

Proposal for a new residential aged care funding model

Submission to the Australian Government –
Department of Health

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Introduction

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.

More specifically, the Public Advocate has the following functions:

- promoting and protecting the rights of adults with impaired capacity (the adults) for a matter;
- promoting the protection of the adults from neglect, exploitation or abuse;
- encouraging the development of programs to help the adults reach the greatest practicable degree of autonomy;
- promoting the provision of services and facilities for the adults; and
- monitoring and reviewing the delivery of services and facilities to the adults.¹

The Public Advocate welcomes the opportunity to comment on the *Proposal for a new residential aged care funding model*, released for public consultation by the Department of Health in March 2019.

Many Queenslanders with impaired decision-making capacity are residents of aged care facilities. Impaired decision-making capacity can arise from a range of factors or conditions, however for many older Queenslanders a loss of capacity is associated with an aged related condition such as dementia.

Funding is a powerful determinant of quality of care, in all care settings, but this is especially the case in aged care. The availability of appropriate funding and resources can impact the quality and types of service responses provided to aged care residents who have conditions such as dementia. The availability of appropriate care options can significantly and positively impact the wellbeing and quality of life of people with impaired decision-making capacity by using positive behaviour supports rather than resorting to the use of unregulated (and potentially unlawful) restrictive practices to manage challenging behaviours.

Overall, I support the proposed new funding structure, and will only make comments about particular elements of the model as outlined below.

Section 6: The three components of funding under the proposed model

The inclusion of three funding components recognises the importance of the provision of shared care facilities, levels of individualised care, and the need for a payment to assist with the transition process (the adjustment payment) associated with moving into residential aged care.

The consultation paper notes that the adjustment payment will be available to cover additional, but time-limited, resource requirements associated with undertaking activities including:

- Time spent getting to know the resident and their family;
- Individualised care planning;
- Behaviour management;
- Health care assessments;
- Facilitating health care arising from assessment e.g. pain management; and
- Developing an advance care directive in partnership with the resident and their family.

¹ *Guardianship and Administration Act 2000* (Qld) s 209.



When making decisions associated with these activities, it is imperative that the person entering residential aged care be provided with the opportunity to participate, even if there are arrangements for a substitute decision-maker in place. In Queensland, the general principles of the *Guardianship and Administration Act* recognise the right of people to participate, to the greatest extent practicable, in decisions affecting their lives. The general principles require that people be given necessary support, and access to information, to enable the person to participate in decisions affecting their life. They also require that the views and wishes of the person be taken into account by substitute decision-makers.²

Further, not allowing for or facilitating access to appropriate support for decision-making is inconsistent with Australia's obligations under the United Nations *Convention on the Rights of Persons with Disability (CRPD)*. These obligations include people who may have lost decision-making capacity, noting that if a person does need someone else to speak for them there should be rules to ensure this is done properly.

In recognition of Australia's obligations under the CRPD, the Australian Law Reform Commission's (ALRC's) 2014 report *Equality, Capacity and Disability in Commonwealth Laws*,³ recommended that new guidelines be developed to encourage supported (as opposed to substitute) decision-making by people with disability. The ALRC recommended the adoption of four national decision-making principles:

Principle 1: The equal right to make decisions

- All adults have an equal right to make decisions that affect their lives and to have those decisions respected.

Principle 2: Support

- Persons who require support in decision-making must be provided with access to the support necessary for them to make, communicate and participate in decisions that affect their lives.

Principle 3: Will, preferences and rights

- The will, preferences and rights of persons who may require decision-making support must direct decisions that affect their lives.

Principle 4: Safeguards

- Laws and legal frameworks must contain appropriate and effective safeguards in relation to interventions for persons who may require decision-making support, including to prevent abuse and undue influence.⁴

The first three principles should apply to activities funded under the adjustment payment. The adoption of the principles will ensure recognition of each person's right to make their own decisions, to receive support to make those decisions, to have their will and preferences guide decisions, as well as having the protection of appropriate safeguards in all of their engagements with the aged care sector.

I would recommend that the calculations of the adjustment payment under the new funding model include provision for the time and supports required to appropriately support a person to participate in making decisions that affect their lives.

² *Guardianship and Administration Act 2000* (Qld) sch 1 pt 1 s7.

³ Australian Law Reform Commission, *Elder Abuse*, Discussion Paper 83, Australian Law Reform Commission, Sydney 2016.

⁴ *Ibid.*



Section 7: How residents would be assessed and classified into classes for the variable payment

The proposed classification assessment tool and process associated with the new funding model is supported. In particular, the use of an external and independent assessor to make decisions related to the variable payment, as opposed to assessments being made at the facility. This will allow for the establishment of an objective and professional relationship that will result in improved funding decisions. The requirement for assessors to be credentialed medical professionals and to have expert clinical skills in conducting aged care assessments will also improve perceptions of the quality of the assessment process and the professionalism of the aged care sector overall.

Re-assessment triggers

Grounds for re-assessment under the funding model proposed include periods of significant hospitalisation, a significant change in mobility, or a standard time period at the request of the facility. Each of these grounds for re-assessment are supported in principle.

I respectfully suggest that a fourth re-assessment trigger be included, being a significant change in the behaviour of a resident. Behavioural changes are often associated with the progression of conditions such as dementia and can, if not managed correctly, lead to significant risks to the person, fellow residents, and aged care staff. The incorrect management of challenging behaviours contributes to inappropriate and prolonged use of restrictive practices in residential aged care, resulting in residents being restrained in things like seats via lap bands for up to fourteen hours a day⁵.

Much of the evidence heard at the Royal Commission into Aged Care Quality and Safety has focussed on the experience of aged care residents who have been subjected to restraint or other restrictive practices implemented to control challenging behaviours, and the consequent impact these treatments have had on those residents and their families and supporters.

Re-assessment following significant behavioural change would allow for a resident to be assessed to determine if specialist behavioural management is required for their ongoing care or potentially a transfer to a different section of the facility or program to better cater for their ongoing needs. It could also help to identify any required changes to the resident's health care. It is anticipated that this type of specialist care may require additional funding for things such as the development of behaviour management support plans, and the implementation of strategies, standards and staff ratios that will provide adequate support for the resident, making the use of restrictive practices (once they are properly, legally regulated) a true last resort.

Section 11: Implications for care delivery and planning

I fully support and encourage the development of a best practice needs identification and care planning assessment tool for use by residential aged care providers. Given, as noted, that the current Aged Care Funding Instrument (ACFI) is being used as a quasi-care planning tool, the introduction of a new tool is necessary and essential to resident wellbeing both now and into the future.

⁵ ABC News, *Aged care homes facing new rules on restraints as Federal Government unveils crackdown*, <<https://www.abc.net.au/news/2019-03-30/new-aged-care-restraint-rules-unveiled-by-federal-government/10955222>> updated 30 March 2019, sourced online 3/6/2019.



As recommended, each aged care resident needs to have their care planning undertaken at least annually. It is vital that all assessments and whatever changes to care they entail are discussed in detail with the resident, their family and other supporters. This approach will facilitate an important and transparent communication and feedback process between residents, families and staff that will help to build confidence in the care being provided as well as demonstrating respect for the rights, needs and preferences of the resident as they continue to age-in-place.

It is anticipated that a requirement for annual care planning for every resident of aged care facilities across the country will be incorporated into the funding model and as a component of the accreditation process.

Conclusion

Thank you for the opportunity to participate in this consultation and, in particular, the extension of time provided to prepare and submit my response. Should you have any questions in relation to this feedback or would like to discuss it further, please contact me on 07 3738 9513 or at public.advocate@justice.qld.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mary Burgess', written in a cursive style.

Mary Burgess
Public Advocate (Queensland)

