

## Aged Care Quality and Safety Commission

### Response to Notice to Give Information and Produce Documents – NTG-0737

16 March 2020

- 1 This is a response to Notice to Produce Documents and Give Information or a Statement in Writing No NTG-0737 dated 12 March 2020 (the **Notice**), which has been issued by the Royal Commission into Aged Care Quality and Safety (the **Royal Commission**) to the Aged Care Quality and Safety Commission (**ACQSC**).
- 2 This information is produced to the Royal Commission on the basis that it will be tendered and received in evidence by the Royal Commission pursuant to Notice No NTG-0737 and on the basis that the information be treated as evidence pursuant to section 6DD of the *Royal Commissions Act 1902* (Cth).

#### HOME CARE

##### Question 3

On 2 April 2019 in the 2019-20 Federal Budget, the Australian Government announced \$7.7 million over two years from 2018-19 to develop an end-to-end compliance framework for the Home Care program, including increased auditing and monitoring of home care provider. Insofar as the funds were allocated to the Aged Care Quality and Safety Commission:

- a. explain the progress that has been made against this announcement
- b. provide an itemised budget for the expenditure of the announced \$7.7 million
- c. identify for each of the items in the budget for the expenditure of the announced \$7.7 million how much of each item was spent before 31 January 2020
- d. describe the 'end-to-end compliance framework' including timeframes for its development and implementation.

##### Question 4

On 2 April 2019 in the 2019-20 Federal Budget, the Australian Government announced \$5.6 million in 2019-20 to commence the implementation of an enhanced home care compliance framework to improve the quality and safety of home care services and enhance the integrity of the home care system. Insofar as the funds were allocated to the Aged Care Quality and Safety Commission:

- a. explain the progress that has been made against this announcement
- b. provide an itemised budget for the expenditure of the announced \$5.6 million
- c. identify for each of the items in the budget for the expenditure of the announced \$5.6 million how much of each item was spent before 31 January 2020
- d. describe the 'enhanced home care compliance framework' including timeframes for its development and implementation. In your answer, explain the difference between this measure, and the measure set out in question 3, above.

*Compliance framework / action plan*

- 3 Funding provided under the *More Choices for a Longer Life* Budget measure (the **Measure**) provides \$724.8 million in funding over five years from 2018-19 to support older Australians through improvements to the quality, safety and accessibility of residential and home care services. In the 2019-20 Federal Budget, the Australian Government announced allocation of funding under the Measure for the development and implementation of the home care compliance framework, as follows:
- (a) \$7.7 million was allocated for the development of 'an end-to-end compliance framework for the Home Care program'. Of this, \$4.175 million was allocated to the ACQSC over a two-year period (\$1.9 million in the 2018/19 financial year, and \$2.3 million in the 2019/20 financial year) and \$3.504 million was allocated to the Department of Health (**Department**); and
  - (b) \$5.6 million was allocated for the 'implementation of an enhanced home care compliance framework'. Of this, \$2.419 million was allocated to the ACQSC for the 2019/20 financial year, and the remaining \$3.148 million was allocated to the Department.
- 4 The Department is responsible for the development of the home care compliance framework, which it prepared in the form of the Home Care Compliance Action Plan (the **Action Plan**). The Action Plan is a high-level document designed to address short to medium term risks for home care regulation. The Action Plan is also designed to guide ongoing work to build fit-for-purpose regulatory capability over time. The Action Plan covers work the Department and the ACQSC have implemented, commenced or planned, to drive improvements in the quality, safety, compliance and integrity of home care services. A copy of the Action Plan is at **Exhibit-1 [CTH.1000.0004.0501]**.
- 5 The ACQSC participated in the development of the Action Plan including through participation in a number of workshops led by the Department. These workshops sought to identify current compliance issues in home care services to enable the development of solutions as to how these issues could be addressed by improvements in regulatory functions and processes.

*Difference between the two funding allocations*

- 6 The \$4.175 million was allocated to the ACQSC to increase its workforce to enable it to increase monitoring activities of home care services. The \$2.419 million was allocated to the ACQSC to commence implementation of phase one of the home care compliance framework. This included increasing engagement with providers and consumers, developing improvements in data collection and risk profiling, and increasing monitoring and compliance activities in home care services

*The ACQSC's home care services integrated regulatory model*

- 7 In respect of the regulation of home-based care services including the Home Care Packages program (**Home Care program**), the Commonwealth Home Support Programme (**CHSP**) and home-based Short-Term Restorative Care (**STRC**) (collectively, **home care services**), the ACQSC is responsible for:
- (a) assessing and approving providers for the delivery of home care services;

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- (b) assessing and monitoring the performance of individual home care service providers against the Aged Care Quality Standards (**Quality Standards**), and holding them to account for returning to full compliance where they are not meeting the Quality Standards;
  - (c) assessing and investigating Home Care program provider compliance in managing consumer fees and other financial obligations;
  - (d) undertaking compliance and enforcement actions, such as imposing sanctions where providers do not meet their aged care responsibilities;
  - (e) managing complaints about providers, which includes monitoring issues raised in complaints;
  - (f) providing information and education to home care providers about their responsibilities under the Quality Standards and the *Aged Care Act 1997* (Cth) (**Aged Care Act**);
  - (g) undertaking consumer experience interviews for consumers of home services; and
  - (h) monitoring system-wide performance against the Quality Standards to ensure that providers of home care services are meeting public expectations of quality and safety, and publishing information on relevant measures of sector-wide performance to assist providers to identify and manage their own risks, and to improve transparency of the sector's operation for consumers and the wider community.
- 8 In support of the objectives of the Action Plan, the ACQSC is developing and implementing an integrated regulatory model which strengthens and enhances the ACQSC's regulation of home care services. The ACQSC's home care services regulatory model lays the groundwork for risk-based assessment of home care providers such that home care compliance more closely aligns with the strengthened monitoring and assessment processes for residential aged care. The ACQSC's work in strengthening the home care regulatory model includes:
- (a) introducing consumer experience interviews from 1 July 2019;
  - (b) engaging additional staff. The ACQSC has engaged the equivalent of 12 additional quality assessors and seven additional complaints officers, who provide on the ground response capability to support complaints handling and the protections provided through audit, monitoring and compliance activities for home care;
  - (c) reviewing and developing the ACQSC's Assessment Methodology to more closely align assessment and monitoring processes with the Quality Standards as they relate to home care;
  - (d) carrying out a project to improve data integrity and support the integration of its functions as they relate to home care services to better manage risk and ensure an integrated, end to end regulatory approach;
  - (e) developing further processes for consumer experience interviews for home care consumers, as described further in response to questions 6 to 9 below;
  - (f) strengthening the ACQSC's capability for risk-based profiling of services for monitoring, visiting and reviewing new home care providers within their first months of operation;

- (g) improving data collection from approved providers of home care;
  - (h) integrating the Home Care Compliance and Investigations function, which was previously part of the Aged Care Compliance Branch of the Department, into the ACQSC, as described in paragraph 10 below; and
  - (i) enhancing the education and information functions of the ACQSC to support home care services.
- 9 The home care services regulatory model forms part of the ACQSC's broader efforts to establish an integrated regulatory model following the transfer of a range of functions and responsibilities from the Department on 1 January 2020,<sup>1</sup> which included the transfer of functions relating to approval of providers, aged care compliance and enforcement, compulsory reporting, and home care compliance and investigations. The transfer provides the ACQSC with a broader range of regulatory functions and powers to oversee the provision of care by providers of Commonwealth-funded aged care services from their entry to their exit (if required) from the regulatory market. The ACQSC's Regulatory Strategy details its approach to its current end-to-end regulatory activities since 1 January 2020, including those relevant to home care services. A copy of the Regulatory Strategy is at Exhibit-2 [CTH.4000.0001.1210]).

*The Home Care Compliance and Investigations team*

- 10 The Home Care Compliance and Investigations team was transferred from the Department to the ACQSC as part of the broader transfer of functions and responsibility from 1 January 2020. The primary responsibilities of the Home Care Compliance and Investigations team are to:
- (a) monitor compliance of home care providers with their responsibilities under the Aged Care Act to provide accurate and timely information to consumers, including the responsibilities relating to transparency in pricing and appropriate expenditure of home care package funds; and
  - (b) undertake preliminary investigations where risk to consumer harm and safety is identified, allowing the Home Care Compliance and Investigations team to refer (when necessary) to other regulators or the Department's Investigation and Fraud team.

<sup>1</sup> Schedules 1 to 4 to the *Aged Care Legislation Amendment (New Commissioner Functions) Act 2019* (Cth).

*Expenditure*

- 11 The following table details the itemised budget for the expenditure of the proportion of the announced \$7.7 million and \$5.6 million allocated to the ACQSC.

Item	Budget Allocation	Amount spent prior to 31 January 2020
\$4.175 million funding to the ACQSC		
Contractor costs to provide additional resources to support growth in regulatory activity and stronger risk-based profiling of services	\$4,175,000	\$3,238,000
\$2.419 million funding to the ACQSC		
Co-ordination of sector engagement with providers and consumers	\$163,000	\$1,134,000
Workshops and meetings regarding aged care quality standards, work on risk profiling and data collection from home care providers	\$175,000	
Contractor costs to provide additional resources to support regulatory activities in home care and the compliance function	\$1,848,000	
Travel and accommodation costs for assessors to undertake monitoring and regulatory activities	\$233,000	

*Home care services compliance activities*

- 12 The ACQSC has received and is utilising funding received under the Measure to increase its home care services compliance activity. At this stage, the program for increasing the level of compliance activity in home care services has progressed more slowly than originally planned. While there was an increase in the level of compliance activity in 2018/19 compared to 2017/18, since then the activity level has declined. Compliance activity in home care services during 2019/20 has been targeted to areas of highest risk to best ensure the safety of home care services for consumers. The level of home care service compliance activities has been impacted by:
- (a) A high turnover in the assessor workforce. Despite several rounds of recruitment and training of new quality assessors in 2019, there has been a high level of attrition across the assessor workforce. This is partly due to the retirement of a number of experienced quality assessors and others taking up employment opportunities elsewhere in the aged care sector;
  - (b) The introduction of the Quality Standards which have assessment and monitoring activities that have initially taken longer to complete. The introduction of the Quality Standards has increased the time taken for quality assessors to undertake performance assessments, particularly with respect to the evidence gathering process and the report writing. The ACQSC has sought to address this through the introduction of the new Evidence Domain approach,

discussed further in response to question 6 below, and the introduction of improved report writing tools; and

- (c) A higher number of non-compliances identified in residential aged care (up from 10.9% in 2018/19 to 22.8% in 2019/20). As at December 2019, there are 200 residential aged care services being monitored for non-compliance with the Quality Standards, compared to 136 services as at December 2018. Non-compliant services require more active monitoring by the ACQSC and regular compliance activities.

#### Question 5

In relation to the letter from Gilbert + Tobin dated 24 December 2019 and the Home Care Compliance Action Plan:

- a. describe how often and in what circumstances consumer experience surveys will be delivered to home care consumers. Including:
  - i. what percentage of home care recipients will be surveyed
  - ii. how home care recipients are selected for the surveys
  - iii. any policy with respect to obtaining the views of home care recipients living with cognitive impairment or with diverse needs

- 13 In July 2019, the ACQSC introduced consumer experience interviews (**CEIs**) for consumers who receive funding under the Home Care program and/or services under the CHSP, and their representatives. CEIs contribute intelligence that assists in assessing the prevailing level of risk in a service and inform performance assessment of a home service against the Quality Standards. They provide evidence of performance by an approved provider, as well as indicators of possible areas of risks or concern at a service that may require further enquiry by the ACQSC.
- 14 CEIs in home care involve 11 structured questions aimed at capturing consumers' experience of care against the Quality Standards. A copy of the CEI questions is set out in Appendix A of the fact sheet 'Consumer Experience Interviews in Home Services' (the **CEI Fact Sheet**), which is at Exhibit-3 [CTH.4000.0001.1391]). Each of the questions is mapped against one or more requirements under the Quality Standards, as set out in Table A of the CEI Fact Sheet.
- 15 To help facilitate participation of consumers in the CEIs, the home care service provider being assessed must notify their consumers and/or their representatives of the upcoming assessment by the ACQSC and provide information to their consumers about how they can participate in the assessment process. This includes information about the options by which they (or their representatives) can provide feedback to the ACQSC and/or complete the CEI, which can be done by telephone, by the consumer (or their representative) attending the service during the site visit and speaking with a quality assessor, or by completing it online.<sup>2</sup>

<sup>2</sup> This option has been available since 1 August 2019 and is available through Lonergan Research's website. The ACQSC engages Lonergan Research as a third party to collect CEI results through an online portal.

- 16 There are currently no set percentages for the number of home care consumers to be surveyed per provider, and no minimum random sample number.<sup>3</sup> Sampling of home care service consumers is currently done by self-selection and as a result, completion of a CEI by a consumer is primarily driven by that consumer's interest in recording and reporting on their experience. During site visits, quality assessors will seek to obtain a sample that is sufficient to enable them to understand the consumer experience of the care and services provided. Determining sufficiency of evidence will vary depending on the nature of the requirement being assessed. As a general guide, quality assessors meet and contact at least ten consumers during a site visit to a home care service.<sup>4</sup>
- 17 The approach taken by quality assessors when conducting CEIs in home care services is set out in the CEI Fact Sheet and the ACQSC's Assessment Methodology. The CEI Fact Sheet sets out an overview of the CEI process, while the Assessment Methodology guides quality assessors to conduct consistent assessments of provider performance under the Quality Standards and has been updated to reflect the changes to the CEI process. The Assessment Methodology sets out:
- (a) how quality assessors are to determine the appropriateness and relevance of evidence;
  - (b) how quality assessors are to design a sample of consumers to enable assessment across the range of requirements being assessed; and
  - (c) the purpose of the structured questions to be asked to consumers.

A copy of the Assessment Methodology is at Exhibit-4 [CTH.4000.0001.1401].

*Consumers with cognitive impairments or diverse needs*

- 18 The home care service consumers interviewed by quality assessors when undertaking performance assessments include consumers living with sensory and/or cognitive impairments, and consumers living with diverse needs. The ACQSC provides training and resources to quality assessors to ensure that communication with all CEIs are carried out effectively and with respect. The ACQSC's fact sheet 'Communicating with consumers with a sensory or cognitive impairment' is at Exhibit-5 [CTH.4000.0001.1657]. This fact sheet provides guidance to quality assessors on general communication interactions with consumers, including those who have hearing impairments, vision impairments, blindness, speech impairments, and/or cognitive impairments, and directs assessors to resources produced by third party organisations such as Dementia Australia.

<sup>3</sup> There are no legislative requirements requiring quality assessors to meet a certain percentage of home care recipients or representatives. Rules 38(2) and 74(2) of the *Aged Care Quality and Safety Commission Rules 2018* do not apply to home care services.

<sup>4</sup> A site visit is conducted on the premises of the provider of the service, and may, in addition, be conducted on premises on which the service is provided.

## CONSUMER EXPERIENCE INTERVIEWS

### Question 6

In relation to the Aged Care Quality and Safety Commission's indication on its website that from 9 December 2019, Consumer Experience Interviews (CEIs) will no longer be undertaken as part of site audits at residential services, describe the Commission's policy for conducting consumer experience interviews in residential aged care and home care services, including:

- a. how often and in what circumstances they will be conducted
- b. what percentage of aged care recipients will be interviewed
- c. how interviewees are selected
- d. how often and in what circumstances will the Consumer Experience Report be published
- e. how this policy accords with r 38(2) and 74(2) of the Aged Care Quality and Safety Commission Rules 2018
- f. any policy with respect to obtaining the views of care recipients living with cognitive impairment or with diverse needs.

### *Residential aged care*

- 19 Prior to 9 December 2019, structured consumer feedback was collected through CEIs during residential site audits. This process had been in place since May 2017 and was introduced to enhance quality assessors' interviews with consumers during site audits against the Accreditation Standards.<sup>5</sup> To inform consumer choice, the former Australian Aged Care Quality Agency (**AACQA**) (and subsequently the ACQSC) published on its website the results of these structured consumer experience interviews as consumer experience reports (**CERs**) for each residential service alongside the service's site audit reports.
- 20 Following the introduction of the Quality Standards in July 2019, the ACQSC has undertaken a process to revise its approach to assessing the performance of residential services against these standards which are more closely aligned to consumer outcomes. This revised approach, which was introduced from 9 December 2019, includes a change in how the ACQSC engages with consumers about their experiences, including what questions they are asked when interviewed by ACQSC assessors.
- 21 Under the ACQSC's revised assessment approach, the eight Quality Standards have been grouped into four "Evidence Domains", which is a construct designed for the purposes of collecting evidence in undertaking an assessment and understanding provider performance against the Quality Standards. The assessment approach for each Evidence Domain includes key steps, relevant

<sup>5</sup> On 1 July 2019, the former quality standards contained in the *Quality of Care Principles 2014* (Cth) (**Principles**) were replaced by the Quality Standards which apply to all aged care services. The former quality standards were comprised of the Accreditation Standards for residential care services, the Home Care Standards for home care services and CHSP services; the National Aboriginal and Torres Strait Islander Flexible Aged Care Program Quality Standards; and the Transition Care Standards.

questions, areas of focus, and expectations of providers against each requirement. The Evidence Domains are as follows:

- (a) Evidence Domain 1: Dignity, respect, choice and complaints (Quality Standards 1 and 6). A copy of the quality assessor tool for Evidence Domain 1 is at Exhibit-6 [CTH.4000.0001.1395];
  - (b) Evidence Domain 2: Care planning and personal and clinical care (Quality Standards 2 and 3). A copy of the quality assessor tool for Evidence Domain 2 is at Exhibit-7 [CTH.4000.0001.1383];
  - (c) Evidence Domain 3: Lifestyle and service environment (Quality Standards 4 and 5). A copy of the quality assessor tool for Evidence Domain 3 is at Exhibit-8 [CTH.4000.0001.1439]; and
  - (d) Evidence Domain 4: Human resources and governance (Quality Standards 7 and 8). A copy of the quality assessor tool for Evidence Domain 4 is at Exhibit-9 [CTH.4000.0001.1513].
- 22 The set of suggested questions to ask consumers as part of their interview differs between each Evidence Domain. Rather than asking a randomly sampled selection of consumers a standard set of questions, assessors under this revised approach now ask selected consumers a more scoped and targeted set of purposeful questions relevant to the requirements within the Evidence Domain they are assessing. The focus is on trying to gain a deep understanding of the consumer's experience relevant to the requirements within that Evidence Domain. Information obtained from these interviews helps form the basis for identifying potential risk areas or issues that require specific focus and helps inform the approach the quality assessors take to the document review and staff interviews that subsequently take place during the assessment.<sup>6</sup> A copy of the quality assessor tool setting out the key interview questions for each Evidence Domain is at Exhibit-10 [CTH.4000.0001.1373].
- 23 The revised approach has changed the way evidence is collected from consumers to support assessment of compliance with the Quality Standards. This revised approach not only supports consumers and their representatives to provide feedback in a manner that is more flexible but also allows for the ACQSC to obtain more targeted evidence that appropriately explores issues raised through consumer feedback. This evidence can then be more effectively utilised as part of the assessment process.
- 24 The sample of consumers is now selected on a purposeful basis by quality assessors based on the Evidence Domain they are assessing. The sampling approach differs for each Evidence Domain, which ensures the quality assessment team is exposed to a wider cross-section of consumers and consumer experience across the Quality Standards. Consumers and/or their representatives may also approach assessors to be interviewed at a service. A copy of the 'Key Lines of Enquiry Guidance' tool which guides quality assessors on the revised approach to quality assessment and includes an overview of how to select and interview a sample of consumers is at Exhibit-11 [CTH.4000.0001.1523].

<sup>6</sup> More detailed information on the ACQSC's assessment process, including how assessors approach evidence gathering, is contained in the Statement of Catherine Theresa Rosenbrock dated 22 July 2019 [WIT.0302.0001.0001].

- 25 In accordance with the requirements of the *Aged Care Quality and Safety Commission Rules 2018* (Cth) (**ACQSC Rules**), during site audits and review audits, quality assessors must ensure that they sample at least 10% of consumers and/or representatives. In most cases, the percentage of consumers and/or representatives interviewed is much higher than 10%. In the period between 1 July 2018 and 30 June 2019, the average sample size of consumers or their representatives was 16% of the total number of consumers of a service. The 'Key Lines of Enquiry Guidance' tool recommends that, as a general rule, five consumers should be selected for each Evidence Domain. The number of consumers sampled for each Evidence Domain may vary depending on the circumstances. For example, a smaller number of consumers may be sampled for each Evidence Domain if the service being assessed is small in size, and more than five consumers may be sampled if a quality assessor identifies a specific issue that requires further exploration.

*Consumers with cognitive impairments or diverse needs*

- 26 The ACQSC does not have a specific policy to prioritise or ensure the obtaining the views of consumers living with cognitive impairment or with diverse needs. Quality assessors, in selecting consumers for an interview, do however take into account any identifiable risk factors of that consumer, which can include whether that consumer has a cognitive impairment or diverse needs.
- 27 As described above in response to question 5, the ACQSC does provide training and resources to quality assessors to support effective and respectful communication with consumers living with sensory and/or cognitive impairments, and consumers living with diverse needs. The ACQSC's fact sheet 'Communicating with consumers with a sensory or cognitive impairment' is at Exhibit-5 [CTH.4000.0001.1657]. In some cases, representatives and/or guardians will be interviewed to represent consumers with cognitive impairment or consumers who have communication challenges.

*Home care*

- 28 The ACQSC's policy for conducting CEIs in home care services is set out in the response to question 5 above. As home care services are not accredited services (as defined under the ACQSC Rules), rules 38(2) and 74(2) of the ACQSC Rules do not apply.

*Publication of CERs*

- 29 While CERs for residential aged care services were published prior to the introduction of the Quality Standards, under the new Evidence Domain approach described in paragraphs 20 to 23 above, CERs are no longer published. This is because the questions asked during CEIs are now selected on a purposeful basis by quality assessors based on the Evidence Domain they are assessing and are not in a standardised format or sampling methodology that can be published.
- 30 The ACQSC is currently looking at introducing a new online approach to capture the experiences of consumers in residential aged care services against a standard set of questions. As part of this, the ACQSC is exploring an appropriate sampling methodology that would enable CERs to be published. This work is underway and expected to be implemented in 2021.

- 31 The ACQSC is also currently undertaking work to determine an appropriate sampling methodology to enable it to publish CERs for home care services. An appropriate methodology would be one that ensures that responses are representative of the service, and that the sample size is sufficient to publish and enables valid comparison between services to aid consumer choice. It is anticipated that CERs for home care services will be published from 2021.

Question 7

In relation to the evidence of Amy Laffan during the Brisbane Hearing on 8 August 2019 (T4646), describe any advice provided by the Department to the Aged Care Quality and Safety Commission on recommendation 2(iii) of the Carnell Paterson Review with respect to seeking the views of 20 per cent of residents during assessment contacts or site audits.

- 32 The ACQSC has not received any advice provided by the Department on recommendation 2(iii) of the Carnell Paterson Review.

Question 8

With respect to recommendation 2(ii) of the Carnell Paterson Review, describe any action taken to develop options to capture the views of residents, families and staff all year round. In your response, address the timeframes for implementation of this measure. If no action has been taken, explain why.

- 33 Recommendation 2(ii) of the Carnell Paterson Review recommends that the ACQSC should develop options to capture the views of residents, families and staff all year round. In line with Recommendation 2(ii), the ACQSC captures the views of consumers and their representatives on an ongoing basis in four main ways:
- (a) As part of the ACQSC's assessment and monitoring activities in respect of home care services, as described in response to question 5 above;
  - (b) As part of the ACQSC's assessment and monitoring activities at residential aged care facilities, as described in response to question 6 above;
  - (c) The complaints process. Anyone may raise a concern or complaint with the ACQSC at any time, for free, by telephone, mail or through the Commission's website. Complaints and concerns can be raised about providers of any Commonwealth-funded residential or respite care, home care, CHSP services and flexible care, and can be raised openly, anonymously or confidentially. Further information on the ACQSC's complaints function is provided at paragraphs 27 to 33 of the Statement of Janet Mary Anderson dated 4 February 2019 [WIT.0023.0001.0001]; and
  - (d) The ACQSC's 1800 hotline and online platform, through which concerns about aged care service can be raised all year round. The information provided by callers on this line is used as intelligence for the assessment and monitoring activities carried out by the ACQSC.

- 34 As described at paragraph 30 above, the ACQSC is also currently considering options to introduce an online survey, which will allow consumers and their representatives in residential aged care facilities to provide their opinion on the services being received at that facility through an online portal.

Question 9

With respect to recommendation 2(viii) of the Carnell Paterson Review, describe any action taken to share information with residential aged care facilities about common areas of non-compliance and complaints. If no action has been taken, explain why.

- 35 Recommendation 2(viii) of the Carnell Paterson Review recommends that the ACQSC share information with residential aged care facilities about common areas of non-compliance and complaints. The ACQSC is committed to transparency about the outcomes of its regulatory and complaints function and has taken steps to implement Recommendation 2(viii).
- 36 The ACQSC currently publishes a range of information on its website, for consumers, providers and the public which includes:
- (a) re-accreditation site audit and review audit reports for residential services;
  - (b) accreditation, re-accreditation and review audit decisions for residential services;
  - (c) a register of complaints directions; and
  - (d) quarterly sector wide performance activity data on compliance and complaints, described below at paragraphs 38 to 39 below.
- 37 The ACQSC also publishes its monthly newsletter, the *Aged Care Quality Bulletin* (the **Bulletin**). The Bulletin is aimed at Australian aged care providers and shares information to help promote improvements in aged care services. Aged care providers are encouraged to provide feedback, including comments or ideas on the content of the newsletter. The Bulletin provides links to resources, including internal and external guides and cases studies. For example, the February 2020 Newsletter discusses Standard 6 – Feedback and Complaints, providing an outline of the overarching principles and requirements of that quality standard, along with links to supporting information including guides, resources and case studies.

*Sector Performance Reports*

- 38 The ACQSC releases Sector Performance Reports on a quarterly basis on its website. These reports provide statistics about residential aged care, home care services, and National Aboriginal and Torres Strait Islander Flexible services. This includes, but is not limited to, statistics on:
- (a) the number of current active services;
  - (b) the number of site audits, review audits and assessment contacts carried out by the ACQSC in that quarter;

- (c) the percentage of services returned to compliance after completion of a timetable for improvement in that quarter;
  - (d) the number of accreditation decisions in that quarter;
  - (e) the most frequent requirements of the Quality Standards that were not met when instances of non-compliance were identified;
  - (f) the extent to which the Quality Standards were not being met when instances of non-compliance were identified (i.e. how many requirements of the Quality Standards were not being met);
  - (g) the number of complaints received in that quarter; and
  - (h) the most frequent issues that complaints were received about.
- 39 Former Sector Performance Reports also included information on the number of serious risk decisions made by the ACQSC and the percentage of services returned to compliance after completion of a timetable for improvement in that quarter. The most recent Sector Performance Report was released in February 2020 with respect to the October to December 2019 quarter. A copy is at Exhibit-12 [CTH.4000.0001.1556].
- 40 As part of the ACQSC's integration of regulatory functions that were transferred from the Department on 1 January 2020, the ACQSC is updating its next Sector Performance Report (for the January to March 2020 quarter) to include data on the number of Non-Compliance Notices and sanctions issued in that quarter.
- 41 In addition to routinely publishing sector performance data on the ACQSC's website, the ACQSC also regularly presents the most recently published information on sector performance at industry conferences, seminars and invitation-only meetings, including meetings convened by the Council of the Ageing, Dementia Australia, Aged & Community Services Australia, Leading Age Services Australia, and individual approved providers.

#### ENHANCED COMPLAINTS HANDLING BY THE AGED CARE QUALITY AND SAFETY COMMISSION

##### Question 10

Explain the progress that has been made to implement recommendation 10(i) of the Carnell Paterson Review, that the Aged Care Quality and Safety Commissioner be given a power to publicly name a provider who is not sufficiently responsive to, or will not comply with, a direction issued by the Commissioner in respect of a complaint.

- 42 Recommendation 10(i) of the Carnell Paterson Review in 2017 suggests enhancing complaints handling by increasing the powers of the then Aged Care Complaints Commissioner (the **Complaints Commissioner**). On 1 January 2019, the functions of the Complaints Commissioner were brought together with the functions of AACQA to form the ACQSC, with powers that were set out in the *Aged Care Quality and Safety Commission Act 2018* (Cth) (**ACQSC Act**) and ACQSC Rules.

- 43 Under the ACQSC Act and the ACQSC Rules, the ACQSC may issue a complaints direction if the Commissioner is satisfied that an approved provider is not meeting their responsibilities under the Aged Care Act, the Aged Care Principles, or funding agreement, in relation to an issue raised in a complaint.<sup>7</sup> The ACQSC is empowered to make public certain information, including information about the approved provider's performance in relation to its responsibilities under the ACQSC Act or the Aged Care Act.<sup>8</sup>
- 44 Since August 2019, the ACQSC has published information on its website about complaints directions that it has issued to an approved provider.

Question 11

With respect to the Department of Health's statement in or around February 2019 (CTH.0001.1000.4510) that the Aged Care Quality and Safety Commissioner will have the power to name residential aged care providers who obstruct the resolution of legitimate complaints, and that this will be progressed as part of the reforms to the Commission from 1 January 2020, explain:

- a. whether, in the Aged Care Quality and Safety Commission's (**ACQSC**) opinion, this power was included in the legislation amending the functions of the Aged Care Quality and Safety Commissioner that came into effect on 1 January 2020 (and if so, identify the relevant provision or provisions)
  - b. if not, when the ACQSC expects this matter will be progressed
  - c. any advice provided by the ACQSC to the Minister after February 2019 about whether this matter should be progressed.
- 45 The power of the ACQSC to name residential aged care providers who obstruct the resolution of legitimate complaints is captured by section 59(1)(h) of the ACQSC Act. The ACQSC has had this power since the commencement of the ACQSC Act on 1 January 2019 and as outlined in paragraph 44 above, the ACQSC has published complaints directions since August 2019.

*Advice to the Minister*

- 46 In the time available to respond to the Notice, the ACQSC has not identified any advice provided by the ACQSC to the Minister after February 2019 about this matter.

<sup>7</sup> ACQSC Rules r 19.

<sup>8</sup> ACQSC Act s 59(1)(h).

Question 12

Recommendation 10(iv) of the Carnell Paterson Review was that additional aggregated and de-identified activity measures be published by the Complaints Commissioner, including the subject matter of complaints, and whether regulatory action has been taken as a result. That Review also suggested that the Commissioner publish an online activity report, updated every month. Explain with reference to this Review:

- a. whether the Aged Care Quality and Safety Commission has any plans to publish more specific data than that included in the 1 July to 30 September 2019 Sector Performance Data
- b. whether the Aged Care Quality and Safety Commission has any plans to publish an online activity report updated every month and if so, when it plans to do so
- c. if the answer to (a) or (b) is no, explain the reasons why not.

*Data in Sector Performance Report*

47 As outlined above at paragraph 40, the ACQSC is currently looking to expand the content of the Sector Performance Report, to include data on functions transferred to the ACQSC on 1 January 2020. The ACQSC is also planning to expand the report to include:

- (a) commentary on published data regarding regulatory activity and complaints; and
- (b) the inclusion of additional analyses such as quarter on quarter comparison and trend graphs

*Online Activity Report*

48 The ACQSC currently publishes a monthly register about findings of non-compliance against the Quality Standards and where complaints directions are issued. Notices of non-compliance are also published on the Department's website.

## CHEMICAL RESTRAINTS

### Question 13

On 2 April 2019 in the 2019 – 20 Federal Budget, the Australian Government announced that a new unit of clinical pharmacists will be established within the Aged Care Quality and Safety Commission to work directly with residential aged care providers to educate them around best practice use of medicines.

On 25 November 2019, the Australia Government announced funding of \$25.5 million to improve medication management programs to reduce the use of medication as a chemical restraint, and new restrictions and education for prescribers on the use of medication as a chemical restraint.

In relation to these announcements:

- a. Provide an update on the unit of clinical pharmacists to be established within the Aged Care Quality and Safety Commission, including:
  - i. whether this has been established and if not, when it will be established
  - ii. how many clinical pharmacists have been employed and on what basis (full time equivalent)
  - iii. an overview of how the education scheme is operating or will operate
  - iv. describe the mechanisms that are in place to assess the effectiveness of the program following the initial education sessions by the clinical pharmacists. If there are no assessment mechanisms in place, explain why.

### Question 14

In the Implementation Progress Report following the Carnell Paterson Review, the Australian Government stated, “The Chief Clinical Advisor of the Commission will promote awareness amongst aged care providers, health professionals and consumers about decision-making tools and educational resources available to limit the use of restrictive practices in residential aged care facilities.” Describe how the Chief Clinical Advisor has “promoted awareness” and how is this being measured and reviewed.

- 49 The ACQSC recognises that physical and chemical restraint must only be used as a last resort and as such has a regulatory and educational focus on reducing inappropriate use of chemical and physical restraint.
- 50 As outlined in the ACQSC’s 2019 Regulatory Bulletin, amendments to the Principles placed explicit obligations on residential care providers to minimise the use of chemical restraint and obligations relating to the use of physical and chemical restraint in residential care and short-term restorative care in residential care setting. The amended Principles require services to exhaust all alternative strategies and ensure restraints are only used as a last resort and are regularly monitored and reviewed. The regulatory changes require providers to satisfy a number of conditions before restraint can be used, including assessment by an approved health practitioner (for physical restraint) and assessment by a medical practitioner or nurse practitioner who has prescribed the medication (for

chemical restraint). These regulatory changes are outlined in the Regulatory Bulletin, a copy of which is at **Exhibit-13 [CTH.4000.0001.1682]**.

*Establishment of a unit of clinical pharmacists within the ACQSC*

- 51 The ACQSC's Chief Clinical Advisor, Dr Melanie Wroth, is currently leading the program which involves clinical pharmacists engaged by the ACQSC working directly with residential aged care providers to educate them around best practice use of medicines (the **Project**). The Project seeks to reduce and preferably eliminate the misuse of medicines, including psychotropic and benzodiazepines medicines, in residential aged care.
- 52 In November 2019, an expression of interest was released by the ACQSC seeking to recruit experienced accredited clinical pharmacists to participate in the first phase of the Project. The ACQSC received 60 applications and appointed 10 clinical pharmacists, who are engaged on a casual basis, in December 2019.<sup>9</sup>

*The RedUSE Program*

- 53 As part of the first phase of the Project, the ACQSC has begun implementing an evidence-based training and support program to reduce the inappropriate use of sedatives in residential aged care facilities, the Reducing Use of Sedatives Program (**RedUSE Program**).<sup>10</sup> The RedUSE Program involves a multi-strategy interdisciplinary approach including pharmacist-run training in residential services about the correct use of medications and alternative approaches, and bringing nurses, pharmacists and doctors together to reduce the prescribing of antipsychotics. The RedUSE Program promotes quality and appropriate use of sedatives, particularly antipsychotics and benzodiazepines. An information sheet on the RedUSE Program is at **Exhibit-14 [CTH.4000.0001.1707]**.
- 54 The RedUSE Program is currently being implemented through a remote pharmacy visiting program that is targeting residential services that are classified as remote or very remote throughout Australia. This involves arranging for the appointed clinical pharmacists to contact and subsequently visit remote and very remote residential aged care services to hear their challenges and provide guidance and advice on best practice medication management. The pharmacists are intending to visit more than 60 remote and very remote locations, to train nominated nurses, care staff and pharmacists. Education will also be provided to other pharmacists and general practitioners who visit the services and provide them with ongoing support and assistance.
- 55 The first site visit undertaken by the RedUSE Program took place on 21 January 2020, in Port Lincoln in South Australia. It involved two days training of twelve nursing and care staff at the Matthew Flinders residential aged care facility. To date, nine site visits have been completed under the

<sup>9</sup> Following their appointment, the clinical pharmacists attended a four-day training session in Canberra which included two days education about the RedUSE Program. The pharmacists were also trained on: the ACQSC's functions; antimicrobial stewardship; the new goal directed prescribing tool, Goal-directed Medication Review Electronic Decision Support System (**G-MEDSS**) (which has been designed to provide clinical decision support for healthcare practitioners conducting medication reviews for older patients); cultural sensitivities, with pharmacists sharing insights; barriers to behaviour change; and education provided by Dementia Support Australia on behaviour advisory mechanisms and their role.

<sup>10</sup> This program was developed by Dr Wroth working alongside Dr Juanita Breen of the Wicking Dementia Research and Education Centre from the University of Tasmania.

RedUSE Program. It is anticipated that all visits under the RedUSE Program to services in remote and very remote locations will be completed by 30 June 2020.<sup>11</sup> Subject to the completion of this phase of the Project, the ACSQC will be making recommendations to Government about the future of the pharmacy visiting program and its potential for wider rollout.

#### *Evaluation of the RedUSE Program*

- 56 A key component of the RedUSE Program is to seek and record information from service managers, nurses, carers, pharmacists and general practitioners on the particular challenges, barriers and issues relating to access to specialist, health care, pharmacist and behaviour management advice. This information will be used to develop further support and educational models in the future. The Project is also documenting whether any residential aged care services have developed creative or effective initiatives that the ACQSC may be able to share with other services to facilitate further education on appropriate measures to reduce restrictive practices.
- 57 Health Outcomes International (HOI) has also been engaged to develop an evaluation framework for the Project. HOI has completed a literature review and is currently consulting with stakeholders on the proposed evaluation framework.

#### *Education to limit use of restrictive practices*

- 58 Resources to help approved providers understand their responsibilities around minimising the use of chemical and physical restraint are available on the ACQSC's website. These include:
- (a) a resource produced in conjunction with the University of Tasmania to provide information on psychotropic medications used in Australia (at Exhibit-15 [CTH.4000.0001.1665]);
  - (b) a self-assessment tool to assist approved providers to record how they are meeting their legislative obligations to minimise the use of physical and chemical restraint (at Exhibit-16 [CTH.4000.0001.1691]);
  - (c) a guidance resource setting out restraint scenarios, to assist approved providers to understand their obligations under the Principles (at Exhibit-17 [CTH.4000.0001.1695]); and
  - (d) a guidance resource to assist approved providers with appropriate documentation of each instance of "PRN" (as required) use of chemical restraint, which includes template stickers to place on a consumer's clinical notes (at Exhibit-18 [CTH.4000.0001.1635]).
- 59 These resources are promoted by the ACQSC's Chief Clinical Advisor and the clinical pharmacist unit as part of the Project. To further promote awareness, the Chief Clinical Advisor has also presented to various stakeholder groups including Dementia Training Australia and the Australian Guardianship and Administration Council. These resources are also promoted and recommended as part of direct communication that Dr Wroth has with service providers, pharmacists

<sup>11</sup> The ongoing progress of the RedUSE Program has been impacted by the effect of COVID-19. Visits under the program have been temporarily suspended while alternative ways to deliver the program are being considered.

and pharmacy service providers who raise queries in relation to medication and restraint on a relatively regular basis.

- 60 Dr Wroth also participated in a webinar conducted on 4 November 2019 by the ACQSC targeting aged care governing bodies on *Accountabilities of Governing Bodies in Aged Care*. This webinar, which is available online, discusses the main components of clinical governance and how it applies in different care settings; what strong and poor clinical governance looks like and information on key clinical governance issues including anti-microbial stewardship, open disclosure, and the use of restraints in aged care settings.

#### Question 15

With regard to the 'differentiated performance rating model' that will be introduced in July 2020, as described in the letter from Gilbert + Tobin dated 24 December 2019. Explain whether there are any plans to move to accreditation audit reports with graduated scores against all outcome measures.

- 61 The ACQSC is committed to transparency about the outcomes of its regulatory and complaints functions to help consumers make informed choices about aged care services, incentivise improvements by providers, build trust and confidence in the aged care system, and to inform the public about the ACQSC's work.
- 62 The ACQSC is currently supporting the work being led by the Department to develop a differentiated performance rating model (the **Model**) as a publicly reported rating system relating to the quality and safety of residential aged care services. The Model will involve the publication of information about individual approved providers on their My Aged Care profiles about their performance and compliance, enabling consumers to differentiate between providers. The information that will be published under the Model will include:
- (a) a compliance rating, which will be displayed as a range between 1 and 4 to reflect the provider's level of compliance; and
  - (b) performance metrics against each of the Quality Standards, which will show the provider's rating against each of the Quality Standards and a snapshot showing a breakdown of the requirements against which the provider is currently compliant or non-compliant.
- 63 The ACQSC has considered the merits of introducing graduated ratings for each assessed requirement and has considered stakeholder comments through the consultation process. The ACQSC considers that an evidence base of sector performance against the Quality Standards (introduced in July 2019) is required before contemplating further differentiation. Information that will be published under the Model from 1 July 2020 will significantly enhance information for consumers to differentiate between approved providers.
- 64 Following the implementation of the Model (which is expected to be launched in July 2020), the ACQSC will consider enhancements over time that can be reliably be made on the basis of assessed performance.