

15 June 2018

END THE INACTION – BAN UNLAWFUL RESTRAINTS IN AGED CARE NOW

Queensland's Public Advocate Mary Burgess has expressed deep frustration at the Australian Government's lack of action on ending the unregulated use of restraints and other restrictive practices in aged care facilities.

Today's World Elder Abuse Awareness Day [15 June] marks the 12-month anniversary of Ms Burgess' public call for the introduction of regulations to better protect elderly Queenslanders and Australians.

"The absence of a legal framework for the use of restrictive practices in residential aged care services leaves older Australians at risk of having their basic human rights breached by staff who do not have the knowledge or skills to manage those with challenging behaviours appropriately," Ms Burgess reiterated.

"I find it difficult to understand why no action has been taken to address restrictive practices, when on a daily basis older Australians in aged care facilities across the country are being subjected to physical and chemical restraint and seclusion without any oversight or accountability.

"There is the potential for these actions to amount to criminal assaults and other civil and criminal wrongs, so not surprisingly there is strong agreement among those advising the government that regulation should occur."

Ms Burgess wrote to the Federal Minister for Aged Care, the Honourable Ken Wyatt AM, MP, with her concerns a year ago, but was referred to the Review of National Aged Care Regulatory Processes team – an independent group tasked with providing recommendations to the Federal Government.

She duly submitted a copy of the paper [Legal frameworks for the use of restrictive practices in residential aged care: An analysis of Australian and overseas jurisdictions](#), which had previously been sent to the Federal Minister.

The review team made a number of recommendations, including one to strictly limit the use of restrictive practices, including to ensure they are used as a last resort.

"The Federal Minister announced five significant initiatives resulting from the review, but as far as we are aware he did not, and has not, formally responded to the recommendations regarding the use of restrictive practices," Ms Burgess said.

Ms Burgess acknowledged that the Australian Government had funded the development of two guides for care providers, recipients of care and their families to identify alternatives to restrictive practices to promote a 'restraint-free' environment.

However, the guides had a number of flaws and were simply guidelines, not regulations, she said.

In February of this year, Ms Burgess appeared as a witness at a hearing for the Federal Standing Committee on Health, Aged Care and Sport's Inquiry into the Quality of Care in Residential Aged Care in Australia, and again requested that the review recommend to the Australian Government that it take steps to regulate the use of restrictive practices in residential aged care.

Ms Burgess pointed out that The Australian Law Reform Commission also recommended the regulation of restrictive practices in aged care in its final report for the Elder Abuse Inquiry, released 12 months ago.

With no current requirement to record or report the use of restrictive practices, it is not possible to determine whether aged care facilities and their staff are using restrictive practices unlawfully or inappropriately for reasons such as staff convenience, or to reduce the need to employ more staff to supervise more challenging residents.

"The community is entitled to know about these matters," Ms Burgess said.

"Family members are entitled to know what restrictive practices are being used and to what extent, in the aged care facilities where their loved ones are receiving care.

"The use of unlawful restrictive practices in residential aged care amounts to institutionalised elder abuse.

"The human rights of older members of our community are not negotiable. There is no excuse for further delays and prevarication.

"The Australian Government should act now."

ENDS

Note 1: The primary role of the Public Advocate in Queensland is to promote and protect the rights, autonomy and participation of Queenslanders with impaired capacity in all aspects of community life.

Note 2: Public Advocate Mary Burgess is available for interview to electronic media. Please contact the Department of Justice and Attorney-General Media Unit on 3008 8765, email media.relations@justice.qld.gov.au with interview requests.