Submission to the
Review of National Aged Care
Quality Regulatory Processes

Prepared by
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About COTA Australia

COTA Australia is the national consumer peak body for older Australians. Its members are the State and Territory COTAs (Councils on the Ageing) in each of the eight States and Territories of Australia. The State and Territory COTAs have around 30,000 individual members and more than 1,000 seniors’ organisation members, which jointly represent over 500,000 older Australians.

COTA Australia’s focus is on national policy issues from the perspective of older people as citizens and consumers and we seek to promote, improve and protect the circumstances and wellbeing of older people in Australia. Information about, and the views of, our constituents and members are gathered through a wide variety of consultative and engagement mechanisms and processes.

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Permission is provided to publish the full response of COTA Australia.
Introduction

COTA Australia welcomes the opportunity to provide written comments to the Review of National Aged Care Quality Regulatory Processes (the Review) led by Ms Kate Carnell AO in conjunction with Professor Ron Paterson ONZM. COTA Australia has also met with the Review team to convey these views.

COTA Australia notes its appreciation to Ms Carnell and Professor Paterson for the time taken to meet with consumers in Melbourne and Brisbane as part of their consultation process. From all accounts participants felt this opportunity was valued, that they were listened to and they were provided an opportunity to say what they felt was not working in residential aged care from their unique perspectives.

COTA Australia is pleased that this inquiry has been undertaken. For some time, we have held concerns that a 97% accreditation pass rate\(^1\) may indicate that the accreditation system has lost some of its edge. We believe in general providers have become skilled at passing accreditation, which is to be expected, but that in a minority of facilities across Australia this does not flow onto normal practice outside the accreditation period.

In this submission, we submit that:

- **The aged care sector needs to increase the transparency of accreditation for residents and their family or friends, and much more effectively gather and incorporate their views about and experience of the facility in which they or their oved one lives**
  - Primarily this should be through increased and independent contact with all residents and their families during an accreditation process, inviting them to get in contact if they wish through a channel of contact that is independent of the provider. Such contact will require the production of a plain language explanation of the process, strong reassurance of anonymity, and simplicity of procedure.
  - Additionally, interviewing of residents as part of the accreditation process should be increased to a minimum of 20% of residents. COTA welcomes the July 2017 introduction by the Quality Agency of consumer experience reports. These will be strengthened by a higher percentage of residents being involved and this should occur through a random sampling method that is independent of the provider and is representative of the resident profile in the facility.
  - COTA believes that for consumer experience reports to be effective, an annualised collection of views should occur. Three years old views about a facility do not provide the relevant transparency of consumer experience required to effect cultural change or assist consumers make choices between facilities.
  - COTA strongly supports the draft standards due to be implemented from July 2018 because they increase the voice of consumer experience of the residents in each outcome of the standards. We are hopeful, if implemented properly, that this will assist in an increased transparency of their views.

- **The culture of ‘complaints’ needs to shift from one of fear of retribution if I make a complaint’, to one where feedback and complaints are a ‘promoted, normal and welcome part of customer service’ in aged care.**

\(^1\) Australian Aged Care Quality Agency, Annual Report 2015-2016, p9
➢ COTA notes that for many leading providers of residential aged care, there has been a commitment to this culture shift for years. However, for many COTA continues to be told by residents and families that they are fearful of making a complaint themselves or having others complain on their behalf. Whether this is due to lack of commitment, a lack of resources, or a lack of staff training, it is counter-productive.

➢ COTA welcomes the comments by successive Ministers responsible for aged care that My Aged Care might incorporate a ‘trip advisor’ style functionality. We do not think that is likely to happen with My Aged Care, and may not be appropriate for a government website. However, we do think such a website should be developed by the sector, with consumer leadership and its development financially and otherwise supported by the Government. We would encourage this initiative to be prioritised as soon as possible given the likely lead time in development and implementation.

➢ COTA also draws attention to the National Aged Care Alliance’s Discussion Paper on “Integrated Consumer Supports” of July 2017 2 which calls for consumers to be better informed about the aged care system and better supported in their aged care journey through a system of integrated consumer supports. This was a COTA proposal that gained the unanimous support, first of all from NACA Consumer Organisations, and now from the full Alliance. Unless plain English information is provided and independent-of-provider information and support is given, we are unlikely to see consumers supported into a cultural shift of customer-service focused complaints.

• The Government should prioritise the portability of bed licenses to permit consumers to change their residential aged care provider and to permit good providers to expand their services in response to positive consumer demand.

➢ This recommendation has been made to successive governments by the Productivity Commission, notably in its 2011 ‘Caring for Older Australians’ report, and in the Aged Care Sector Committee’s ‘Aged Care Roadmap’. In addition, it has broad support within the sector as demonstrated through the National Aged Care Alliance’s Blueprint 2 call for a ‘demand driven system’.

➢ Portability will enable residents to choose the best provider and allows the best providers to offer themselves beyond current constraints, which over time will pressure not so good providers out of the industry. Also, it allows consumers/families to much more easily move from poor provider experience.

• The Government should accept all aged care recommendations from the Elder Abuse— A National Legal Response Final Report3 especially in relation to:

➢ Introduction of a ‘a national employment screening process’ (recommendation 4-9), and

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➢ Development of national guidelines for the ‘community visitors scheme’ (recommendation 4-14).

• Consideration of a national ‘official visitors scheme’
  In terms of implementing a broader improvement to quality, COTA believes there is merit in exploring an official visitors scheme to achieve greater early warning systems in monitoring and indeed complaint handling. As the ALRC Discussion Paper said at paragraph 2.268,⁴ the official visitors scheme ‘would complement complaints and reportable incident schemes, by providing an additional opportunity to identify issues of concern, especially on behalf of those with cognitive or communication disabilities, and those with fewer social supports.’

• The introduction of an accreditation marketplace should be operationalised by July 2018 to commence with the introduction of the new aged care standards, rather than the current commitment of sometime after their implementation.

  ➢ In doing so, such facilities as Oakden’s M’akk and McLeay ward with multiple accreditation requirements could have a single accreditation assessment process across its various accreditation schemes.

  ➢ Additionally, were the Aged Care Quality Agency to retain responsibility for unannounced visits, it would ensure there were two different pairs of eyes inspecting each facility, thus reducing the impact of any lax culture within any one organisation.

Broadly COTA believes that the quality of residential aged care over the past two decades has improved substantively due to both the Accreditation Scheme and other efforts. We note that of the 2,681 residential aged care facilities⁵ in Australia the non-compliance across the sector of quality is relatively low. Nevertheless, improvements can be made to ensure these outliers are identified sooner and performance managed in a superior manner than is currently achieved through the regulatory system. We remain concerned that there is insufficient competitive pressure in aged care at the moment to drive quality to higher levels that meet growing consumer and community expectations.

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The first term of reference of the Review seeks to understand “Why, prior to its sanction on 17 March 2017, Commonwealth aged care regulatory processes did not adequately identify the systemic and longstanding failures of care at the Makk and McLeay wards documented in the Oakden Report?”

COTA Australia is unable to provide direct comment on the specific situation of Makk and McLeay wards as it has no first-hand evidence or experience it can provide the review.

COTA Australia does, however, wish to make a few observations:

- COTA notes the Oakden Report recognises the unique nature of Makk and McLeay wards in that Oakden “is, and has always been a Specialist Older Person’s Mental Health Service for South Australians with Severe Mental Illness including those arising in the context of Dementia, for 34 years” (p 31). COTA recognises that this makes the wards a special or unusual case compared to most other aged care facilities in so far as they provide higher levels of specialist mental health services than the average aged care service.

- However, the issues identified in the Oakden Report go much broader than issues of specialist mental health services some of which include items that should have been identified by any competent assessor as insufficient to meet Outcomes 4.4 and 4.5:
  
    ➢ “Oakden has areas such as the BIOS area that is unbearably hot in summer and would promote the likelihood of dehydration. In several areas, the Review found damp areas, poor ventilation and highly perfumed odours being used to mask offensive background smells.” (p 35)

    ➢ “There is poor access to outdoor areas, which are in any event, in a state of poor upkeep, and not designed in a way that would ensure consumers can wander without falling as a result of uneven surfaces.” (p 35)

- More troubling however is the culture of the Makk and McLeay wards identified by the report:
  
    ➢ “the Review heard repeatedly, that Oakden (in particular Makk and McLeay Nursing Home), is a place for the rest of the consumer’s life. This resulted in an attitude among staff that there was less effort and emphasis that needed to be placed on managing the consumer’s challenging behaviours as there was little prospect that any improvement would help facilitate their discharge. This became a self-fulfilling prophecy for many in Oakden.” (pg. 30)

- Concerns regarding culture and support for ageing loved ones is a deeply held and common concern amongst Australians whom COTA speaks with. Specifically, they often express concerns that placing their loved ones in a residential facility will lead to a lack of quality of life. COTA Australia is pleased to note however that in its experience, cases such as Oakden are not a common occurrence amongst the 2,681 residential aged care facilities in Australia. Indeed, they are isolated and rare.

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The failure of the Aged Care Quality Agency to appropriately identify breeches of the aged care quality standards is of deep concern. As we will discuss later in this submission, we believe the increased direct contact between the accrediting body (in this case the Aged Care Quality Agency) and residents of their facilities, along with their family and friends will go some way to ensuring that additional observations of the physical environment and culture of the organisation are appropriately considered during the accreditation process.

**Improvements to the Commonwealth aged care regulatory system**

The second term of reference seeks to identify “What improvements to the Commonwealth aged care regulatory system would increase the likelihood of immediate detection, and swift remediation by providers, of failures of care such as those identified in the Oakden Report?” It specifically identifies any changes to the relevant legislation, administrative processes or approaches, reporting requirements (either voluntary or mandatory) and the engagement processes between the Commonwealth regulatory agencies and other regulatory agencies.

COTA has long been concerned that despite the formal accreditation and complaint processes mandated by successive governments, some poor behaviour has continued to ‘fly below the radar’, hidden from the accreditation processes; and with many of those residents and families who are affected not confident enough to complain. We do not believe there is a ‘silver bullet’ solution to these remaining challenges, but offer the following comments in support of ways in which we can achieve significant and material improvements.

**Support for the increased focus on consumer views in revised aged care quality standards**

The introduction of consumer outcome statements in the draft of the new aged care quality standards to be introduced from July 2018 are a welcome improvement to include the views of consumers as part of the quality accreditation process. This increased focus will complement the recently introduced consumer experience reports that provide a sample view of consumer’s perception of their residential aged care facility.

COTA considers that having relevant and meaningful consumer outcomes for each standard is important, as it will shape consumer expectations, help them formulate goals and preferences and provide a basis for negotiating with service providers and exploring how their goals and preferences might be achieved. The items in the proposed draft standards are written in plain English and easy to understand for the most part. They address important issues such as choice, dignity of risk, partnership, quality of life, and meeting the needs, goals, and preferences of consumers.

When coupled with a changing culture to encourage feedback as part of good customer service, COTA believes the increased collection of consumer views as part of the quality process will help to improve the accreditation process.

**Increase the voice of residents and their family and friends in the accreditation process**

COTA Australia believes that ensuring all residents and their representatives are aware of an accreditation taking place and providing them with opportunity to make submissions to the accreditation team will significantly improve the accreditation process.
It is not uncommon for COTA to hear that residents or family members were not aware that an accreditation process was about to occur, nor were they aware of how they could participate. COTA Australia believes this would be best done through the accrediting body writing to the residents and their representatives directly, rather than going through the provider.

A letter sent directly to each resident and their representatives should include a clearly understood explanation of what accreditation involves, a strong assurance of anonymity in any information provided, and provide a method for residents or representatives to get in contact directly with the accreditation team. While COTA recognises there may be legislative change required to ensure direct contact can be made, COTA believes this would be appropriate and almost universally welcomed in the community.

COTA welcomes the July 2017 introduction of ‘consumer experience reports’ by the Australian Aged Care Quality Agency and associated interviewing of residents as part of the accreditation process. We believe this will go a long way towards systematically incorporating the consumer voice in the accreditation process under the current standards.

However, COTA believes that the current benchmark of only receiving the views of 1 in 10 residents should be doubled to 1 in 5 residents. This increase to 20% of residents would require a change to section 2.15(2) of the Quality Agency Principles 2013.

COTA understands that the new ‘consumer experience reports’ collection does occur through a random sampling method that is independent of the provider and we will be observing these reports as they begin to be used to identify if consumers agree the results are representative of the residents in the facility.

COTA believes however that with changing of staff the culture of facilities can change within a very short timeframe. Accordingly, COTA believes there should be an annualised collection of the consumer experience report for each residential facility, to ensure the views are current and of relevance to consumers looking to understand the views of other residents prior to entering a residential aged care service. It is clear to us that potential residents will heavily discount information that is not perceived as current.

**Change the culture of complaints from ‘fear of retribution’ to ‘a normal and welcome part of customer service’**

One of the most common items of feedback COTA hears is that consumers are too afraid to complain or having families complain on their behalf. This does not necessarily mean that there is anything to fear, but rather that there is a culture of concern that needs to change. COTA believes this cultural change has been successfully improved upon across the sector, with some market leaders in customer service - a component of which is feedback or complaints.

COTA believes that if culture was shifted towards one that focused on customer service and encouraged feedback, complaints would become a promoted and welcome part of customer service. COTA recognises that adopting customer service focused culture does present challenges in terms of staff training and the availability of scarce resources, nevertheless believes it is a critical issue.

COTA welcomes the comments by successive Ministers responsible for aged care that My Aged Care might incorporate a ‘trip advisor’ style functionality. We do not think that is likely to happen with My Aged Care, and may not be appropriate for a government website. However, we do think such a website should be developed by the sector, with consumer leadership and its development financially and otherwise supported by the Government. We would encourage this initiative to be prioritised as soon as possible given the likely lead time in development and implementation.

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Accept all aged care recommendations from ALRC’s Elder Abuse Report

COTA Australia notes the Government is still considering its response to the Australian Law Reform Commission’s (ALRC) ‘Elder Abuse — A National Legal Response Final Report’. Included in the ALRC report’s section on aged care are a series of recommendations on aged care that COTA Australia recommends Government should adopt to increase quality in residential aged care. COTA notes its support for the introduction of a serious incidents scheme, as outlined in the final report across recommendations 4-1 through to 4-6.

The ALRC recommended the development of national guidelines for the current community visitors scheme (recommendation 4-14), to provide a consistent framework whereby the visitor may identify any areas of abuse or neglect to their coordinator for appropriate action to be taken by the coordinator. This could include the identification of any issues into the complaints commissioner as a 3rd party complaint, or into tip-offs about compliance with accreditation.

Additionally, the report suggested a national employment screening process should be instituted (Recommendation 4-9) that would consider a range of factors before determining clearance levels which would include criminal history, relevant reported serious incidents and relevant disciplinary proceedings or complaints. COTA Australia contends this would best be embedded within a ‘working with vulnerable person’s card’ to ensure consistent application of these factors across the industry.

Official visitors scheme

COTA draws the Review’s attention to paragraphs 4.232-4.235 of the ALRC’s final report and 11.266 – 11.276 of the discussion paper where the ALRC discusses the establishment of an ‘official visitor’ scheme. The ALRC finalised its recommendations without the official visitor’s scheme identified in its discussion paper in preference for a focus on the introduction of a robust serious incidents scheme (identified as the strongest method of addressing the elder abuse matters).

However, in terms of implementing a broader improvement to quality, COTA believes there is merit in exploring the official visitors scheme to achieve greater early warning systems in monitoring and indeed complaint handling. As the ALRCs discussion paper at paragraph 2.268 said the official visitors scheme would ‘would complement complaints and reportable incident schemes, by providing an additional opportunity to identify issues of concern, especially on behalf of those with cognitive or communication disabilities, and those with fewer social supports.’

Expand accreditation agencies to enable private accreditation entities to conduct a single accreditation process across multiple accreditation systems by July 2018

COTA Australia notes the Government had previously foreshadowed that the monopoly of the Australian Aged Care Quality Agency over administration of accreditation would be opened to allow facilities the ability to utilise an accrediting body of their choice. Recently, Government indicated this would proceed following the July 2018 introduction of the new Quality Standards. COTA believes there is merit to reprioritising the introduction of a quality accreditation marketplace to ensure it is operationalised by July 2018 with the new standards commencement.

COTA notes given the unique situation of facilities as Makk and McLeay ward which required compliance with multiple accreditation schemes a single accreditation entity who can accredit or at least assess against accreditation of multiple accreditation schemes would ensure there was a clear line of responsibility regarding which accreditation scheme should have identified these errors. Additionally, were the Aged Care Quality Agency to retain responsibility for unannounced visits, it

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would ensure there were two different pairs of eyes inspecting each facility, thus reducing the impact of any laxed culture within any one organisation.

**Other measures to strengthen protection of residents**

The final term of reference seeks to identify “*Any other matter that the reviewers consider relevant to the purpose of the review, including any other measures in addition to current statutory arrangements that may strengthen the protection of residents.*”

**A Government commitment to allow the portability of residential ‘bed licenses’**

In 2011 the Productivity Commission’s 2011 Caring for Older Australians report recommended that consumers should be able to change their providers, including changing their residential care provider. Support for this principle was reaffirmed by the Aged Care Sector Committee in April 2015 as part of the Aged Care Roadmap\(^{10}\) and by the National Aged Care Alliance’s 2016 Federal Election Position Statement 3.1 which called for bipartisan commitment to “co-design process that removes Aged Care Allocation Round for residential care by 2019 and uncaps supply by 2021 is established.”\(^{11}\)

Portability will enable residents to choose the best provider and allows the best providers to offer themselves beyond current constraints, which over time will pressure not so good providers out of the industry. Additionally, and perhaps most importantly for some consumers affected by the worst of quality of care or physical environments, it allows consumers/families to move from poor provider experiences.

**Supported, Informed and Empowered Consumers**

COTA also notes the National Aged Care Alliance’s call for consumers to be better informed about the aged care system and specifically its call for integrated consumer supports. Unless such plain English information is provided and independent of provider information is given, we are unlikely to see consumers supported into a cultural shift of customer-service focused complaints.

COTA draws the Review’s attention to the Alliance’s discussion paper on integrated consumer supports.\(^{12}\) This paper outlines the various elements of consumer support that will assist consumers in feeling empowered to navigate and improve the aged care system.

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