



To the Committee Secretariat, Senate Community Affairs Legislation Committee

## Submission on the Aged Care and Other Legislation Amendment (Royal Commission Response No. 1) Bill 2021

UnitingCare Australia appreciates the opportunity to contribute to the Standing Committee's inquiry into the Aged Care and Other Legislation Amendment (Royal Commission Response No. 1) Bill 2021 (the Bill). In responding to only Schedule 1 – Amendments relating to restrictive practices, we wish to acknowledge our networking with Leading Age Services Australia (LASA) and that the comments below are intended to complement their consideration of the full suite of matters relevant to this measure.

We also wish to emphasise that UnitingCare Australia seeks to represent the interests of all vulnerable and disadvantaged community members, not just those who are served by UnitingCare providers.

UnitingCare Australia supports reforms to the systems governing care and support of older people together with people experiencing 'premature' onset of conditions associated with ageing such as dementia, who may be supported through the aged care system.

We support, equally, efforts to align the protections of individuals who receive services across government programs. As expressed by the Royal Commission in the Final Report,

the use of restrictive practices in aged care must be based on an independent expert assessment and subject to ongoing reporting and monitoring. The amendments [to the subordinate legislation] should reflect the overall principle that people receiving aged care should be equally protected from restrictive practices as other members of the community.

In our conclusion to this submission we recommend, however, that the Committee should determine a later date for implementation of this legislation, noting that the Royal Commission recommended amendments to the existing Quality of Care Principles and delay of repeal of the existing scheme.



The Royal Commission into Aged Care Quality and Safety (the Royal Commission) explored in detail issues relating to use of restrictive practices, with a view to eliminating or reducing their 'unnecessary and potentially harmful' use. The Independent review of legislative provisions governing the use of restraint in residential aged care (the Independent review) also made extensive recommendations to this end. While the Royal Commission did not have access to that review, they recommended that its findings be considered in regulating for appropriate use of restrictive practices.

Our interpretation of the findings of the Independent review, including that

- [i]t is not possible to draw definitive conclusions about the effectiveness of the Restraints Principles at this time...
- ...[there are several indications] that the Restraints Principles have promoted positive steps toward minimising restraint... and
- ... the most commonly reported negative unintended consequence of the Restraints Principles was the perceived need to cease all practices that could constitute restraint, without considering how this may impact quality of care for some residents or in some circumstances
- [there are several other] negative consequences reported ...

is that

- the existence of the regulations and Restraints Principles has accelerated action on the part of providers to reduce use of restraints
- there are serious, unintended, negative consequences for residents that need to be addressed.

The Royal Commission also recommended that any relevant outcomes of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability be considered. We note that this week's hearings of that Royal Commission, and the responses to the Discussion paper on restrictive practices, have included evidence that would suggest a need to revisit the regulation of restrictive practices in the disability context.

UnitingCare Australia is deeply concerned, on principle, that the Bill has been introduced without any supporting measures to promote safer and higher quality of care for individuals at risk of inappropriate or avoidable use of restraints, despite the overwhelming dominance of recommendations to this effect in the Independent review. This concern is based on the history of government reforms that do not address, in a systematic and holistic way, the drivers of quality in care.

We note that in responding to the Bill we have had only a brief opportunity to consider the content of amendments to the subordinate Quality of Care Principles. They appear to heighten rather than to diminish our concerns, as they are very complex and create new uncertainties for example in regard to the scope of chemical restraint ["a practice or



intervention that is... for the primary purpose of influencing a care recipient's behaviour, but does not include the use of medication prescribed for... the treatment of ... the care recipient for: (i) a diagnosed mental disorder; or (ii) a physical illness; or (iii) a physical condition; or (b) end of life care for the care recipient"].

**Inappropriate use of restrictive practices represents a significant infringement of an individual's freedom and dignity. National regulations already require that restraints should only be used *when everything else has been tried and has failed*.**

Resident behaviours that cause concern and may cause harm can often be anticipated and prevented by staff who have developed strong relationships with residents and understand their clinical, psychological and other needs. If a dangerous situation nevertheless arises, restraints should be used for the shortest time possible and (in the case of chemical restraints) at the lowest dose necessary.

Current funding arrangements do not, however, promote the environment for a preventive approach. The Government's response to the Final Report of the Royal Commission accepts the principles articulated by the Royal Commission. These principles have not yet, however, been translated into adequate funding or staffing of aged care services. There is currently very limited capacity to undertake the workforce expansion and development that is essential to underpin understanding of an individual's full range of needs, and effective de-escalation of behaviour. This foundational reform depends on implementation of the Australian National Aged Care Classification (ANACC) approach, and adoption of independent pricing based on the cost of delivering care.

The aged care system does not currently fund development of behaviour management plans – in the sense used by the National Disability Insurance Scheme – for individuals who need them. This is recognised in the design of the ANACC. A comprehensive policy response to the Royal Commission would address the full suite of matters including:

- a comprehensive care plan for every care recipient at risk of inappropriate restrictions, based on a detailed personal history and holistic assessment by a suitably qualified individual, which is communicated to all staff;
- measures to ensure psycho-social responses are employed as the first line of care;
- the role of staff in monitoring the effectiveness of any restraint in use, including watching for side-effects and removing the restraint when it is no longer needed;
- clear guidance on how to balance the interests of individuals, staff and community, in deciding whether restraint is appropriate in a particular situation;
- access to medication reviews, trials of on-site pharmacists, specialist training in psychosocial alternatives to use of medication and levels of funding that enable best practice care of individuals with adequate hours of care.

While we welcome the intent of Schedule 1 of the Bill, and measures to minimise use of restraints, we are deeply concerned that changes **at this time** will not address the root causes



of inappropriate use of restrictive practices. In the absence of capacity to increase caring time and in the face of evidence that calls into question the effectiveness of the NDIS regulatory scheme, the impost of practice change will be borne twice. Further, an under-resourced or ill-defined approach to behaviour management planning potentially exposes the workforce to situations they are not equipped to manage.

## Conclusion

We make the following recommendation:

1. that the Committee notes the Royal Commission's recommendations in relation to restrictive practices were intended to be complemented by other reforms including recommendations 22, 23, 65, 80 and 86
2. that the Committee considers the timing of the implementation of this legislation, noting that the Royal Commission recommended delay of repeal of the existing scheme.

### ***Additional Comment in relation to dementia care***

UnitingCare Australia also supports the Royal Commission's recommendation to review the Specialist Dementia Care Program. Members of our aged care network in New South Wales and South Australia have received funding to develop Specialist Dementia Care units under the Specialist Dementia Care Program. The additional resources and flexibility able to be accessed through this model has been observed to have clear benefits for consumers.

In the context of the development of that Program we cited a range of measures/alternative models that could be adopted to improve the capacity of the existing, mainstream care system to meet the needs of individuals requiring behaviour support (<https://unitingcare.org.au/download/specialist-dementia-care-units/>). We note our concern that any regulations created in relation to reduction and avoidance of use of restrictive practices should not impede the capacity to develop and expand innovation in this area.

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