

12 February 2018

Our ref: VK – HDL/Elder

Jonathan Smithers
Chief Executive Officer
Law Council of Australia
19 Torrens Street
BRADDON ACT 2612

By email: emma.hlubucek@lawcouncil.asn.au

Dear Mr Smithers

Inquiry into the Quality of Aged Care in Residential Aged Care Facilities in Australia

Thank you for the opportunity to provide comments on the Inquiry into the Quality of Aged Care in Residential Aged Care Facilities in Australia (the **Inquiry**). Queensland Law Society appreciates being consulted on this important inquiry.

This response has been compiled with the assistance of the Elder Law and Health and Disability Law Committees (the **Committees**) whose members have substantial expertise and practice in this area.

The Queensland Law Society (**QLS**) is the peak professional body for the State's legal practitioners. We represent and promote nearly 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

As an overarching comment, the Society is concerned that the Inquiry, similarly to the 2017 Senate review on these issues, is tailored to only address some aspects of the failings of Australia's aged care facilities and treatment of the elderly. QLS' view is that much more needs to be done; namely, a review of the entire system with a particular focus on the interaction of State and Commonwealth agencies that regulate and have the ability to impact on each aspect of the aged care quality provided to a consumer. This would require a much wider lens of inquiry – a 360 degree review from the perspective of the consumer, rather than a 'top down' approach focussing on improving high level policies. QLS is concerned that there is a growing disconnect between different State and Commonwealth agencies and the various

policies which are separately developed at different levels to address particular issues, resulting in a 'hyper-policy' program that does not necessarily improve outcomes for residents.

For your consideration, we have addressed the terms of reference as follows:

1. Incidence of all mistreatment of residents in residential aged care facilities and associated reporting and response mechanisms, including the treatment of whistle blowers

The Society has concerns that whistle-blowers are inadequately protected under Commonwealth legislation, and that clear arrangements to enable anonymous reporting need to be implemented.

The Society considers that the *Disability Services Act 2006* (Qld) is a comprehensive regulatory framework that should be considered as a potential model for Commonwealth reform. The inclusion of restrictive practice provisions in this Act has resulted in greater transparency, consistency, professionalism and oversight of these practices.

As it stands the *Aged Care Act 1997* (Cth) does not regulate the use of restrictive practices such as chemical, physical and mechanical restraint. These practices are a breach of human rights and can lead to negative physical and psychological effects on residents in aged care. There are also serious questions in relation to the degree to which some facilities seek consent for use of chemical restraint.

We reiterate our comments from the QLS August 2017 submission that these practices need to be reviewed, with the objective of installing consistent standards at aged care facilities.

2. Effectiveness of the Australian Aged Care Quality Agency, the Aged Care Complaints Commission and the *Charter of Care: Recipients' Rights and Responsibilities* in ensuring adequate consumer protection in residential aged care

QLS is concerned that these entities are grossly under-resourced to undertake their objectives. This may be in fact compounding the problem:

- increased funding would allow for more robust and meaningful review capabilities, leading to greater compliance and consumer confidence in the accreditation system;
- less financial strain on these agencies may allow a more tailored approach to dealing with facilities where there is a failing. It may be more appropriate to assist those facilities which are genuinely striving to be compliant by taking a more collaborative and education-based response to issues affecting accreditation. A punitive response may not always result in better outcome for consumers.

The Society is unconvinced that expanding the current Charter would result in any meaningful change for residents. There is a need to make sure that residents and their families are better informed about their rights by including an obligation for facilities to regularly provide

education or information on rights, support for making complaints and the complaint process. However, there is little evidence to suggest that the expansion of the Charter will have any tangible effect. QLS is aware that in several facilities, staff are unaware of the Charter's existence.

3. Adequacy of consumer protection arrangements for aged care residents who do not have family, friends or other representatives to help them exercise choice and their rights in care

The Society is very concerned about the lack of agency for a resident generally. The risk that a patient is unaware of or unable to ensure that their treatment accords with relevant rights and protections will increase where there is no trusted person who can advocate on their behalf, and may also be increased for those in regional and remote facilities without access to other services which are available in metropolitan areas.

QLS has previously called for a revision of governing legislation to ensure that facilities allow general practitioners to continue to visit their patients at the nursing home, once they have become a resident. This continued familiarity is particularly important where a resident does not have family, friends or other representatives to assist them in ensuring that their rights are not infringed upon.

Thank you again for the opportunity to provide comments. If you have any queries regarding the contents of this letter, please do not hesitate to contact our Senior Policy Solicitor, Vanessa Krulin by phone on 3842 5872 or by email to Vanessa.Krulin@qls.com.au.

Yours faithfully



Ken Taylor
President