

Inquiry into the administration of Commonwealth regulations

Submission from the
Aged Care Quality and Safety Commission
to the
Joint Committee of Public Accounts and Audit





Background and context

In March 2021, the Royal Commission into Aged Care Quality and Safety recommended introducing mandatory minimum staffing standards for registered nurses (RNs) and other aged care workers (Recommendation 86), which was agreed to by the Australian Government.

From 1 July 2023, the Australian Government required residential aged care facilities to have an RN on site and on duty 24 hours a day (24/7 RN).

From 1 October 2023, the government required each aged care resident to receive, on average, at least 200 minutes of care per day, including at least 40 minutes of RN care – mandatory care minutes (CM).

In December 2023, the *Auditor General Report No.8 of 2023–24 Design and Early Implementation of Residential Aged Care Reforms* (the Audit) concluded that the design and early implementation of the Australian Government's response to Recommendation 86 was found to be largely effective.

The Audit provided early assurance to the Australian Government about whether the Department of Health and Aged Care (the Department) and the Aged Care Quality and Safety Commission (the Commission) have effectively introduced the mandatory staffing standards. The Audit concluded that the Department and the Commission were largely prepared to monitor and enforce compliance with 24/7 RN and CM. Both agencies had commenced, but not completed, updating procedural guidance and training staff as of October 2023. However, the Audit noted that the Commission had not planned how it will measure regulatory impact.

The Australian National Audit Office (ANAO) made two recommendations to the Commission (Recommendations 3 and 4 in the Audit) aimed at improving the documentation of intelligence production processes and measuring performance.

The Commission agreed to all recommendations.



Recommendation 3

The Audit found that although the Commission has updated systems to incorporate CM and 24/7 RN data into regulatory intelligence production, and plans to increase analytic capability for risk profiling of providers in relation to CM and 24/7 RN noncompliance, the processes for producing and disseminating regulatory intelligence analysis were insufficiently documented.

Recommendation no. 3

4.23 The Aged Care Quality and Safety Commission improve its documentation of processes for preparing and disseminating intelligence briefs.

Aged Care Quality and Safety Commission response: *Agreed.*

4.24 The Commission has finalised the Standard Operating Procedure (SOP) and Work Instructions for the preparation and dissemination of intelligence briefs. This SOP includes reference to the use of Care Minutes (CM) and 24/7 Registered Nursing (RN) data and information in intelligence briefs, where relevant.

4.25 Additionally, the Commission has finalised the SOP for risk profiling of workforce risks (Care Minutes and 24/7 Registered Nursing).

4.26 The Commission has recently developed a Data and Intelligence Capability Framework which outlines the capability requirements (People, Process, Technology) required for the use of data and intelligence in decision making within the Commission. This will include the collection, analysis and dissemination of intelligence. This framework identified the need to update and develop Data and Intelligence policies and processes, with related work currently underway and to be completed by March 2024.

Commission progress on Recommendation 3

As identified in the Commission response to the Audit, standard operating procedures (SOP) and Work Instructions for risk profiling of CM and 24/7 RN workforce risks have been finalised. At the time of the Audit, the Commission did not have a sufficient quantity of relevant data to undertake high-quality analyses of CM targets, with this threshold only being reached in early 2024. Since then, the Commission has enhanced the 24/7 RN and CM SOPs to include:

- Technical procedures for the Risk Based Targeting and Information Sharing system
- Collating data from the Department
- Processing, sanitising and validating data



- Triage criteria and classification into high, moderate and low risk
- Longitudinal analysis of provider performance
- Summary intelligence assessments
- Quality control and dissemination of intelligence briefs.

The Commission has implemented its plan to produce internal periodic reports ranking services with reported 24/7 RN coverage and risk profiling.

24/7 RN intelligence briefs are produced and disseminated to the Commission's Quality Assessment and Monitoring Group (QAM) monthly. 24/7 RN intelligence briefs are prepared by categorising services on a matrix based on whether they meet 24/7 RN requirements to enable a regulatory confidence assessment of moderate and high-risk services and escalation to QAM. QAM uses intelligence briefs to inform risk profiling for the broader Commission regulatory approach by identifying services where noncompliance and other contextual risks indicate a requirement to validate that safe and appropriate clinical assessment and care is delivered to consumers in line with provider obligations.

CM intelligence briefs are produced and disseminated to the Commission's Sector Risk Committee quarterly. CM intelligence briefs group services into risk profiles based on the degree of noncompliance. The methodology for profiling services aligns with the *Quality of Care Principles 2014*.

The Commission and the Department have operationalised risk triaging for 24/7 RN and CM through the jointly supported Risk Based Targeting and Information Sharing (RBTIS) system. RBTIS now codifies the rules for service performance classification outcomes, reducing manual data collation, increasing the timeliness of risk profiling, and minimising the risk of error. The inclusion of 24/7 RN and CM data into RBTIS supports broader profiling of provider and sector risk, leading to improved regulatory oversight and response.

Commission assessment of Recommendation 3

The Commission's enhanced SOP, and methodologies to generate *ad hoc* and scheduled intelligence briefs, have adequately implemented the Audit recommendation to improve documentation of processes for preparing and disseminating intelligence briefs.



Recommendation 4

At the time of the Audit, the Commission's regulatory operating model included 'understanding regulatory impact and outcomes' as one of its five key components, and the Commission's regulatory approach provided for a post-implementation review of 24/7 RN and CM reforms in July 2024 through four measures of success:

- Minimising failures in care, or harms to residents at gaps in RN coverage
- Identifying and remedying unmanaged risks and noncompliance through regulatory action and engagement with providers preventing future harm
- Reducing gaps in RN coverage through regulatory oversight (including funding arrangements), incentivising providers' 'best efforts' in ensuring RN coverage
- Increasing sector capability and understanding of workforce related responsibilities, with a focus by governing bodies on effective workforce management and planning, supporting readiness for implementation of the (future) strengthened Quality Standards.

At the time of the Audit, the Commission's regulatory approach did not include a methodology or targets for data collection to measure performance against these four measures of success. The Commission advised ANAO during the Audit that it:

- is still maturing as an organisation that measures regulatory impact as opposed to levels of compliance
- considers it prudent to gain experience from early CM and 24/7 RN regulatory activity to understand how the new measures affect regulatory outcomes before formulating metrics to evaluate regulatory outcomes.

The Commission advised the ANAO that the reform of the Quality Standards and the introduction of the new Aged Care Act would present an opportunity to embed in the regulatory framework the collection and measurement of data about regulatory impact.



Recommendation no. 4

4.53 The Aged Care Quality and Safety Commission identify a method to assess the impact of care minute and 24/7 RN regulation on aged care quality outcomes and whether regulatory activities are effective at promoting compliance with these measures.

Aged Care Quality and Safety Commission response: *Agreed.*

4.54 The Commission acknowledges that compliance with these measures is impacted by a range of factors in addition to the Commission's specific regulatory activities. These include, for example, supplementary funding to the sector and enhanced transparency about compliance with the workforce requirements on My Aged Care. Our evaluation, in collaboration with the Department, will seek to understand our contribution to promoting compliance with the Care Minutes (CM) and 24/7 Registered Nursing (RN) regulation, and more broadly, its relationship to quality and safety outcomes for consumers.

Commission progress on Recommendation 4

The Commission commenced an Evaluation Plan for Workforce Responsibilities (Evaluation Plan) to assess the effectiveness of regulatory activities. The Evaluation Plan was designed to measure performance and demonstrate commitment to risk-based, data driven practice and continuous improvement. The Evaluation Plan commenced in November 2023 and will deliver three Evaluation Reports before concluding by October 2024. The Evaluation Plan will investigate:

- How effectively regulatory officers conduct quality assessment and monitoring activities, and what insights can the Commission draw from their observations?
- Are monitoring assessments at services identified as a result of risk profiling?
- To what extent does risk profiling identify risk and how does this translate into scheduling of monitoring activity?
- Where are risks identified and what action does QAM recommend?

The Commission internally released Evaluation Report 1 in January 2024 to assess 24/7 RN and exemptions. Evaluation Report 1 indicated:

- The QAM Workforce Responsibilities team is monitoring and assessing targeted services and successfully applying risk-based and proportionate regulatory responses
- Risk profiling models developed by Intelligence and Analysis (I&A) successfully predict risk, supporting the Commission to detect and monitor potential risk



- Evaluation of Workforce Responsibilities regulatory activities contribute to shaping and improving this program of work.

The Commission internally released Evaluation Report 2 in May 2024 to expand on the assessment of 24/7 RN developed in Evaluation Report 1. Evaluation Report 2 supported Evaluation Report 1 with additional findings:

- There has been an increase in the number of 24/7 RN compliant services since the requirement came into effect
- 24/7 RN noncompliance is an important indicator of service-level risk, which increases as services move further from compliance
- The QAM Workforce Responsibilities team has a good understanding of and is confident in assessing Workforce Responsibilities requirements.

As CM requirements came into effect in October 2023, they were out of scope for Evaluation Reports 1 and 2. However, CM will be the focus of Evaluation Report 3 in September 2024. The next steps for the Evaluation Plan are:

- Review Evaluation Plan for alignment with updated Regulatory Approach for CM
- Analysis of CM data and QAM reports
- Report on findings from interviews with selected services subject to QAM activities
- Extend qualitative analysis to include risks related to CM noncompliance and compare with risks identified in relation to 24/7 RN noncompliance.

Commission assessment of Recommendation 4

The Commission has made significant progress and partially implemented identifying a method to assess the impact of CM and 24/7 RN regulation on aged care quality outcomes and whether regulatory activities are effective at promoting compliance with these measures.

The Commission has effectively identified a method of assessing the impact of CM and 24/7 regulation. So far, the Evaluation Plan and Evaluation Reports have assessed the impact of 24/7 RN. However, similar assessment of CM will not be completed until September 2024. The nature of the recommendation necessitates continued, iterative implementation, alongside ongoing development of the new Commission Regulatory Strategy, Regulatory Operating Model, and the design and implementation of the new Aged Care Act (at time of writing, due to commence on 1 July 2025, subject to parliamentary processes).