

19 September 2019

Mr Rob Hansen
Committee Secretary
Health, Communities, Disability Services and Domestic and Family Violence Prevention
Committee
Parliament House
George Street
BRISBANE QLD 4000

Email: health@parliament.qld.gov.au

Dear Mr Hansen

Re: Submission – Health Transparency Bill 2019

Thank you for the opportunity to make a submission to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee in relation to the Health Transparency Bill 2019 and its supporting draft regulations.

As you may be aware, the position of Public Advocate is established under the *Guardianship and Administration Act 2000* (Qld). The primary role of the Public Advocate is to promote and protect the rights, autonomy and participation of Queensland adults with impaired decision-making capacity in all aspects of community life.

Many users of aged care, end of life and palliative care services have, or will potentially develop, impaired decision making capacity (permanently or intermittently) as a result of a range of circumstances and conditions.

My submission focusses on the provisions of the Bill and draft regulations dealing with residential aged care.

Firstly, I would like to commend the Government on its initiative in preparing this legislation, which will improve the transparency of the quality and safety of health services provided in Queensland and help members of the community to make better-informed decisions in relation to their health and aged care. Legislation such as this has the potential to significantly impact people's lives, providing access to necessary information to make, what often can be, very difficult decisions, particularly in relation to selecting an aged care facility for themselves or a family member.

The residential aged care information required under the Bill in Clause 10, includes;

- a) information prescribed by regulation about;
 - (i) the personal care or nursing care provided to residents at the facility; or
 - (ii) the staffing for the personal care and nursing care provided to residents at the facility; and

- b) information that explains, and helps in understanding, the information provided in paragraph (a).¹

The relevant part of the regulation referred to in Clause 10 of the Bill is Clause 3 of the proposed Health Transparency Regulation 2019.² It requires the reporting of average daily resident care hours for State government-operated and private facilities, including information about how the average is to be calculated, namely by dividing the total number of hours of residential care that nurses and support workers provide at a facility by the number of residents at the facility on the day.

While the draft regulation will ensure that a “figure” is provided for the average number of care hours provided to residents of an aged care facility during a day, it does not address two critical issues — the skill mix of the staff providing care to residents and the general level of care provided at the facility according to the particular needs of the residents.

The skill mix of staff

The regulation proposes that the hours spent providing care at a residential aged care facility by registered nurses, enrolled nurses and support workers be added together to provide a summed total of the hours of care provided across the facility.

While the presentation of this information in this way may not be an issue in an acute care environment such as a hospital, many of the issues the Royal Commission into Aged Care Quality and Safety are hearing about from witnesses about the quality of care in facilities are associated with the provision of care by inexperienced or untrained staff, without the supervision of appropriately skilled and experienced nursing or other staff. This issue is particularly acute when examining the levels and quality of care provided to people in dementia units.

The importance of an appropriate skill mix in a residential aged care setting has also been highlighted in various reports and submissions by a range of organisations and committees. These include; the Australian Productivity Commission's 2011 report, *Caring for Older Australians*³, the Commonwealth Review of National Aged Care Quality Regulatory Processes⁴ conducted by Carnell and Paterson in 2017 and the Queensland Nurses and Midwives Union (QNMU), in its submission to this Committee's Inquiry into aged care, end-of-life and palliative care and voluntary assisted dying in Queensland.⁵

The QNMU in particular noted in its submission that;

research completed by the Australian Nurses and Midwives Federation in 2016 found that on average residents in residential aged care facilities required 4.3 hours of care per day, with an optimum staff and skill-mix of registered nurses (30%), enrolled nurses (20%) and unregulated care workers (50%). The research also found when these conditions were not present, there was increased likelihood of care being missed as well as increased risk and decreased safety for residents (falls, pressure injuries and nutritional deficits).⁶

The Productivity Commission suggested that aged care providers should be required to make available information about the staff and skill mix for the profile of aged care residents,

¹Health Transparency Bill 2019, s 10.

² Health Transparency Regulation 2019 (Qld), Subordinate Legislation 2019 No..., made under the Health Transparency Act 2019.

³ Productivity Commission *Caring for Older Australians*, Report No. 53, Final Inquiry Report, Canberra, 2011.

⁴ Carnell, Kate AO and Paterson, Ron ONZM, *Review of National Aged Care Quality Regulatory Processes*, October 2017.

⁵ Queensland Nurses and Midwives Union, Submission 1213 to the Health, Communities, Disability Services and Domestic and Family Violence Committee – Inquiry into aged care, end-of-life and palliative care and assisted dying, April 2019. Accessed online 5 August 2019 <<https://www.parliament.qld.gov.au/work-of-committees/committees/HCDSDVPC/inquiries/current-inquiries/AgedCareEOLPC>>

⁶ Ibid, p16

so that consumers could make more informed choices about what services best suit their needs.

It is therefore suggested that the Committee consider recommending the regulation include a requirement for residential aged care facilities to provide average daily resident care hours as well as a break-down of the skill mix of staff available at the facility (ideally for weekdays, nights and weekends), divided between registered nurses, enrolled nurses and support workers.

This change to the regulation would echo the Private Member's Bill introduced into the Australian Parliament by Rebecca Sharkie MP in 2018 (re-introduced in July 2019 following the Federal election) which requires residential aged care facilities to publish staff to resident ratios by job description⁷ and would be consistent with the position of the QNMU.

The level of care provided by residential aged care facilities

The Australian Aged Care Funding Instrument⁸ currently provides for the classification of residential aged care residents under three domains for funding purposes, namely activities of daily living, behaviour, and complex health care. Under each of these categories, the applicability of the care is first assessed and then the levels of care (high, medium or low) are determined via another series of assessments. These assessments determine the level of funding an aged care residential facility receives for its residents.

Clearly, the mix of residents (in terms of their care needs) within a facility will have an impact on the staffing levels and skill mix of staff required. For example, in a facility where the majority of residents receive low level care for activities of daily living and do not have behaviour or complex health care needs, the skill mix and staffing ratios required would be very different from a facility where the majority of clients have high and complex health care and behavioural needs, which would include dementia-specific areas or wards and other associated facilities and accompanying levels of care.

In the circumstances, I respectfully suggest that the Committee consider recommending amending the regulation to provide that residential aged care providers publish information about the levels of care provided at each facility, which will also relate to the staffing ratio and skill mix figure calculated for the facility.

The benefits of publishing more information

I am strongly of the view that the provision by residential aged care providers of the additional information I have suggested will enhance the potential of the Bill to fulfil its overall purpose — to help members of the Queensland community to make better-informed decisions about their health care and the care of their loved ones and family members. The additional information will enable a more meaningful and direct comparison of residential aged care facilities, with decisions made on the basis of both the number of staff, their experience and qualifications, as well as the care needs of residents, rather than just the total hours of care/contact per day per resident.

This approach may also potentially encourage aged care providers to aspire to higher levels and quality of care as a point of differentiation, rather than focusing on just meeting minimum standards that might be benchmarked or set by the industry with the requirement for the reporting of average daily resident care hours alone.

⁷ Manning, Jack, *Sharkie fulfils election commitments*, The Times on the Coast news, sourced online 5/8/19, <<https://www.victorharbortimes.com.au/story/6295144/sharkie-fulfills-election-commitments/>>

⁸ Department of Health (Cth), *Aged Care Funding Instrument User Guide*, ISBN: 978-1-76007-306-0, 2016, sourced online 5/8/2019 <<https://agedcare.health.gov.au/funding/aged-care-subsidies-and-supplements/residential-care-subsidy/basic-subsidy-amount-aged-care-funding-instrument/aged-care-funding-instrument-acfi-user-guide>>

Thank you for the opportunity to provide feedback on the Health Transparency Bill 2019 and regulations. If you require any clarification of this feedback please do not hesitate to contact my office on phone 3738 9513 or via email to public.advocate@justice.qld.gov.au.

Yours sincerely

A handwritten signature in cursive script that reads "Mary Burgess". The signature is written in dark ink and is positioned to the left of the typed name.

Mary Burgess
Public Advocate