



# **Royal Commission into Aged Care Quality and Safety**

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Submission by the Queensland Mental Health Commission

March 2020

## Table of Contents

The Queensland Mental Health Commission .....	3
Overview .....	3
Mental health of older people .....	4
Access to mental health services .....	5
Suicide prevention a priority for older people.....	6
Physical health and mental health.....	7
Mental health of Aboriginal and Torres Strait Islander people .....	8
Mental health of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community.....	9
The aged-care workforce .....	10
Younger people with a disability in residential aged care .....	11
Restrictive practices .....	11
Queensland Human Rights Act 2019 .....	14
Lived experience-led reform .....	15
Related legislative reform in Queensland.....	17
Conclusion .....	17

## The Queensland Mental Health Commission

The Queensland Mental Health Commission (the Commission) is an independent statutory agency established under the *Queensland Mental Health Commission Act 2013* (the Act).

It was established to drive ongoing reform towards a more integrated, evidence-based and recovery-oriented mental health and substance misuse system. Under the Act, the Commission must focus on systemic mental health and substance misuse issues.<sup>1</sup>

In exercising its functions under the Act, the Commission takes account of issues affecting people who are vulnerable to, or otherwise at significant risk of, developing mental health issues, as well as recognising the importance of custom and culture when providing treatment, care and support to Aboriginal and Torres Strait Islander peoples.

The Commission works in four main ways:

- developing a whole-of-government strategic plan for improving mental health and limiting the harm associated with problematic alcohol and other drug use
- undertaking reviews and research to inform decision-making, build the evidence base, support innovation and identify good practice
- facilitating and promoting mental health awareness, prevention and early intervention
- establishing and supporting statewide mechanisms that are collaborative, representative, transparent and accountable.

The Commission promotes policies and practices that are aligned to the vision of the *Shifting Minds Queensland Mental Health, Alcohol and Other Drugs Strategic Plan 2018-2023 (Shifting minds)* for a fair and inclusive Queensland, where all people – including older people living in aged-care facilities – can achieve positive mental health and wellbeing and live their lives with meaning and purpose.

*Shifting minds* highlights the importance of meaningful community participation and social inclusion for mental health, wellbeing and recovery. Stigma, in the form of misunderstanding and negative attitudes, and structural discrimination towards older people can limit people's ability to form and maintain social connections and participate in community life. *Shifting minds* includes the priority action of 'Promoting and monitoring least-restrictive practices in policy and legislation, reducing restrictive practice, and improving responses to human rights complaints'.

This submission incorporates feedback from the Queensland Mental Health and Drug Advisory Council. The Council's role is to provide advice to the Commission on mental health and problematic substance use issues.

## Overview

The Commission welcomes the opportunity to make a submission to the Royal Commission into Aged Care Quality and Safety.

In developing this submission, the Commission consulted with the Queensland Human Rights Commission, the Queensland Office of the Public Advocate, and the Office of the Public Guardian.

This submission relates to the following areas of the Terms of Reference: mental health and access to services; stigma associated with ageing and mental illness; restrictive practices; the aged-care

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<sup>1</sup> Section 11(2)(a) of the *Queensland Mental Health Commission Act 2013*

workforce; and related legislative reform in Queensland. It also addresses the need for a significant cultural change to support the respect, dignity, choice, control and human rights of older Australians.

## Mental health of older people

The Royal Commission into Aged Care Quality and Safety Interim Report: Neglect<sup>2</sup>, outlines the evidence that Australians are living longer, and considers the associated demographic, social and economic pressures that will test the aged-care system.

Healthy ageing is intrinsically linked to good mental health. Although the majority of older people do experience good mental health, more than nine per cent experience mental illness and almost 11 per cent experience a high level of psychological distress, including depression or anxiety.<sup>3</sup>

Common risk factors and causes of older people developing mental health conditions such as depression and anxiety include chronic physical illness, grief and loss, financial stress, changed living arrangements, decreased social networks and increased social isolation.<sup>4</sup>

It is understandable that aged-care residents in particular have a high prevalence of mental illness, with psychological distress, anxiety, depression, and behavioural and psychological symptoms of dementia being reported.<sup>5</sup> In 2018, it was estimated the majority of aged-care residents (86 per cent) had at least one diagnosed mental health or behavioural disorder, about half (49 per cent) had depression, and half (52 per cent) had dementia.<sup>6</sup>

The symptoms of depression and anxiety are often not well recognised in older people and can be confused with ageing or dementia.<sup>7</sup> This is likely to be contributing to mental health conditions such as depression remaining undetected and untreated in residential-care settings<sup>8,9</sup>.

Older people, especially those from refugee and culturally and linguistically diverse (CALD) backgrounds, can suffer from trauma, including post-traumatic stress disorder (PTSD). The Australian Guidelines for the Treatment of Acute Stress Disorder and PTSD provide information about the most effective treatments for PTSD, including in older people.<sup>10</sup>

On this basis, mandatory mental wellbeing and PTSD screening for new residents of aged-care facilities has the potential to detect early mental health problems and reduce the risk of mental illness; enable support for new and existing residents to cope better with transition to care, co-

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<sup>2</sup> Royal Commission into Aged Care Quality and Safety Interim Report: Neglect Volume 1; Available at:

<https://agedcare.royalcommission.gov.au/publications/Documents/interim-report/interim-report-volume-1.pdf>

<sup>3</sup> Health of older people in Australia: a snapshot 2004-05 [Internet]. Canberra. Australian Bureau of Statistics. 2006a. Catalogue number 4822.0.55.001. [cited 2016 August 13] Available from: <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4822.0.55.001>

<sup>4</sup> *Beyondblue* What works to promote emotional wellbeing in older people: A guide for aged care staff working in community or residential care settings (pg 7); Available from: <http://resources.beyondblue.org.au/prism/file?token=BL/1263A>

<sup>5</sup> Creighton AS, Davison TE, Kissane DW. The prevalence of anxiety among older adults in nursing homes and other residential aged care facilities: a systematic review. *International Journal of Geriatric Psychiatry* 2016; 31: 555-66

<sup>6</sup> Australian Institute of Health and Welfare. GEN fact sheet 2017–18: People's care needs in aged care. Canberra: AIHW, 2019

<sup>7</sup> Haralambous B, Lin X, Dow B, Jones C, Tinney J & Bryant C 2009. Depression in older age: a scoping study. Melbourne: National Ageing Research Institute.

<sup>8</sup> Davison, T., McCabe, M. P., Mellor, D., Ski, C., George, K., & Moore, K. A. (2007). The prevalence and recognition of major depression among low-level aged care residents with and without cognitive impairment. *Aging and Mental Health*, 11(1), 82-88. doi: 10.1080/13607860600736109

<sup>9</sup> Kramer, D., Allgaier, A. K., Fejtikova, S., Mergl, R., & Hegerl, U. (2009). Depression in nursing homes: Prevalence, recognition, and treatment. *International Journal of Psychiatry in Medicine*, 39(4), 345-358. doi: 10.2190/PM.39.4.a

<sup>10</sup> <https://www.phoenixaustralia.org/wp-content/uploads/2019/03/Phoenix-Guidelines-Older-people-and-PTSD.pdf>

occurring physical illness or other difficult life experiences; and provide appropriate treatment supports.

Screening should also be mandatory, or at least encouraged and supported, for older people receiving care in community-based services.

#### **Recommendation**

1. Improve access to appropriate treatment and support through the introduction of mandatory screening for people in residential and community-based aged care, to detect mental illness, including PTSD and early mental health problems.

#### **Access to mental health services**

Older people in aged-care facilities require the same spectrum of mental health care as the general population – including mental health promotion, early intervention, community-based care, and acute and crisis management.

Age-appropriate initiatives that aim to promote mental health and emotional well-being are particularly relevant, given the known risk factors of stress, decreased physical activity and increased social isolation associated with the changes in living arrangements when moving into aged-care facilities. Aged-care facilities must strive to create and maintain living conditions that support wellbeing and allow people to lead healthy lives.

Prompt diagnosis and early intervention in the initial stages of a mental illness can have significant benefits as it can prevent or reduce the progress of a mental illness and lead to improved, timely and targeted treatment and an improved quality of life.

A recent Australian Government Department of Health report recommended service planning and provision for aged-care facility residents with individual mental health needs. This should include residents:

- with significant transition issues and experiencing adjustment disorders or abnormal symptoms of grief and loss
- with mild to moderate anxiety and/or depression
- with past history of mental illness for which they received services
- who, in addition to their mental illness, have a level of comorbid cognitive decline and/or dementia (the Australian Institute of Health and Welfare reports that 40 per cent of residents with dementia are likely to have a mental health or behavioural problem).<sup>11</sup>

Currently, mental health services are not commonly available and accessible within the personal care and accommodation services provided by residential aged-care facilities. Less than one per cent of aged-care residents receive any kind of psychosocial treatment, despite the high prevalence of mental health disorders<sup>12</sup> and the strong evidence-base for the effectiveness of these

<sup>11</sup> Psychological Treatment Services for people with mental illness in Residential Aged Care Facilities; [https://www1.health.gov.au/internet/main/publishing.nsf/content/2126B045A8DA90FDCA257F6500018260/\\$File/11PHN%20Guidance%20-%20Psychological%20treatment%20services%20in%20Residential%20Aged%20Care.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/content/2126B045A8DA90FDCA257F6500018260/$File/11PHN%20Guidance%20-%20Psychological%20treatment%20services%20in%20Residential%20Aged%20Care.pdf)

<sup>12</sup> George, K., Davison, T. E., McCabe, M., Mellor, D., & Moore, K. (2007). Treatment of depression in low-level residential care facilities for the elderly. *International Psychogeriatrics*, 19(6), 1153-1160. doi: 10.1017/S1041610207005364; Davison TE, Koder D, Helmes E, et al. Brief on the Role of Psychologists in Residential and Home Care Services for Older Adults. *Australian Psychologist* 2017; 52: 397-405

interventions.<sup>13</sup> Psychologists were not well-represented in a 2017 survey on the utilisation of psychological support in such settings. Only 11 of 81 residential settings surveyed throughout Australia employed psychologists (mostly on a casual or part-time basis), and only one setting had a full-time psychologist.<sup>14</sup>

As outlined in the National Mental Health Commission's submission to the Royal Commission into Aged Care Quality and Safety, there is a significant gap in funding for people in residential aged care to access psychologists, as residents are not eligible for a GP mental health care plan or the Medicare Better Access initiative.<sup>15</sup> Residential aged-care providers are not required to provide clinical mental health treatment services or to assist with associated out-of-pocket costs for residents as this is not within scope of the personal care or accommodation services residential facilities provide.

Aged-care residents are entitled to access mental health treatment plans from their general practitioners and psychological therapies which is equivalent to the general population.

To address the current gap, Primary Health Networks (PHNs) are now funded to commission psychological treatment services targeting the mental health needs of people in residential aged-care facilities through the *Improved Access to Psychological Services* initiative. Since January 2019, these services have been intended to enable residents to access mental health services similar to those available in the community through the Better Access to Psychologists, Psychiatrists and General Practice through the MBS Initiative (Better Access).<sup>16</sup> An evaluation should be completed – and made publicly available – to understand if this initiative is meeting the need. The evaluation should include an assessment of whether the needs of older Australians could be better met through an uncapped Medicare Better Access approach than through the Improved Access to Psychological Services initiative.

#### Recommendations

2. Improve access to mental health services by requiring residential aged-care providers to ensure the spectrum of mental health care is available and accessible to residents.
3. Improve access to appropriate treatment by ensuring residents of aged-care facilities have equivalent access to mental health treatment plans as the general population.

## Suicide prevention a priority for older people

Efforts to reduce suicide and suicidality are as important for older people as they are for younger people. Men over 85 have the highest suicide rate of any age group, at 32.9 deaths per 100,000 people.<sup>17</sup>

<sup>13</sup> Stargatt J, Bhar SS, Davison TE, et al. The Availability of Psychological Services for Aged Care Residents in Australia: A Survey of Facility Staff. *Australian Psychologist* 2017; 52: 406-13.

<sup>14</sup> Stargatt, J., Bhar, S., Davison, T. E., Pachana, N. A., Mitchell, L., Koder, D., Helmes, E. (in press). The availability of psychological services for aged care residents in Australia: A pilot study. *Australian Psychologist*; <https://www.psychology.org.au/inpsych/2016/december/bhar1>

<sup>15</sup> <https://www.mentalhealthcommission.gov.au/getmedia/fbe36d19-d09b-4a17-bbaf-6129cadba04/submission-to-the-royal-commission-into-aged-care-quality-and-safety>

<sup>16</sup> Psychological Treatment Services for people with mental illness in Residential Aged Care Facilities; [https://www1.health.gov.au/internet/main/publishing.nsf/Content/2126B045A8DA90FDCA257F6500018260/\\$File/11PHN%20Guidance%20-%20Psychological%20treatment%20services%20in%20Residential%20Aged%20Care.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/2126B045A8DA90FDCA257F6500018260/$File/11PHN%20Guidance%20-%20Psychological%20treatment%20services%20in%20Residential%20Aged%20Care.pdf)

<sup>17</sup> Australian Bureau of Statistics. Causes of death Data 2019

While mental illness can be a contributing factor to suicides among older people, data from the Australian Institute for Suicide Research and Prevention's Suicide in Queensland 2019 Annual Report indicates that suicides among older people often occur in the context of social isolation, loneliness, poor social support, concern about being a burden on loved ones, and significant loss, including bereavement.<sup>18</sup>

Entering residential care can itself contribute to mental illness and increase the suicide risk. A study of suicide deaths among people in residential aged care identified that maladjustments to life was a factor in almost 30 per cent of these deaths.<sup>19</sup>

Evidence suggests promoting good mental health and wellbeing through efforts to reduce social isolation and promote social connections and positive adaption to ageing and loss should be a significant component in suicide prevention among older people. It is essential to address the mental health challenges associated with transition to residential aged care and to provide early intervention.

Routine screening for depression and suicidality, and improved access to psychiatric care are critically important components of effective prevention, but they should not be the sole strategies for reducing suicide.

#### **Recommendation**

4. Build the capacity of residential and community-based aged-care environments to recognise and reduce suicide in older people through the introduction of strategies to assess suicide risk and promote early interventions.

## Physical health and mental health

As stated in the considerations of the Royal Commission into Aged Care Quality and Safety Interim Report: Neglect, maintaining a healthy, active lifestyle strongly contributes to healthy ageing.<sup>20</sup> Physical activity is a protective factor for noncommunicable diseases and is associated with improved mental health, delay in the onset of dementia, and improved quality of life and social wellbeing.<sup>21, 22, 23</sup>

Chronic physical illnesses such as diabetes, stroke, heart disease, or arthritis are the strongest risk factors for depression and anxiety.<sup>24</sup> This is compounded in older people who are more likely to be

<sup>18</sup> [https://www.griffith.edu.au/data/assets/pdf\\_file/0029/848063/Suicide\\_in\\_QLD\\_2019\\_ANNUAL\\_REPORT\\_ACCESSIBLE.pdf](https://www.griffith.edu.au/data/assets/pdf_file/0029/848063/Suicide_in_QLD_2019_ANNUAL_REPORT_ACCESSIBLE.pdf)

<sup>19</sup> Murphy, BJ, Bugeja, LC, Pilgrim, JL, Ibrahim, JE. Suicide among nursing home residents in Australia: A national population-based retrospective analysis of medico-legal death investigation information. *Int J Geriatric Psychiatry*. 2018; 33: 786– 796. <https://doi.org/10.1002/gps.4862>

<sup>20</sup> Royal Commission into Aged Care Quality and Safety outlines in chapter 7 “Elders are our future” of the Interim Report: Neglect Volume 1; Available at: <https://agedcare.royalcommission.gov.au/publications/Documents/interim-report/interim-report-volume-1.pdf>

<sup>21</sup> Schuch F. B., Vancampfort D., Richards J., Rosenbaum S., Ward P. B., Stubbs B. Exercise as a treatment for depression: A meta-analysis adjusting for publication bias. *Journal of Psychiatric Research*. 2016;77:42–51. doi: 10.1016/j.jpsychires.2016.02.023

<sup>22</sup> Livingston G., Sommerlad A., Orgeta V., et al. Dementia prevention, intervention, and care. *The Lancet*. 2017;390(10113):2673–2734. doi: 10.1016/S0140-6736(17)31363-6

<sup>23</sup> Das P., Horton R. Rethinking our approach to physical activity. *The Lancet*. 2012;380(9838):189–190. doi: 10.1016/S0140-6736(12)61024-1.; Camboim F. E. F., Nóbrega M. O., Davim R. M. B., et al. et alenefits of PA in the third age for the quality of life. *J Nurs Recife*. 2017;11(6):2415–22

<sup>24</sup> Clarke DM and Currie KC. Depression, anxiety and their relationship with chronic diseases: a review of the epidemiology, risk and treatment evidence. *Med J Aust* 2009; 190 (7): 54-60.

experiencing worsening physical health and a reduction in physical mobility that also impacts on their ability to engage socially.

People who have a lived experience of severe mental illness are likely to die up to 25 years earlier than the general population. This is commonly due to conditions such as respiratory or cardiovascular diseases caused by medication side-effects, obesity, smoking, and a lack of exercise.<sup>25</sup>

With physical and mental health so intertwined, the early identification, monitoring and support for physical health needs of older people, particularly those with mental illness, is critically important.<sup>26</sup> Residential aged-care facilities need to be aware of the common coexistence and the importance of identifying mental and physical illness early, so older people are not living with symptoms that could be avoided.

The Physical Activity Recommendations for Older Australians (65 years and older) recommend that older people should accumulate at least 30 minutes of moderate physical activity on most days.<sup>27</sup> Older Australians living in residential aged care should be provided with opportunities and support to undertake this level of activity as their personal health circumstances safely allow.

#### **Recommendation**

5. Increase the focus on the physical health needs of older people living in residential and community-based aged-care settings and ensure people have access to appropriate supports to maintain a healthy level of physical activity.

## **Mental health of Aboriginal and Torres Strait Islander peoples**

The Commission supports the considerations of the Royal Commission into Aged Care Quality and Safety Interim Report: Neglect in relation to the suggestions to reform aged care for Aboriginal and Torres Strait Islander peoples, especially a focus on self-determination in the design and delivery of residential age-care services.<sup>28</sup>

Aboriginal and Torres Strait Islander cultures highly value connection to country, autonomy, the role of Elders, families and kinship, and these connections are an integral part of social and emotional wellbeing.

Due to disproportionate levels of illness, Aboriginal and Torres Strait Islander peoples are more likely to require aged-care services at a younger age. Support to stay on Country for as long as possible is required, despite the challenges for regional and remote locations. Any move from community into residential aged care may be particularly sensitive and needs to be supported by navigation advice and culturally informed, holistic services with a workforce with the cultural capability to care for older Indigenous people in a way that is respectful of each individual's social and cultural beliefs.

<sup>25</sup> World Health Organisation, information sheet: Premature death among people with severe mental disorders. [Internet]. [cited 2016 August 15]. Available from: [http://www.who.int/mental\\_health/management/info\\_sheet.pdf](http://www.who.int/mental_health/management/info_sheet.pdf)

<sup>26</sup> Langhammer B, Bergland A, Rydwick E. The Importance of Physical Activity Exercise among Older People. Biomed Res Int. 2018;2018:7856823. Published 2018 Dec 5. doi:10.1155/2018/7856823

<sup>27</sup> <https://www1.health.gov.au/internet/main/publishing.nsf/Content/health-pubhlth-strateg-phys-act-guidelines>

<sup>28</sup> Royal Commission into Aged Care Quality and Safety Interim Report: Neglect Volume 1; Available at: <https://agedcare.royalcommission.gov.au/publications/Documents/interim-report/interim-report-volume-1.pdf>



### Recommendation

6. Create an aged care sector in which the needs of Aboriginal and Torres Strait Islander peoples are met in a culturally safe way and delivered by a culturally capable workforce (preferably Aboriginal and Torres Strait Islander peoples). Where ever possible, services should be on Country and co-designed by communities, Elders and people with a lived experience.

## Mental health of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community

Many older lesbian, gay, bisexual, transgender and intersex (LGBTI) people have experienced stigma and discrimination, with a profound impact on their mental health.<sup>29</sup> They have higher rates of depression, anxiety and problematic alcohol and other drug use.<sup>30</sup>

Older LGBTI people who believe services are unsafe are likely to avoid such services, delay access or fail to disclose all their needs.<sup>31</sup> Fear of disclosing sexuality and experiencing discrimination may act as a barrier to accessing appropriate aged care and contribute to social isolation.<sup>32</sup> This is particularly relevant when people move from living in a supportive community or relationship to a less accepting residential aged-care facility.

Consequently, many do not disclose their sexual orientation, transgender identity or intersex status and are therefore largely invisible in aged care.<sup>33</sup> As a result, service providers may not be aware of older LGBTI people's needs, and many do not understand the importance of culturally safe care.

Aged-care workers would benefit from training in relation to sensitivity and awareness of the LGBTI community's needs, to support every person's human right to maintain gender identity and access non-discriminatory inclusive services.

<sup>29</sup> Mental Health Commission New South Wales; Living well later in Life: The case for change; July 2017; Available at:

[https://nswmentalhealthcommission.com.au/sites/default/files/documents/living\\_well\\_in\\_later\\_life\\_-\\_the\\_case\\_for\\_change.pdf](https://nswmentalhealthcommission.com.au/sites/default/files/documents/living_well_in_later_life_-_the_case_for_change.pdf)

<sup>30</sup> National Drug and Alcohol Policy Centre. Drug Policy Modelling Program [Internet] Monograph Series, NDARC 2012. [cited 2016 August 2016] Available from: <https://ndarc.med.unsw.edu.au/sites/default/files/ndarc/resources/21%20An%20assessment%20of%20illicit%20drug%20policy%20in%20Australia.pdf>

<sup>31</sup> Pauline Cramer, Catherine Barrett, JR Latham and Carolyn Whyte Sexual Health and Ageing Program, Australian Research Centre in Sex, Health and Society, La Trobe University, Melbourne, Victoria, Australia; available at: [https://www.latrobe.edu.au/\\_\\_data/assets/pdf\\_file/0008/814769/Culturally-safe-services-for-older-LGBTI-people.pdf](https://www.latrobe.edu.au/__data/assets/pdf_file/0008/814769/Culturally-safe-services-for-older-LGBTI-people.pdf)

<sup>32</sup> Dow, B., Joosten, M. & Tinney, J (2015). Mental health of older lesbian, gay and transgender people. Presentation slides. (Internet). [cited 2017 June 20]. Available at: [http://www.nari.net.au/files/files/documents/mental\\_health\\_of\\_older\\_people.pdf](http://www.nari.net.au/files/files/documents/mental_health_of_older_people.pdf)

<sup>33</sup> Barrett C, Harrison J, Kent J. Permission to speak. The perspectives of service providers caring for older GLBTI seniors. Melbourne, Matrix Guild Victoria Inc and Vintage Men Inc., 2009. [Cited August 2015 .] Available from URL: [matrixguildvic.org.au](http://matrixguildvic.org.au); GLBTI Retirement Association Inc. (GRAI). We don't have any of those people here. Retirement Accommodation and Aged Care Issues for NonHeterosexual Populations. Curtin Health Innovation Research Institute; WA Centre for Health Promotion Research; Centre for Research on Ageing; Curtin University, Bentley, Western Australia, 2010.

### Recommendation

7. Offer non-discriminatory aged-care services which are accepting of sexuality, sex and gender identity and can specifically address the mental health needs of LGBTI older people, with the capability and competencies of workers strengthened through training in awareness and sensitivity to older LGBTI people's needs.

## The aged-care workforce

The aged-care workforce plays a critical role in delivering high quality, safe, and person-centred care. The Commission acknowledges the commitment and dedication of people working in aged care, providing intensive care in challenging environments. We advocate for reasonable minimal staff/resident ratios and appropriate professional supports that enable the required level of qualifications, skills, experience and training to deliver high-quality and safe aged care. This also contributes to the mental well-being of the workforce itself.

As outlined in Leading Aged Care Services Australia's 2018 report, despite the high prevalence of mental illness in aged-care residents, the majority of staff don't have the training to identify, understand and respond to mental health issues such as depression and anxiety. As a result, mental illness often goes unrecognised and unsupported<sup>34</sup>.

There is a need to support the skills and capability of the aged-care workforce by providing mental health and stigma-reduction training to improve the mental health of older people. Increased mental health literacy can lead to improved safety and quality in service provision. Improved understanding of stigma can reduce discrimination and barriers to help-seeking and increase the confidence of aged-care workers and volunteers to work with people with mental illness. Where possible, older people affected by mental illness or suicide should be involved with the development and delivery of this training.

One example is Beyond Blue's *What works to promote emotional wellbeing in older people: A guide for aged-care staff working in community or residential-care settings*.<sup>35</sup> Beyond blue is also inviting care workers to complete their free online Professional Education to Aged Care course, designed to assist aged-care staff in recognising and managing the symptoms of depression and anxiety in residents.<sup>36</sup> The course is suitable for staff including nurses, personal care assistants and community care workers.

<sup>34</sup> LASA, Leading Aged Care Services Australia; Improved access to psychological services in residential care; July 2018; available at: <https://lasa.asn.au/wp-content/uploads/2018/07/18-07-19-Consultation-on-mental-health-supports-in-RACFs-final.pdf>

<sup>35</sup> <http://resources.beyondblue.org.au/prism/file?token=BL/1263A>

<sup>36</sup> <https://www.beyondblue.org.au/about-us/about-our-work/older-adults-program/professional-education-in-to-aged-care-peac-program>

#### **Recommendation**

8. Strengthen residential and community-based aged-care workforce competencies through training modules including mental health literacy (such as Mental Health First Aid), and anti-stigma and trauma- informed care.

### **Younger people with a disability in residential aged care**

The Commission welcomes the considerations of the Royal Commission into Aged Care Quality and Safety outlined in *Falling Through the Gaps: Younger People in Residential Aged Care*, chapter 10 of the Interim Report: Neglect.<sup>37</sup>

Residential aged care is not a suitable environment for younger people and placing them in such facilities is a significant risk for their mental health and wellbeing.

The current practice of accommodating young people with a disability in aged-care facilities due to a lack of suitable housing options is unacceptable. Residential aged-care facilities are designed to support the needs of older people and are a challenging environment for young residents particularly with regard to mental health. Young people with a disability living in aged care are at high risk of not being supported to access a desired, age-appropriate quality life and of developing depression or anxiety as a result.

The Royal Commission is correct in finding that younger people in residential aged care comprise a human rights issue, with concerns that many younger people are deprived of their rights under the *United Nations Convention of the Rights of Persons with Disabilities*.

We strongly support the Royal Commission's stated intent for rapid action to reduce and eliminate the incidence of younger people entering residential aged care.

#### **Recommendation**

9. Create priority accommodation and services to ensure younger people with a disability, including psychosocial disability and mental illness, are no longer living in residential aged care. This should be an immediate action.

### **Restrictive practices**

The use of restrictive practices to manage the challenging behaviours of people in aged-care facilities is a key human rights issue. Restrictive practices have no therapeutic value, and result in emotional

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<sup>37</sup> Royal Commission into Aged Care Quality and Safety Interim Report: Neglect Volume 1; Available at: <https://agedcare.royalcommission.gov.au/publications/Documents/interim-report/interim-report-volume-1.pdf>

and physical harm for residents and staff. There is an urgent need to legislate the use of restrictive practices in the Australian aged-care system.

The Royal Commission has received evidence that aged-care facility residents have been subjected to a range of restrictive practices, including detention (locked doors and seclusion), and environmental (restricted access to possessions or places, tracking and camera surveillance), physical and mechanical (lap belts) and chemical (medications that sedate and 'silence') restrictions that have had a profound impact on those residents and their families and friends.<sup>38</sup>

As outlined in the Royal Commission's Interim Report, in many instances' restraints are used as a first, rather than last, resort to manage challenging behaviours, contrary to available guidance and evidence.<sup>39</sup> There is substantial research evidence that shows in many cases the use of physical restraints causes more harm than benefit and infringes on the autonomy of the older person.<sup>40</sup>

With the number of people with a mental illness and dementia significantly increasing, any practices by residential aged-care facilities managing people's challenging behaviours associated with their conditions must be evidence- and rights-based, regulated and strictly monitored. The potential harm that could occur as a result of poorly-applied restrictive practices highlights an urgent need to legislate such practices. Such legislation should encompass approval, authority and independence of consent, the duration of restraint, reviews, and oversight.

Some Australian jurisdictions regulate the use of restrictive practices in the disability and/or mental health sectors. Queensland has a comprehensive regulatory framework under the *Disability Services Act 2006* (Qld) for the use of restrictive practices by State Government-funded disability service-providers. The best practice-model ensures restrictive practices are formally approved before use and are employed in conjunction with positive behaviour support plans that aim to reduce the use of restrictive practices over time.<sup>41</sup> The adoption of a properly-regulated regime has resulted in greater transparency in Queensland's disability sector, and increased consistency, professionalism and oversight of restrictive practices. The Queensland disability sector model could be adapted for use in Australia's aged-care sector.

The *Aged Care Act 1997* (Cth) does not formally regulate the use of restrictive practices in residential aged-care facilities. This increases the risk of widespread unregulated use of restrictive practices and the potential for serious human rights breaches.

As referred to in the Queensland Public Advocate's Submission,<sup>42</sup> numerous inquiries and reviews have explored the issue of restrictive practice use in residential aged care, with at least three reports released in the past three years making recommendations for legislative change in this area. These reports were the *Elder Abuse Issues Paper 2016*; the *Elder Abuse Inquiry – Elder Abuse: A National Legal Response 2017* (the Australian Law Reform Commission); and the *Review of National Aged Care Quality Regulatory Processes 2017*.<sup>43</sup>

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<sup>38</sup> Submission of the Queensland Public Advocate to the Royal Commission into Aged Care Quality and Safety: [https://www.justice.qld.gov.au/\\_\\_data/assets/pdf\\_file/0008/617993/aged-care-royal-commission-submission.pdf](https://www.justice.qld.gov.au/__data/assets/pdf_file/0008/617993/aged-care-royal-commission-submission.pdf)

<sup>39</sup> Royal Commission into Aged Care Quality and Safety Interim Report: Neglect Volume 1; Available at: <https://agedcare.royalcommission.gov.au/publications/Documents/interim-report/interim-report-volume-1.pdf>

<sup>40</sup> Gastmans C, Milisen K. Use of physical restraint in nursing homes: clinical-ethical considerations. *J Med Ethics*. 2006;32(3):148–152. doi:10.1136/jme.2005.012708

<sup>41</sup> Disability Services Act 2006 (Qld) pt 6 – provisions relating to positive behaviour support and restrictive practices. Guardianship and Administration Act 2000 (Qld) ch 5B – provisions relating to restrictive practices.

<sup>42</sup> Submission of the Queensland Public Advocate to the Royal Commission into Aged Care Quality and Safety: [https://www.justice.qld.gov.au/\\_\\_data/assets/pdf\\_file/0008/617993/aged-care-royal-commission-submission.pdf](https://www.justice.qld.gov.au/__data/assets/pdf_file/0008/617993/aged-care-royal-commission-submission.pdf)

<sup>43</sup> [https://agedcare.health.gov.au/sites/default/files/documents/10\\_2017/review\\_report\\_final\\_23\\_october\\_2017.pdf](https://agedcare.health.gov.au/sites/default/files/documents/10_2017/review_report_final_23_october_2017.pdf)

The Office of the Public Advocate has also released *Legal frameworks for the use of restrictive practices in residential aged care: An analysis of Australian and international jurisdictions*.<sup>44</sup> The paper found that many comparable countries, including New Zealand, the United Kingdom, Scotland, the United States of America and most provinces of Canada, had formal legal frameworks regulating the use of restrictive practices in residential aged care. The Commission agrees with the Public Advocate's finding that "without appropriate action, Australia will remain out-of-step, in terms of regulation of restrictive practices in residential aged care and the protection of the rights of older Australians, compared with other western, democratic countries".

In October 2019, Human Rights Watch released the report *Fading Away - How Aged Care Facilities in Australia Chemically Restrain Older People with Dementia*.<sup>45</sup> This report – based on interviews with family members, doctors, nurses, and advocates – documented the use of medications as chemical restraint in 35 aged-care facilities in Queensland, Victoria and New South Wales. In all three states, Human Rights Watch research indicated that older people were restrained with sedatives and antipsychotic medications. The report recommended:

- the introduction of legislation to prohibit the use of chemical restraints as a means of controlling the behaviour of older people with dementia or for the convenience of staff.
- that any new law should ensure
  - informed consent for all treatment or interventions (from the aged-care resident or the person with power of attorney)
  - independent monitoring
  - effective, accessible, independent complaint mechanisms.
- all policies and actions implemented for aged care should be consistent with the *UN Convention on the Rights of Persons with Disabilities*.

In October 2019, the Commission published a suite of documents associated with the completion of the 'Human rights protection frameworks for people being treated involuntarily for a mental illness' project<sup>46</sup>. This study explored how legislative changes made in the *Mental Health Act 2016* protected the human rights of people who received involuntary treatment for a mental illness in hospital and community settings, from the perspective of relevant stakeholders, people with lived experience of mental illness, and carers.

The Commission has long advocated for stronger human rights protections and supports the National Mental Health Commission's efforts towards the elimination of seclusion and restrictive practices.<sup>47</sup>

#### **Recommendation**

10. Introduce legislation to support the reduction and, where possible, elimination of the use of restraint and seclusion, and to ensure any restrictive practices are evidence- and rights-based and used only as a last resort, and with effective safeguards and oversight mechanisms.

<sup>44</sup> Office of the Public Advocate, *Legal frameworks for the use of restrictive practices in residential aged care: An analysis of Australian and international jurisdictions* (June 2017).

<sup>45</sup> <https://www.hrw.org/report/2019/10/15/fading-away/how-aged-care-facilities-australia-chemically-restrain-older-people>

<sup>46</sup> <https://www.qmhc.qld.gov.au/research-review/human-rights/involuntary-treatment-protections>

<sup>47</sup> <https://www.mentalhealthcommission.gov.au/our-work/reducing-restrictive-practices.aspx>

## Queensland Human Rights Act 2019

The Queensland Human Rights Act 2019 (the Act) has seen Queensland join the Australian Capital Territory and Victoria as the only Australian jurisdictions with statutory protection for human rights.

<sup>48</sup>

The Queensland Act has been described as the “most comprehensive and accessible human rights protections in the country”<sup>49</sup> extending beyond legislation in the ACT and Victoria. It protects economic, social and cultural rights to education and healthcare, and establishes for human rights complaints to be made to the Queensland Human Rights Commission. Information about the Act is provided on the Human Rights Commission’s website at: <https://www.qhrc.qld.gov.au/your-rights/human-rights-law>.

A number of human rights are engaged in relation to people living in aged-care facilities, particularly when considering the vulnerability of elderly people (in particular, those with dementia) and the use of restrictive practices and seclusion.

- Recognition and equality – include the right not to receive age-discriminatory treatment
- Right to life – relevant to palliative and end-of-life care aspects.
- Protection from torture and cruel, inhumane or degrading treatment – a right relevant to dignity and respect in personal care arrangements.
- Freedom of movement – relevant to restricting movement with locked doors and the use of physical or chemical restraints.
- Freedom of expression – people’s right to communicate, participate and make decisions that affect their lives, including to participate and express consent in treatment, management and medication decisions, enter new relationships, and develop personally in their ‘home’.
- Privacy and reputation – relevant to unlawful or arbitrary interference with a person’s privacy, family and home, and particularly relevant as aged-care facilities are people’s homes.
- Right to liberty and security of person – relevant where detention or seclusion occurs in locked facilities.
- Property rights – for access and ownership of personal objects and effects in their home.
- Cultural rights – generally and cultural rights of Aboriginal and Torres Strait Islander peoples.
- Right to humane treatment when deprived of liberty – for treatment with “humanity” and “respect”.
- Right to health services – including mental health services.

Convenience to service providers, low staffing levels or lack of staff training are not legitimate justifications for limiting these human rights. Nor is the use of restrictive practices to reduce falls or limit the chance of injury, particularly if there are less-restrictive options.

The Act is relevant to Queensland’s 16 state-funded aged-care facilities. Most of the state’s residential aged-care is in Commonwealth-funded private facilities. A federal Human Rights Act, supported by a legislated approach to restrictive practices based on the *Disability Services Act 2006* (Qld), improved staffing ratios and staff training would ensure human rights principles would apply within the aged-care sector.

Ensuring the dignity of people living in aged-care settings should be at the forefront of any reform initiatives. This requires a cultural shift. Changing the culture of aged care to one that is based on

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<sup>48</sup> <https://www.legislation.qld.gov.au/view/whole/html/asmade/act-2019-005>

<sup>49</sup> Shane Duffy, Chief Executive Officer of The Aboriginal and Torres Strait Islander Legal Service (QLD), Media release 27 February 2019; Available at: <http://www.atsils.org.au/media-release-historic-human-rights-act-passed-in-queensland-parliament-today/>

human rights principles and reframing the idea of residents from 'patients' to 'rights-holders' to be treated with dignity and respect has the potential to improve services and ensure the consideration of individual needs, values and interests.

Innovative models that seek to re-create suburban communities, with home-like clusters and centralised and co-located social and health services, demonstrate this approach.

#### **Recommendation**

11. Create a culture based on human rights principles, reframing the idea of aged-care residents from 'patients' to 'rights-holders'.

### **Lived experience-led reform**

There is a need for increased engagement of people with lived experience (of aged care and, where relevant, mental illness), their families and carers in the reform of the Australian aged-care system.

The many benefits arising from the engagement and participation of consumers, carers and their families in the development, implementation and evaluation of services are widely recognised. Benefits include improved health outcomes, enhanced service-provision quality and safety, and greater cost-effectiveness.

One example is the Fifth National Mental Health and Suicide Prevention Plan<sup>50</sup>, with governments committing to equitable, practical, authentic co-design with consumers and carers. Collaborative partnerships with consumers and carers are recognised as integral to implementing changes that improve outcomes for people with, or at risk of, mental illness and/or suicide. Examples of supporting the involvement of consumers and carers include collaboration on design and planning, implementation, monitoring and evaluation of policies and actions, as well as capacity-building among organisations that support consumer and carer participation, and recognition of the contribution of consumers and carers to the Fifth Plan implementation.

The Commission is committed to improving engagement with and participation of people with lived experience, their families and other support people, and affirms the right of all people to participate in decisions that affect their care, and to determine the conditions that enable them to live contributing lives.

Engaging stakeholders and facilitating meaningful participation is essential to achieving transformational change. Diverse and genuine engagement with people with lived experience, their families and other support people adds value to decision-making by providing direct knowledge about the needs of the community, resulting in better-targeted and more responsive services and initiatives.

Engagement and participation with people with lived experience in mental health and suicide prevention that actively supports co-design, co-production, and co-delivery of systems and services leads to better health and wellbeing outcomes, aids recovery, and achieves better experiences for service users and service providers. This requires strong policy commitment to partnering with

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<sup>50</sup> <https://www.mentalhealthcommission.gov.au/getmedia/0209d27b-1873-4245-b6e5-49e770084b81/Fifth-National-Mental-Health-and-Suicide-Prevention-Plan.pdf>

people with lived experience in monitoring and reviewing system and service performance, and decision-making about what is deemed to be a desired outcome.

Stretch2Engage provides a framework to guide efforts to increase and improve engagement in the mental health and alcohol and other drugs public and non-government sectors. It calls for a different approach to how organisations think about engagement and sets the foundation for culture change that holds engagement as core business.<sup>51</sup>

The National Mental Health Commission's *Sit beside me, not above me: Supporting safe and effective engagement and participation of people with lived experience* report<sup>52</sup> provides a comprehensive overview of considerations for effective and safe engagement and participation. Importantly, it notes that safe and effective engagement and participation is a collective responsibility that includes people with lived experience, their families and other support people, service providers, and organisational leadership.

It also recognises that there is a need for training and continuous development for those who engage with people with a lived experience, their families and other support people in all sectors. Mechanisms, structures and strategies are needed to drive comprehensive, sustainable and widespread cultural change that values kindness, respect, understanding and continuous quality improvement.

The National Mental Health Commission has also recently released a good practice guide, *Consumer and carer engagement: a practical guide*<sup>53</sup>, that could assist aged-care providers to implement appropriate and meaningful engagement and participation activities.

Similar to the examples provided above, successful reform of the aged-care sector will depend on meaningful and effective engagement of residents with a lived experience in aged care and mental illness. Lived experience needs to inform every reform initiative, all levels of policy development, program and service delivery, and evaluations.

The SANE Australia *Growing Older, Staying Well: mental health care for older Australians* report<sup>54</sup> provides insight into the experience of older adults with lived experience of mental illness and their carers and families, and examines their concerns and areas nominated for change.

#### **Recommendation**

12. Develop strategies to empower, enable and support people with a lived experience to lead all stages of reform of the aged-care sector.

<sup>51</sup> <https://www.qmhc.qld.gov.au/engage-enable/lived-experience-led-reform/best-practice-principles>

<sup>52</sup> *Sit beside me, not above me: Supporting safe and effective engagement and participation of people with lived experience*. Accessed at <https://www.mentalhealthcommission.gov.au/media/253244/Sit%20beside%20me,%20not%20above%20me%20-%20Supporting%20safe%20and%20effective%20engagement%20a....pdf>

<sup>53</sup> *Consumer and carer engagement: a practical guide*. Accessed at <https://www.mentalhealthcommission.gov.au/our-work/consumer-and-carer-engagement.asp>

<sup>54</sup> *SANE Australia Growing older, staying well: mental health care for older Australians*. Accessed at <https://www.sane.org/images/PDFs/GrowingOlderStayingWell.pdf>



## Related legislative reform in Queensland

The Queensland Parliamentary Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee is investigating the closure of the Earle Haven residential aged-care facility on the Gold Coast in July 2019 as part of its inquiry into aged care, end-of-life and palliative care and voluntary assisted dying. The committee will be investigating the quality and safety of care provided to the former residents<sup>55</sup>.

The Federal Minister for Aged Care and Senior Australians, Richard Colbeck, commissioned an inquiry to examine the circumstances leading up to the collapse in provision of aged-care services at Earle Haven, and the affect of the events on the safety and wellbeing of residents. The report's 23 recommendations have a significant focus on greater regulatory oversight of approved providers and their commercial arrangements.

On 4 September 2019, Queensland Minister for Health and Minister for Ambulance Services Dr Steven Miles introduced the Health Transparency Bill 2019<sup>56</sup>, supported by the Parliamentary Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee. The Bill seeks to:

- establish a legislative framework for collecting and publishing information about public and private hospitals and residential aged-care facilities
- amend the *Hospital and Health Boards Act 2011* to introduce a minimum nurse and support worker skill-mix ratio and minimum average daily resident care hours in public residential aged-care facilities.

The explanatory notes state: "Australian jurisdictions including the Commonwealth Government do not require aged-care providers to report staffing information about nursing care and personal care providing at facilities. Revelations at the current Royal Commission into Aged Care Quality and Safety have illustrated the need to ensure more transparency in Queensland residential aged-care facilities. The Queensland Government is committed to ensuring that elderly Queenslanders and their families have access to comparative information to make informed decisions when selecting a residential aged-care provider. The public reporting of staffing information in public and private residential aged-care facilities is expected to facilitate improved transparency about residential care and staffing. The reporting of staffing information may also contribute to improvements similar to those associated with the reporting of hospital outcome information, improving accountability to consumers, foster a culture of transparency, and provide information to consumers to enable informed choices. This may result in changes to the practices of the private aged-care sector and drive providers to respond to what consumers want."

## Conclusion

The Commission welcomes the Royal Commission into Aged Care Quality and Safety as a critical opportunity to implement aged-care sector reforms that will bring positive policy, legislative, practice and cultural change to build a culture of respect for older Australians.

The human rights and mental health and wellbeing of aged-care residents and their loved ones must be protected. In response, this submission calls for action in line with 12 recommendations:

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<sup>55</sup> <https://www.parliament.qld.gov.au/work-of-committees/committees/HCDSDFVPC/inquiries/current-inquiries/EarleHavenClosure>

<sup>56</sup> <https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2019/5619T1427.pdf>

1. Improve access to appropriate treatment and support through the introduction of mandatory screening for people in residential and community-based aged care, to detect mental illness, including PTSD and early mental health problems.
2. Improve access to mental health services by requiring residential aged-care providers to ensure the spectrum of mental health care is available and accessible to residents.
3. Improve access to appropriate treatment by ensuring residents of aged-care facilities have equivalent access to mental health treatment plans as the general population.
4. Build the capacity of residential and community-based aged-care environments to recognise and reduce suicide in older people through the introduction of strategies to assess suicide risk and promote early interventions.
5. Increase the focus on the physical health needs of older people living in residential and community-based aged-care settings and ensure people have access to appropriate supports to maintain a healthy level of physical activity.
6. Create an aged care sector in which the needs of Aboriginal and Torres Strait Islander peoples are met in a culturally safe way and delivered by a culturally capable workforce (preferably Aboriginal and Torres Strait Islander peoples). Where ever possible, services should be on Country and co-designed by communities, Elders and people with a lived experience.
7. Offer non-discriminatory aged-care services which are accepting of sexuality, sex and gender identity and can specifically address the mental health needs of LGBTI older people, with the capability and competencies of workers strengthened through training in awareness and sensitivity to older LGBTI people's needs.
8. Strengthen residential and community-based aged-care workforce competencies through training modules including mental health literacy (such as Mental Health First Aid), and anti-stigma and trauma- informed care.
9. Create priority accommodation and services to ensure younger people with a disability, including psychosocial disability and mental illness, are no longer living in residential aged care. This should be an immediate action.
10. Introduce legislation to support the reduction and, where possible, elimination of the use of restraint and seclusion, and to ensure any restrictive practices are evidence- and rights-based and used only as a last resort, and with effective safeguards and oversight mechanisms.
11. Create a culture based on human rights principles, reframing the idea of aged-care residents from 'patients' to 'rights-holders'.
12. Develop strategies to empower, enable and support people with a lived experience to lead all stages of reform of the aged-care sector.

Changing the culture of aged care to one that is based on human rights principles and reframing the idea of residents from "patients" to "rights-holders" needs to be at the core of sector reform to ensure people are treated with dignity and respect.