



Minister announces review of accreditation processes following Oakden (Makk and McLeay) Nursing Home scandal

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Media Release

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Meanwhile

There is a lot going on in aged care
..... at least on paper!

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**Leamington
Southport, Queensland
clinical neglect leading
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complaints scheme**

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RNs in NSW nursing homes

***Shooters, Fishers and Farmers
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ELDER CARE WATCH
working to improve aged care

Media Release

30 April 2017

Aged care accreditation: a paper tiger

Aged care accreditation operates on a ‘continuous improvement’ model which is tantamount to a penalty- free zone. So long as you promise to improve you will be given another chance.

The Australian* has exposed a serious disconnect in the monitoring of care quality by the regulator, the Aged Care Quality Agency. The story reveals nursing homes which consistently pass all care standards have individual cases of horrific abuse or neglect. Historically, this disconnect has been blithely defended by the regulator by separating the home’s systems and processes from individual cases. An agency spokeswoman quoted in the story acknowledged the sobering consequence when she said “..... accreditation alone could not protect individuals” (*The Australian*, page 4).

The advance notice audits by the regulator are primarily a check on policies and processes as they appear on paper. The home’s preparation consumes mountains of paper and management time including that of valuable registered nurses. These high skill employees are already thin on the ground, comprising 15 per cent of the direct care (*sic*) workforce and the 2016 Aged Care Workforce Report (*Department of Health, 2017*) finds 44 per cent of RNs spent less than one third of their time in direct caring. The paper tiger accreditation system is partly responsible for keeping these nurses away from patients.

Ironically, calls for tighter regulation occur as many Adelaide nursing homes are moved from 3 yearly to 5 yearly accreditation in the name of reducing red tape. This is happening under the auspices of the so-called SA Innovation Hub.

Elder Care Watch calls for Agency resources to be redirected to unannounced audits. The latter occur under the umbrella “assessment contacts”. They provide the best chance of revealing actual care provided care practice is examined and not paper policies. Currently reports on these audits are able to be kept secret by the regulator by virtue of the “protected information” clauses of the Aged Care Act. Such clauses were originally meant to protect personal privacy but in this Act they extend to “the affairs of the approved provider”. Federal parliament should remove this barrier to transparency in the monitoring of care quality.

***A. Burrell, ‘Aged-care checks for neglect failing’ Weekend Australian, April 29-30 2017 pp.1&4**

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Minister announces review of accreditation processes following Oakden scandal



The Minister for Aged Care, Ken Wyatt, has commissioned an independent review of the regulation of the quality of care in nursing homes. The review will look at the role of the Aged Care Quality Agency, the Aged Care Complaints Commissioner and the Department of Health. The review was triggered by another review: a damning report on Oakden by SA Chief Psychiatrist, Dr Aaron Groves. The reviewers will report to the Minister by 31 August 2017 (*continued page 8*).

“... I want to get to the bottom of any shortcomings of the national regulatory system that meant that the Commonwealth was not aware of the extent of the problems with the quality of care at this facility earlier”

Media Release, 1 May 2017

Whistleblower triggers review at Oakden

The Chief Psychiatrist’s review was triggered by concerns expressed by a resident’s family at Oakden Older Persons Mental Health Service which includes the 40 bed Makk and McLeay Nursing Home. The report revealed “a catalogue of horrors” over more than a decade: medication overdoses, physical assault, humiliation, restraint, seclusion, dehydration, sudden deaths and a culture of cover-up. A number of incidents have been referred to police and 21 staff have been referred to the Australian Health Practitioner Regulation Agency (E. Jones, ‘Home of shame’, *Advertiser*, 21 April 2017: 1, 6 & 7).

Oakden is operated by the SA government. The nursing home is covered by the *Aged Care Act* and so is audited by the Aged Care Quality Agency. Makk and McLeay failed 26 of 44 standards in 2008. It subsequently passed all standards including audits in 2013 and 2016. Belatedly, in March 2017, the home was found to fail 15 standards and to present a serious risk to residents. The SA government has decided to close the home and, together with senior management, is under intense scrutiny by the media and parliament.



Makk and McLeay Nursing Home is part of the Oakden complex

In the meantime →

There is a lot going on in aged care

Department of Health

Review of Aged Care Funding Instrument (ACFI)

Follows 2016 controversy with some providers allegedly rorting the formula. The Australian Health Services Research Institute (University of Wollongong) identified five alternatives to the current formula for determining care subsidies.

Report released 19 April 2017

Applied Aged Care Solutions is currently examining ACFI's basic design and the option of independent, rather than provider, assessment of care needs.

Australian Law Reform Commission

Elder Abuse Inquiry

A wide-ranging review which includes aged care and also guardianship, family agreements and wills, among other issues.

The Discussion paper recommends *inter alia*, compulsory reporting of abuse and complaint handling, employment screening, code of conduct for aged care workers and regulation of patient restraint.

Report due May 2017

Senate Community Affairs Committee

Future of Australia's aged care sector workforce

Expansive terms of reference including future workforce requirements, challenges in attracting and retaining workers, remuneration, training, career paths, international comparisons, the role of government, and the impact of government cuts to the Aged Care Workforce Fund.

Report due 21 June 2017

..... at least on paper!

Department of Health
Aged Care Legislated Review

Looking at the impact of the 2012 reforms: *Aged Care (Living Longer Living Better) Act* and future changes needed. Independent review led by David Tune, Chair, Aged Care Sector Committee. This standing Committee provides advice to government.

Report due 1 August 2017

Department of Health
Accreditation standards review

Consultation paper '*Draft Aged Care Quality Standards*' proposes changes to standards but a key feature is the idea of a single set of standards for all care settings. There is some rearranging such as the elevation of 'dignity, respect and choice' and some new aspects of care such as managing risks of falls, choking, delirium and pressure sores.

There is nothing about how the new standards will be measured.

Pilot circa July - December 2017
Aspiration: operative July 2018

Department of Health
Accreditation process review

Consultation paper '*Options for assessing performance against standards*'. A limited set of options is presented; the focus is whether each care setting (home, residential, etc.), should have separate processes.

There is nothing about advance notice, second chances for providers via 'continuous improvement', interviews with relatives, or public access to all audit reports.

Hopefully these issues will be part of the Minister's latest review

(see pages 3 and 8).

Aspiration: operative July 2018

Aged care in practice: Leamington nursing home *profound clinical neglect resulting in a death barely admonition from a powerless complaints scheme*

Leamington, Southport, Queensland

This home passed all standards in a Quality Agency audit in April 2015.

It had 77 residents and 71 were high care.

At that time the approved provider was Aquarius Aged Care but shortly before the incident described below Opal Aged Care took over as approved provider. Opal is the new name for Domain Principal Group, the company which operated Quakers Hill.



Zdenick (Danny) Selir died in the Gold Coast University Hospital from a massive infection after transfer from the Leamington nursing home on 18 August 2015.

Hospital documents record “*extended necrotic wounds on his right heel and sacrum*”.

Mr Selir was admitted to the nursing home on 17 June 2015 after suffering a stroke. He had minor pressure injuries on his heels. In considering a complaint lodged by a relative, an officer with the complaints scheme referred to these injuries as “*unstageable (depth unknown)*” because of insufficient recording of wound care for 2 weeks from admission.

The resident’s deteriorating condition was discovered by a relative who, after detecting a foul odour, lifted the bed covers to reveal gangrene in his right foot and a 15 cm pressure wound on his sacral area.

According to his daughter-in-law, this relative had to call an ambulance after the home allegedly said the wounds were manageable. Unhappy with management’s response, the daughter-in-law later went to the complaints scheme.

The scheme found the home did not provide the “*appropriate medical (sic) care*” for Mr. Selir.

The home was criticised for inadequate monitoring of wounds and failure to report to the GP when the wounds deteriorated.

The Complaints Commissioner was satisfied with mandatory wound care training for RNs and ENs from external trainer Smith and Nephew; monthly wound audits; daily discussion of wounds and evidence that staff were recording detail on wounds.

This is sound remedial action but there is no penalty and no justice for the patient who suffered apparent deadly neglect.

Sources: ABC RN, ‘Elder abuse inquiry: man dies in hospital after Gold Coast nursing home staff fail to properly treat wounds, 27 September 2015; Aged Care Complaints Commissioner, [Feedback on the resolution process](#), case ID S16/1527.

Registered nurses in NSW nursing homes

*Shooters, Fishers and Farmers Party seeks to
reinstate law requiring RN on duty 24/7
receives support from Labor, Greens and independents
attempt fails due to opposition from
Liberal Party and Nationals*

On 11 May 2017, the NSW Liberal-National government voted to defeat a bill introduced by the Shooters, Fishers and Farmers Party.

The bill related to the employment of registered nurses (RNs) in nursing homes in NSW and sought to restore the legal position existing until 2014.

Until 2014 the NSW law required a registered nurse to be on duty at all times at a nursing home providing a high level of residential care (*Public Health Act, s.104*). This had applied for over 30 years, some reports said for over 50 years.

NSW the only State with a law

NSW was the only state with such a law. The federal law, the *Aged Care Act 1997*, said nothing about RNs being on duty. This meant that unless there was a State law covering the matter there was no law and that is the position today in the rest of Australia.

A federal change and an unintended consequence

Then along came the federal *Living Longer, Living Better Reforms* which, from July 2014, abolished the high care - low care distinction for the purpose of paying for accommodation. All residents, not just low care residents, could now be charged a bond. The change was about accommodation costs, it had no direct connection with the medical condition of residents or their nursing needs.

continued page 8



Philip Donato
MLA, Orange, NSW
Shooters, Fishers & Farmers Party

“Registered nurses are needed in nursing homes to provide a high level of care ... they can administer pain relief stronger than a Panadol..... they can respond early to critical incidents and can often prevent unnecessary hospital admissions ... and they know when to and when not to administer medications staff with a lower level of training may just blindly follow a medication order because they lack the clinical judgement to detect deterioration”

P. Donato, Legislative Assembly,
Hansard, 11 May 2017

RNs in New South Wales nursing homes attempt to reinstate original law requiring RN on duty 24/7 fails

NSW law rendered inoperable (continued from page 7)

The federal change rendered the NSW provision inoperable as the NSW wording was linked to the definition of ‘high level of residential care’ in the *Aged Care Act*, a term which no longer existed. In practice of course, residents requiring high care continued to comprise the majority of residents in nursing homes across the country.

NSW government’s grandfather clause

The Baird government had legislated in 2015 to provide that the pre-existing law would continue to apply to all nursing homes in operation before 1 July 2014. This meant that any homes starting operation after that date were not legally obliged to have at least one RN on every shift.

Shooters, Fishers and Farmers Party bill

The bill simply, but importantly, sought to restore the pre-2014 position, that all facilities “.....at which a high level of residential care ... is provided” must have an RN on duty at all times (P. Donato, Legislative Assembly, [Hansard](#), 11 May 2017).

Legislative Assembly debate

Liberal and National speakers were either confused or misleading. They spoke of the threat to the viability of small rural facilities with low care residents and they spoke of the distinction between high and low care facilities, a distinction which does not exist with ‘ageing in place’. All members of the Legislative Assembly present voted for the bill except the Liberals and the Nationals. The bill failed by 10 votes (Legislative Assembly, [Hansard](#), 11 May 2017:25).

Independence

Elder Care Watch is independent. It does not seek or accept funds from private organisations or from governments. It relies on support from subscribers.

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Oakden follow on Minister announces Review appointments

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The Minister has appointed a former ACT Chief Minister and a Law Professor from University of Auckland to conduct the review of the regulation of care quality in nursing homes.

Ms Kate Carnell is the Australian Small Business and Family Enterprise Ombudsman and former CEO of the Australian Food and Grocery Council and of Beyondblue.

She was a Director of the Aged Care Accreditation Agency (now Quality Agency), the main subject of the review, from 2009 to 2011.

Professor Ron Paterson is “an international expert on complaints, healthcare quality and the regulation of health professions” (K. Wyatt [Media Release](#), 11 May 2017).