <p>Levels of non-compliance particularly with new expectations under the Aged Care Quality Standards are expected to trend upwards placing further pressure on Commission resources.</p> <p>The Department have recently updated the provider approval forms and operating procedures to update information on material changes and key personal.</p> | <p>Commission to understand these arrangements and regulate market entry.</p>  |  |   |
|          | <p>There is a small proportion of the unregistered aged care workforce who present a serious risk to the public because they are incompetent or impaired, or engage in exploitative, predatory or illegal conduct such that if they were a registered practitioner, their registration would be cancelled and their right to practice withdrawn</p>   | <p>Compliance monitoring is largely one-size-fits-all due to the lack of a systematic way of categorising service types and risk. The Commission is currently constrained in differentiating the regulatory treatment and there is lack of clarity about what services are being provided to consumers.</p>  | <p>5.2 Consider accreditation for different segments of the home services market as an additional quality assurance for higher risk services, or as a market differentiator.</p> | <p>Legislative amendment</p>  |
|          |   | <p>The Commission has limited range of risk detection tools.</p> <p>Concerns about sharp practices, the accumulation of unspent funds and prudential risks.</p> <p>There is minimal visibility of actual service delivery to confirm the quality of care or detect covert harms</p> <p>Growing dissatisfaction as home care complaints frequently relates to fees and charges</p> <p>Sophisticated intelligence management and analytic capability is not currently available</p> <p>There is minimal visibility of actual service delivery and difficulties reaching a sufficient number of to confirm the quality of care.</p> | <p>5.3 Improve risk detection methodologies including consumer feedback supported by more sophisticated intelligence and data analytic capability.</p>                           | <p>Investment in IT architecture and innovation</p> <p>Policy approaches and legislative change</p> |

| Priority   | Current state (2020)  | Problem   | Solutions  | Mechanism   |
|--|---|---|--|---|
|  |   | There is an unacceptable risk of unregistered caregivers moving from one care setting to another without safeguards (such as when previous abuse has occurred).   | 5.4 Adopt a national code of conduct to help protect the public by setting minimum standards of conduct and practice for all unregistered aged care workers.                           | Legislative amendment   |
| <b>6. Expand the range of enforcement powers</b> | The Commission has a strategic intent to apply a range of escalating enforcement actions that are matched to the circumstances and behaviour of the provider.   | Limited range of punitive sanctions available – which are primarily directive - in response to failures in care. The range of available sanctions cannot be easily tailored to a wide range of provider circumstances   | 6.1 Add enforceable undertakings to the current range of enforcement actions   | Legislative amendment and new enforcement authority through Regulatory Powers Act (Standard Provisions), 2014 |
|  | Restrictions on subsidies are not always effective in promoting sustainable improvements in care and services<br><br>The Regulatory Powers Act (Standard Provisions), 2014 provides a broader range as an accepted baseline of powers required for an effective monitoring, investigation or enforcement regulatory regime. | Limited mechanisms to deal effectively with breaches of responsibilities provision of false or misleading information, record keeping, failure to comply with a notice etc. or to hold individuals to account as key personnel in dealings with the regulator.                                | 6.2 Introduce infringement notices and civil penalties for providers and key personnel to deter and deal with contraventions that do not meet thresholds for broader compliance action | New enforcement authority through Regulatory Powers Act (Standard Provisions), 2014                           |
| <b>7. Promote research and best practice</b>     | The Commission has an overarching function to promote the provision of quality care and services. This is primarily delivered through information and education on matters related to functions of the Commission<br><br>The Chief Clinical Advisor role at the Commission is a key enabler of strategic partnerships for   | Translation of research to practice remains a challenge. Preventable failures in clinical care and variable outcomes for consumers continue despite evidence of better practice.<br><br>Poor mechanisms for innovation through systematic learning, and dissemination of learning to improve. | 7.1 Consider the role of the Commission and others to promote better practice and systemic learning from adverse events.   | Policy approaches   |

| Priority   | Current state (2020)  | Problem  | Solutions  | Mechanism  |
|--|---|--|--|--|
|  | <p>improvements in quality and safety</p> <p>The Australian Government funds the Australian Institute of Health and Welfare (AIHW), which uses data and information to produce high-quality reports and other information products which are used to improve the delivery of health and welfare for Australians. It maintains the dedicated aged care website, GEN</p> <p>Government has funded research packages focused on ageing, aged care and dementia, including through the National Health and Medical Research Council. Commencing in 2019-20, the 10-year Ageing, Aged Care and Dementia Mission is funded through the Medical Research Future Fund.</p> <p>Government also recently announced the establishment of an Aged Care Workforce Research Centre.</p> | <p>The regulatory system has been criticised as one size fits all and not promoting quality beyond minimal levels of compliance</p> <p>Many leadership positions in aged care require specialist qualifications, but they also require the broader range of management and leadership capabilities and behaviours in a challenging sector.</p> <p>A common language and shared understanding of expected behaviour for aged care leaders would enhance development of capability in these roles.</p> | <p>7.2 Differentiate regulatory treatments that can incentivise better practice by recognising segments of the market (i.e. trusted providers) for whom quality and safety may be maintained with lower levels of regulatory involvement.</p> <p>7.3 Consider how Government could provide impetus to leadership development in aged care.</p> | <p>Regulatory practice</p> <p>Policy approaches</p> <p>Policy approaches</p> |
| <p><b>8. Collaborate for systemic change</b></p> | <p>The Commission has a strategic intent to make better use of targeted campaigns that use the right combination of the Commission's regulatory functions to tackle important problems</p> <p>The Chief Clinical Advisor role is a key enabler of strategic partnerships in areas of variable clinical outcomes</p>   | <p>Gaps where poor integration of health and aged care services impedes timely access to aged care supports and action is needed to strengthen the interface between aged, primary and acute care, or address overlaps where responsibilities for outcomes are shared such as minimising the use of chemical restraint.</p>  | <p>8.1 Invest in new skills, capability and dedicated resourcing to apply behavioural insights and intensive campaign management to enable the Commission to take on problems at their source in partnership with others with influence, to bring about change.</p>  | <p>Regulatory practice</p>   |

| Priority | Current state (2020)   | Problem  | Solutions  | Mechanism  |
|----------|--|--|--|--|
|          | <p>Other Commonwealth, state and local governments play roles in aged care setting and setting parameters for care providers, as do professional standards councils, health professional regulatory authorities, regulating the various roles and responsibilities of their workforce. Examples include building certification, medication management, workplace safety, food safety.</p> <p>The Commission has a range of MOUs in place with other regulators and Commonwealth and State entities to share information on risk and support its regulatory objectives</p> <p>The Commission needs new skills, capability and dedicated resourcing to apply behavioural insights and the necessary campaign management to deliver priority change campaigns each year in partnership with others with influence in the aged care sector</p> | <p>Overlapping stakeholder and regulatory domains in aged care create compliance cost for providers and do not take into account how people transition from other care environments or between aged care settings where multiple systems interact at critical transitions in individual care pathways.</p> <p>Regulation struggles to detect covert, harmful behaviour or normalised behaviour that is undisclosed such as undetected harms that impact on dignity or autonomy. The risk is magnified in home services where there are fewer “eyes on quality”</p> | <p>8.2 Clearly identify and articulate regulatory intent across systems to avoid unintended operational impact or legislative duplication and to create greater regulatory efficiency and effectiveness, and minimise the burden on aged care providers,</p> <p>8.3 Explore opportunities to strengthen links with public advocates, treating doctors and health professionals who may be in a position to observe the quality of care and services, and ensure that they know how to raise a concern with the Commission and are protected when they do so.</p> | <p>Policy approaches</p> <p>Policy approaches<br/>Regulatory Practices</p> |