



**Australian Government**  
**Department of Social Services**

Ms Rhia Victorino  
Principal Council Officer  
General Purpose Standing Committee No 3  
NSW Legislative Council  
Parliament House  
Macquarie Street  
Sydney NSW 2000

Dear Ms Victorino

Thank you for the opportunity to respond to questions arising from my appearance before the above Committee on 5 August 2015. There are a number of Supplementary Questions, additional Supplementary Questions, and questions on notice evident in the transcript. My responses to the Questions on notice are set out below.

**Supplementary Questions**

**1. Is a review of the Accreditation Standards planned or is a review being currently undertaken?**  
**Response**

As part of the Australian Government's 2015 Budget initiative to develop a single quality framework for aged care, the Accreditation Standards, are being reviewed.

**2. How many nursing homes are currently in operation within New South Wales?**  
**Response**

As at 30 June 2015, there were 874 accredited residential aged care services in NSW.

The Department understands that under the relevant NSW legislation, a "nursing home" is a residential aged care service that has allocated places that require a high level care (within the meaning of the Commonwealth Aged Care Act 1997). The Department does not have information on the number of "nursing homes" within the meaning of the relevant NSW legislation because the distinction between high care and low care allocation of places ceased on 1 July 2014.

**3. How many new nursing homes have commenced operation within New South Wales between 1 July 2014 and 30 June 2015?**  
**Response**

The Quality Agency accredited seven commencing (new) residential aged care services between 1 July 2014 and 23 June 2015. Note that the Department is not able to advise how many of these would be "nursing homes" as defined in the relevant NSW legislation.

**4. How many nursing homes were in operation within New South Wales before 1 July 2014?**

Response

There were 876 accredited residential aged care facilities in operation in New South Wales as at 30 June 2014.

**5. How many aged care facilities with residents who require a high level of residential care, other than nursing homes, are currently in operation in New South Wales?**

Response

See response to question 2.

**6. How many new aged care facilities with residents who require a high level of residential care, other than nursing homes, have commenced operation within New South Wales between 1 July 2014 and 23 June 2015?**

Response

The Quality Agency accredited seven commencing (new) residential aged care services between 1 July 2014 and 23 June 2015. Note the Department's response to Question 2.

**7. How many aged care facilities with residents who require a high level of residential care, other than nursing homes, were in operation within New South Wales before 1 July 2014?**

Response

There were 535 New South Wales residential aged care services with operational high care places as at 30 June 2014.

**8(c). What security screening requirements are required for these employees (Registered Nurses, Enrolled Nurses with/without medication endorsement) to practice or be employed in New South Wales (Police Records Check, NSW Working With Children Check, etc.)?**

Response

Police checks are intended to complement robust recruitment practices and are part of an approved provider's responsibility to ensure all staff and volunteers are suitable to provide care to the aged.

Police certificates, not more than three years old must be held by all staff members who are reasonably likely to have access to care recipients, whether supervised or unsupervised.

While approved providers should aim to ensure all new staff members have obtained a police certificate before they start work, aged care legislation does provide arrangements for commencing work prior to receipt of a police certificate in exceptional circumstances.

Section 49 of the *Accountability Principles 2014* enables a person to start work prior to obtaining a police certificate and pending an assessment of any criminal conviction identified in the certificate if:

- the care or other service to be provided by the person is essential; and

- an application for a police certificate has been made before the date on which the person first becomes a staff member or volunteer; and
- until the police certificate is obtained, the person will be subject to appropriate supervision during periods when the person has access to care recipients; and
- the person makes a statutory declaration stating that they have never been:
  - a) convicted of murder or sexual assault; or
  - b) convicted of, and sentenced to imprisonment for, any other form of assault.

In such cases, the approved provider must have policies and procedures in place to demonstrate:

- that an application for a police certificate has been made;
- the care and other service to be provided is essential;
- the way in which the person would be appropriately supervised; and
- how supervision will occur in a range of working conditions, e.g. during night shifts and holiday periods when supervisory staff numbers may be limited.

**9. Who determines the nature of an accreditation standard? What is the rationale for not including a specific requirement for a registered nurse in relevant accreditation standards such as Standards 1.6, 2.4 and 2.5?**

Response

The residential aged care Accreditation Standards (Standards) are set out in Commonwealth aged care legislation. The Department of Social Services has policy responsibility for the Standards, and the Quality Agency provides guidance for approved providers on the systems and processes providers should have in place to be able to demonstrate they meet the Standards.

Commonwealth legislation is clear that providers are required to have sufficient numbers of appropriately skilled staff sufficient to meet the needs of care recipients. For example, where a resident requires specialised or complex nursing services, these must be carried out by a nurse practitioner, registered nurse or enrolled nurse acting within their scope of practice as determined by the Nursing and Midwifery Board of Australia.

Additionally, providers are required to comply with State and Territory legislation and regulations, such as those covering the use of Schedule 4 and Schedule 8 medications which specify types of care to be provided.

The relationship between staffing in aged care homes and the quality of the care provided is complex. There is considerable diversity in staffing arrangements across accredited homes. This is to be expected given the considerable variation across the sector in the nature of the care recipients' needs, facility size and design, the way work is organised and the extent to which some services are conducted in-house or outsourced. Requirements will also change over time within individual facilities as changes occur in the mix of care recipients' needs. There is no single optimum staffing level and mix as there may be many sets of arrangements for the provision of quality aged care that apply in response to residents' particular circumstances.

Given the fluctuating and diverse needs of residents across all aged care homes, it is inappropriate to mandate the staff skills and mix in residential aged care.

The issue of staff ratios was raised in the Productivity Commission Caring for Older Australians Final Report. The Commission noted the diversity of stakeholder perspectives on this issue. While the Commission expressed the view that at this stage the introduction of a simple staff ratio would not be a positive reform, it did not make any recommendations on staff ratios. The report observed that “at this stage, the imposition of a simple staff ratio is a relatively blunt instrument, particularly given that the care resident profile of every facility will be ever changing.”

**10. Please outline the complaint mechanisms available to residents and their families through your agency?**

Response

The Aged Care Complaints Scheme (the Scheme) provides a free service for anyone to raise their concerns about the quality of care or services being delivered to people receiving aged care services subsidised by the Australian Government, including:

- residential care
- Home Care Packages
- Commonwealth Home Support Programme services (except HACC services in Western Australia and Victoria), and
- National Aboriginal and Torres Strait Islander Flexible Aged Care.

Complaints can relate to care, catering, financial matters, hygiene, equipment, security, discrimination, activities, choice, comfort and safety or other matters related to the responsibilities of a service provider.

If a complainant or a provider is dissatisfied with the outcome of the complaints process, they can seek internal reconsideration of the Scheme’s decision or alternatively seek an independent review by the Aged Care Commissioner.

If a complainant continues to be dissatisfied with the processes of the Scheme or the Commissioner, these concerns can be raised with the Commonwealth Ombudsman.

Relevantly, responsibility for managing the Complaints Scheme is expected to transfer from the Department of Social Services to the Aged Care Commissioner on 1 January 2016.

If a consumer has a concern that relates to the conduct of health practitioners, including nurses, these concerns should be directed to the Australian Health Practitioner Regulation Agency (AHPRA) in the first instance. Among other things, AHPRA:

- has offices in each state and territory where the public can make a complaint about a registered health practitioner or student
- manages investigations into the professional conduct, performance or health of registered health practitioners on behalf of the health profession national boards, except in:
  - NSW where this is undertaken by the Health Professional Councils Authority and the Health Care Complaints Commission, and
  - Queensland where this may be undertaken by the Queensland Health Ombudsman.

- works with the Health Complaints Commissions in each state and territory to make sure the appropriate organisation deals with community concerns about individual, registered health practitioners.

### **Additional Supplementary Questions**

#### **1. Is there Commonwealth legislation which identifies the level/qualification of staff required at an aged care facility or requires that an aged care facility employ staff of a certain level/qualification?**

##### **Response**

The Quality of Care Principles 2013 (the Principles) identifies the qualifications of staff who perform certain nursing services in residential aged care facilities. For example, Schedule 1, Part 3 of the Principles specifies that:

- initial assessment and care planning must be carried out by a nurse practitioner or registered nurse
- on-going management and evaluation must be carried out by a nurse practitioner, registered nurse or enrolled nurse acting within their scope of practice, and
- a range of nursing services which must be carried out by a nurse practitioner, registered nurse, or enrolled nurse or other professional appropriate to the service, acting within their scope of practice. These may include, but are not limited to:
  - establishing and monitoring a complex pain management or palliative care program
  - insertion, care and maintenance of tubes, including intravenous and naso-gastric tubes
  - establishing and reviewing a catheter care program, including the insertion, removal and replacement of catheters, and
  - risk management procedures relating to acute or chronic infectious conditions.

#### **2. Please define the respective roles of the Commonwealth and State with regards to aged care.**

##### **Response**

In relation to residential aged care, the Commonwealth has principal responsibility for policy, funding and regulation of obligations, conditions, responsibilities, and reporting requirements of approved providers, set out in the *Aged Care Act 1997* and associated Aged Care Principles, including:

- aged care planning, through allocation of the number and location of aged care places
- prices providers can charge for care and living expenses; and partial regulation of accommodation prices
- quality of care, through pre-market approval of providers and ongoing regular assessment against quality standards
- compliance actions where an approved provider fails to meet its obligations.

Aged care services are also required to comply with any relevant State and Territory legislation and regulations, such as those covering food safety, infection control, medication management and emergency management procedures. The monitoring of compliance with State and Territory legislation and regulations is the responsibility of the relevant jurisdiction.

### Questions on Notice

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**Question – “The Hon Walt Secord: For the 939 aged-care facilities in New South Wales, how many complaints have you received?”**

Response

1,130 complaints concerning residential care in New South Wales were received by the Department of Social Services’ Aged Care Complaints Scheme in 2013-14.

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**Question - “CHAIR: My question is about action taken about complaints. Are residents or their representatives informed when a facility is under review, has sanctions applied or is in timeline? Is that made known?”**

Response

The Complaints Scheme processes and outcomes remain confidential between complainants, service providers and affected care recipients. Information gathered by the Scheme is protected information under the *Aged Care Act 1997* and as such, cannot be disclosed to third parties.

In the event the Quality Agency undertakes an assessment contact, whether as a result of a complaint or not, it will interview staff and usually more than 10 per cent of residents and/or their representatives as part of observing care practices. Generally the Quality Agency’s decisions and reports about assessment contacts are not publicly available. However, an update to the home’s last audit report will be published on the Quality Agency website if the decision results in a ‘compliance change’ – either:

- the last information published showed that the home had failed to meet the Accreditation Standards and the home has now met all expected outcomes

or

- the home has been on a timetable for improvement and this assessment found that it has not succeeded in meeting all the expected outcomes on time.

A care recipient or their representative has a legislative right to information about the residential care service in which they reside. The Department uses a graduated regulatory response and where this results in the Department issuing a Notice of Non-Compliance and/or sanctions this information is made publically available through the My Aged Care and the Department of Health web sites. This information is not usually made public until the provider has been given a reasonable opportunity to inform affected care recipients and their representatives. Additionally, where the Department imposes sanctions, the approved provider is expected to provide written notification of

the sanction to care recipients, relatives and their representatives. The Department also encourages the approved provider to hold a Residents and Representatives meeting to inform residents, relatives and their representatives of the sanctions that have been imposed, the reasons for the sanctions and to outline the steps being undertaken to remedy the non-compliance. This meeting provides care recipients a forum in which to raise concerns with the approved provider and/or the Department.

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**Question - "Can you provide further information to the Committee about how that process is defined? I am interested to know whether information is provided in writing to all recipients and/or their representatives."**

Response

The Charter of care recipients' rights and responsibilities requires the approved provider to provide care recipients access to information about his or her rights, care, accommodation and any other information that relates to them personally. As such, when a sanction is imposed the approved provider writes to residents, relatives and their representatives. In addition the approved provider usually holds a Resident and Relative Meeting. Once the approved provider schedules the Residents and Relatives meeting, the Department is advised and correspondence is issued by the Department to each resident or their representative. This letter details the time and date of the meeting, as well as an assurance that the Department will closely monitor the service to require problems to be fixed quickly, and that care recipients are supported during this challenging period.

I trust these answers will assist the Committee.

Yours sincerely

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Quality and Regulatory Policy Branch  
Department of Social Services

4 September 2015