



# Submission to Queensland Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

Queensland Parliament Aged Care Inquiry  
Investigation of the closure of the Earle Haven  
residential aged care facility at Nerang

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submission

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*The primary function of nurses is to provide early surveillance and to detect problems that could lead to death and other complications. If there aren't enough nurses at the bedside with visual contact with patients, nurses don't have a chance of making those decisions.*  
*Linda Aiken, Professor of Nursing, Pennsylvania State University*

## Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the Queensland Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee for the opportunity to make a submission to the investigation of the closure of the Earle Haven residential aged care facility at Nerang.

Nursing and midwifery is the largest occupational group in Queensland Health (QH) and one of the largest across the Queensland government. The QNMU is the principal health union in Queensland covering all categories of workers that make up the nursing workforce including registered nurses (RN), registered midwives (RM), enrolled nurses (EN) and assistants in nursing (AIN) who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 60,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses in Queensland are members of the QNMU.

The recent events surrounding the closure of the Earle Haven aged care facility have yet again dramatically highlighted the parlous state of aged care services in Australia.

The QNMU believes its aged care membership base makes the organisation a stakeholder in any debate regarding the quality and safety of aged care services. As a member led organisation which advocates for nurses and unregulated healthcare workers in aged care, member feedback consistently identifies a range of endemic and systemic issues which impact on the safety and quality of care provided and which effect those receiving and providing care. These issues include staffing and skill-mix, working conditions, governance and regulation, funding and training.

While aged care regulation falls largely within the commonwealth jurisdiction, the QNMU believes that the State does have a responsibility to remain in this space in terms of service provision, regulation and advocacy. Given the systemic issues identified by the Aged Care Royal Commission and their impact upon elderly Queenslanders, ongoing state involvement is critical if there is to be real improvement in this sector.

In contrast to the anaemic and desultory response by federal agencies and authorities the QNMU is pleased this investigation at a State level is occurring in order to identify causes and help to prevent further similar events in the future.

At the recent annual conference, around 300 QNMU nursing and midwifery delegates unanimously voted in support of an urgency motion calling on the federal government to act immediately to address the significant issues arising from the Earle Haven residential aged care facility closure. (Attachment 1)

The QNMU applauds the Queensland Government in undertaking this inquiry into the dramatic and chaotic closure of Earle Haven and this submission seeks to address the quality and safety of care issues outlined in the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee inquiry, as observed by the QNMU.

## Recommendations

The QNMU recommends:

1. The Queensland Government investigate its powers and/or authority under its public health mandate with a view to legislating that all Queensland residential aged care facilities must have at least one registered nurse on site 24 hours per day, 7 days a week;
2. The Queensland Government pursue the introduction of evidence based legislated minimum staffing and skill-mix requirements for all nursing homes (RACFs) by the Federal Government at all opportunities, e.g. Council of Australian Governments;
3. The Queensland Government coordinate the development of a state-wide aged care workforce plan in conjunction with the federal government, aged care providers, provider representatives, relevant unions, consumers and training and education providers to ensure that there are sufficient aged care workers to meet projected demands for care;
4. The Queensland Government legislate to ensure public transparency of all private nursing home nurse to resident ratios and skill mix;
5. The federal government amend the *Aged Care Act 1997* to require evidence of compliance with benchmarks that ensure both the number and skills of staff are adequate to ensure quality care is provided by all categories of staff and abuse-by-neglect will be minimised, if not eliminated;

6. The federal government amend the relevant aged care regulation to include provisions mandating that aged care regulation must be read in conjunction with the *Health Practitioner Regulation National Law Act 2009* (National Law).

## Background

On 11 July 2019, the Earle Haven aged care facility suddenly closed, requiring the urgent relocation of approximately 70 residents to alternative accommodation in hospital and other aged care facilities. The immediate response to the closure was coordinated by state authorities with little apparent involvement from the federal authorities who shoulder the primary jurisdictional responsibility.

The QNMU became aware of concerns regarding the quality of care at Earle Haven in early July 2019, however the facility closed prior to these issues being discussed with facility management. The QNMU had also been in hearings before the Fair Work Commission from 30 April regarding our concerns about non-payment of industrial entitlements. The QNMU filed a report outlining the Summary of Events leading up to and following the sudden closure of Earle Haven nursing home with the Royal Commission on 7 August 2019.

## Earle Haven

The financial dispute between the operators of Earle Haven, subcontractor HelpStreet Group and the company that owns Earle Haven, People Care, triggered the closure of Earle Haven.

The QNMU is not privy to the contracting arrangements between People Care and Help Street, however we understand that there is an absence of federal government regulation that prescribes how approved providers can subcontract care services to a non-approved provider. This would appear to be a shortcoming in the regulation of aged care.

Compounding the issues of financial management is that the federal government is not transparent regarding the financial positions of approved providers, even when their parent companies are large multinational corporations. The Aged Care Financing Authority publishes general information only, separated into 'for profit', 'not for profit' and 'government' providers.

## Safety and quality in aged care

As identified by Phillips et al., (2017) the proportion of those aged care residents requiring high levels of care has dramatically increased from 13% in 2009 to 61% in 2016.

During this same period, the proportion of qualified nurses fell dramatically, with the registered nurse cohort reducing by 33% and the non-nursing-qualified staff increased proportionally.

Residential aged care facilities, while not hospitals, are places where considerable and often complex health care takes place to an increasingly ageing, frail cohort with a significant and rising morbidity profile. Due to the decreasing length of stay in residential aged care and the increasing intensity of care, these facilities are more like hospices or subacute, non-acute care facilities.

The QNMU view, shared by other relevant agencies, is that aged care is health care.

However, aged care is provided without the robust governance, safety and quality standards, staffing, skill mix and clinical infrastructure, accountability, reporting, and funding arrangements accepted as essential to the effective and efficient operation of the hospital and health care sectors.

Simultaneously, there has been a shift towards an increasingly deskilled, and unregulated, aged care workforce and perversely, a de-emphasis on the health care aspects of aged care in favour of a social model of aged care at a time when the health care needs of residents have never been greater (Phillips et al., 2017). It is little wonder then that the care and safety issues identified almost daily in aged care continue to occur largely unabated.

Recent inquiries, media reports, complaints by those receiving aged care services and research, have raised serious concerns regarding the safety and quality of these services (Ibrahim et al., 2017, Willis et al., 2016). In Australia, aged care services are a public good, funded predominately by the public purse and delivered mainly by the private sector.

Falling proportions of registered and enrolled nurses and increasing numbers of unregulated care-workers are resulting in deteriorating skill and staff mix within the aged care workforce.

The QNMU position is that safe, quality care will only be achieved with mandated minimum care hours per resident per day and skill levels in aged care. There are many other matters that are subject to regulation that can impact the quality of outcomes, however, without the appropriate staff in suitable numbers with the right skills to deliver the front-line care, all other measures fall short.

## Understaffing

The *Aged Care Act 1997* (the Act) is the principle legislation used to regulate commonwealth funded aged care.

Chapter 4 of the Act requires approved providers 'to maintain an adequate number of appropriately skilled staff to ensure the care needs of recipients are met'. The Act does not however address what an adequate number is or define appropriately skilled staff.

A lack of mandated minimum staffing levels and skills mix means:

- providers operate without guidance and in some instances, the clinical knowledge, to match staffing levels to care needs;
- there is no benchmark for determining what 'adequate numbers' are;
- there is no benchmark for determining what appropriate level of skill is to ensure that care needs are met;
- providers may make staffing decisions driven by budgetary considerations, rather than ensuring delivery of safe, quality care.

A QNMU audit of over eighty privately run aged care facilities in Queensland in May 2018 clearly points to a situation where older Queenslanders are not receiving the standard and level of care they require. The findings of this audit identified:

- residents only received 2.61 hours of care per day (average) compared to the research-based requirement of at least 4.3 hours of care per day (Willis et al., 2016);
- the staff and skill-mix of the aged care workforce has shifted to one where care is provided by unregulated care workers with Certificate III or IV qualifications rather than a regulated nursing workforce of RNs and ENs who have undertaken significantly more training. The QNMU audit found the average staffing and skill-mix percentages were RNs (16.02%), ENs (6.98%) and unregulated care workers (77.01%).

Australian Nursing and Midwifery Federation (ANMF) research (Willis et al., 2016) on staffing and skill-mix in residential aged care found on average, residents required 4.3 hours of care per day with an optimum staffing 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).

This rather mechanistic analysis of needs tends to overlook the great value and humanity that nursing staff also deliver through having a little extra time beyond the logistics, to talk and connect and calm and reassure those at what is often a very difficult time of life. This is in large measure where the difference is made between “doing the basics” and bringing light to the quality of life of residents that these facilities must also be partly responsible for. This simple connection may well be the difference between a life worth living and simply continuing to exist. If those who take care of mechanical needs of residents cannot also take a little time for compassion and communication, then these will be truly grim places, and we cannot allow the narrow interests of the private sector to define the way in which humans will care for each other and whether that care is indeed humane or simply mechanical.

The QNMU believes there has long been significant community concern regarding the standards of aged care services generally. This is the main focus of the ongoing *Ratios for Aged Care Campaign* being undertaken by the QNMU.

As recently revealed by the Aged Care Royal Commission, the aged care sector is complex, largely delivered by the private sector and primarily funded by the federal government.

At the state level, the Queensland government maintains sixteen residential aged care facilities, with the current government committing to implementing staffing and skill-mix ratios in these facilities. The QNMU has long campaigned for staff ratios in aged care and we applaud the Queensland Government’s recent announcement that it will prescribe minimum nurse-to-resident ratios in all state-owned residential aged care facilities.

The QNMU estimates that at the time of closure, Earle Haven residents were receiving an average of 2.73 hours of care per day. This level of care is alarmingly 1.57 hours less per day than the minimum of 4.3 hours per day identified by Willis et al. (2016). It is also significantly less than the 3.65 hours of care per resident per day established as the minimum benchmark that the Queensland Government has pledged to legislate.

As identified by the Senate Community Affairs References Committee Report *Future of Australia's aged care sector workforce* (2017) the requirements for the aged care workforce will increase from the current 366 000 to 980 000 by 2050 to meet the aged care demands of older Australians. Given the current shortfalls and projected demand it is essential that comprehensive measures to implement evidence-based staffing and skill-



mix are undertaken as a matter of urgency as well as broader workforce planning and development to meet future needs.

## Recommendations

1. The Queensland Government investigate its powers and/or authority under its public health mandate with a view to legislating that all Queensland residential aged care facilities must have at least one registered nurse on site 24 hours per day, 7 days a week;
2. The Queensland Government pursue the introduction of evidence based legislated minimum staffing and skill-mix requirements for all nursing homes (RACFs) by the Federal Government at all opportunities, e.g. Council of Australian Governments;
3. The Queensland Government coordinate the development of a state-wide aged care workforce plan in conjunction with the federal government, aged care providers, provider representatives, relevant unions, consumers and training and education providers to ensure that there are sufficient aged care workers to meet projected demands for care;
4. The Queensland Government legislate to ensure public transparency of all private nursing home nurse to resident ratios and skill mix;
5. The federal government amend the *Aged Care Act 1997* to require evidence of compliance with benchmarks that ensure both the number and skills of staff are adequate to ensure quality care is provided by all categories of staff and abuse-by-neglect will be minimised, if not eliminated;
6. The federal government amend the relevant aged care regulation to include provisions mandating that aged care regulation must be read in conjunction with the *Health Practitioner Regulation National Law Act 2009* (National Law).

## Restraint

Issues regarding restraint in aged care have been well documented in the Royal Commission into Aged Care Quality and Safety hearings thus far. The QNMU view is that physical restraint should be used only as a last resort when there is an imminent risk of serious harm to the resident or others after all other strategies have been tried and failed.

The federal government lacks effective policy and practice guidelines for the use of restraint in aged care. Queensland however has quite prescriptive policies and practice guidelines regarding restraint, relevant to mental health services, published by the Chief Psychiatrist. They focus on the safety and dignity of the patient, including reduction and elimination plans and, significantly, mandate the immediate reporting of the use of restraint.

We note here that physical restraint in aged care is the equivalent of mechanical restraint described by the Chief Psychiatrist. The federal government would do well to adapt these policies and guidelines for use in aged care.

With regard to chemical restraint, the QNMU view is that medication should be prescribed for residents only when there is a clinical need. Whilst the behavioural and psychological symptoms of dementia can create disruption and risk within an aged care facility, the use of medication should never be a substitute for appropriate surveillance by a sufficient number of registered and enrolled nurses.

It is our view that the prevalence of the use of restraint in aged care, whether physical or chemical, is a symptom of the chronic understaffing of residential aged care services, as illustrated above. Appropriate staffing and skill mix, along with training in minimising the impact of the behavioural and psychological symptoms of dementia, would go a long way to reducing restraint in aged care.

## **Conclusion**

As the Royal Commission into aged care has clearly illustrated, the lack of a robust regulatory environment that prioritises nursing care and a lethargic and under-resourced regulator is a recipe for questionable corporate behaviour that seriously impairs the capacity of nurses and carers to provide quality care to consumers.

The over-riding lesson is that current regulation of aged care is woefully inadequate and the QNMU holds grave concerns about the safety of those in residential aged care. Similarly, the monitoring and enforcement of those regulations by the various government regulatory agencies must be reliably firm and uncompromising in their methods if we are to offer residents any real human dignity.

There must be better coordination and collaboration between State and federal governments as well as between sectors and key stakeholders if a sustainable, high quality and safe aged care system is to be achieved and disasters such as Earle Haven understaffing and over-drugging of residents is to be prevented.

In summarising, the key points for the QNMU are:

- Adequate numbers of registered nurses in aged care facilities is critical to residents living out their final years pain free and in the best health possible;
- The aged care sector is significantly and alarmingly under resourced with registered nurses and enrolled nurses;
- The ability of nurses and care staff to provide safe and quality care to residents is severely impeded by the sheer volume of residents they are asked to care for;
- The aged care sector must be person centred and not profit focused;
- While mainly privately delivered, aged care services are largely publicly funded and governments at the state and federal levels must acknowledge their first priority is the care of older Australians with this priority embedded in governance and regulation of the sector;
- The key “asks” of the QNMU Ratios for Aged Care Campaign form the basis of resolving the current “crisis” in the sector;
- State governments have an ongoing role in the provision of aged care services to advocate on behalf of, and assist, older Queenslanders to navigate the labyrinth of the aged care system with dignity.

## References

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Willis, E., Price, K., Bonner, R., Henderson, J., Gibson, T., Hurley, J., Blackman, I., Toffoli, L. & Currie, T. (2016) *Meeting residents' care needs: A study of the requirement for nursing and personal care staff*, Australian Nursing and Midwifery Federation.

## Attachment 1 Resolution from Annual Conference 2019

Delegates to the 2019 QNMU Annual Conference note with extreme concern the recent unprecedented action taken by management at Earle Haven Residential Aged Care Facility at Nerang on the Gold Coast. The closure of this facility on Thursday 11 July with no notice to residents and their families and staff was extraordinary and callous. It placed at significant risk the more than 70 vulnerable elderly residents who were forced to be relocated to other facilities on the Gold Coast that day.

We condemn in the strongest possible terms management's abandonment of residents and staff and the significant failure of their duty of care. This situation demonstrates the woefully inadequate aged care regulatory framework in Australia, where opaque contractual arrangements present significant additional risks and fundamentally fail to meet community expectations around transparency and accountability. In this case, it appears a contractual dispute between the owner of the facility, Arthur Miller, and Help Street, the organisation contracted to run the facility on behalf of Mr Miller, has led to this dire situation. This has resulted in frail elderly residents being treated as commodities, rather than with the dignity they deserve.

We call upon the federal government to act immediately to address the significant issues arising from this system failure that has caused so much distress to residents, their families and staff affected. Action is required now to address the flaws in the regulation of Aged Care in Australia highlighted by the Earle Haven closure and we cannot wait until the current Royal Commission into Aged Care provides its final report in April 2020 for action to prevent future such disasters.

Specifically, we call upon the federal government to:

- Immediately intervene to secure permanent placement of displaced residents and ensure appropriate resourcing is provided to provide safe staffing to care for these residents;
- Initiate a referral to applicable police authorities to investigate any offences under the Criminal Law of Queensland or the Aged Care Act in relation to the callous disregard shown for the vulnerable residents;
- Vigorously pursue the owner and manager of the facility for monies owed to residents and their families as well as worker entitlements;
- Apply all penalties available against management of the facility for their unconscionable actions;
- Prohibit opaque sub-contracting arrangements in the aged care sector;
- Provide emergency payments to staff suffering significant financial hardship;
- Assist employees to secure immediate alternate employment; and
- Significantly enhance the aged care regulatory framework to ensure transparency and accountability for federal funding.

QNMU Delegates congratulate the Queensland government for their swift action to address this disastrous system failure, in particular the efforts of Queensland Health and the Queensland Ambulance Service to swiftly relocate affected residents. We support calls by Queensland Health Minister Hon Steven Miles for the Queensland Police Service to investigate whether criminal charges can be laid in relation to this matter.

QNMU delegates also reaffirm their support for our ongoing aged care campaign that seeks:

- **Safe staff numbers:** The introduction of laws relating to staff numbers in Australian aged care facilities, as currently there are none;
- **Accountability:** Improved transparency and accountability with mandatory public reporting on staff numbers, skill mix and spending of public money to ensure the wellbeing

and health of residents. Recognition of the skills of Assistant in Nursing and care staff via a national licensing system;

- **Tied Funding:** A guarantee that tax payer funding is used for nursing for each resident and improvement to the funding model so it reflects the actual cost of evidence-based quality care;
- **Safety and quality:** Ensure the right skill mix of nurses and carers to look after vulnerable aged care residents;
- **Workforce support:** Increase workforce attraction and retention with improved pay, conditions and job security for all.