

Royal Commission into Aged Care Quality and Safety

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Webinar – 12.30 pm AEDT



Objectives



- > Royal Commissions powers and processes
- > Learnings from past Royal Commissions
- > Practical tips to assess risk and develop strategy
- > Preparation action items



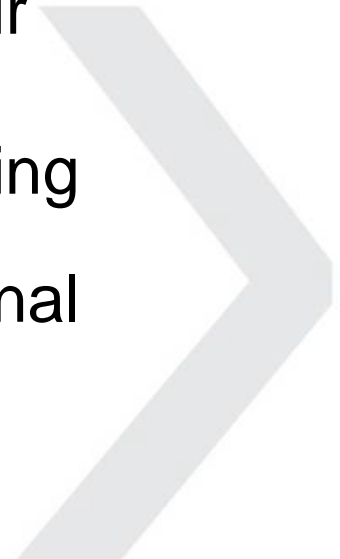
Royal Commission powers and processes



Royal Commission



- > The quality of care provided to older Australians, and the extent of substandard care
- > The challenge of providing care to Australians with disabilities living in residential aged care, particularly younger people with disabilities
- > The challenge of supporting the increasing number of Australians suffering dementia and addressing their care needs as they age
- > The future challenges and opportunities for delivering aged care services in the context of changing demographics, including in remote, rural and regional Australia
- > Other matters



Royal Commission



- > Covers Home Care and Residential Care
- > Not Retirement Villages (yet?)
- > Terms of Reference public consultation
- > Appointment of Royal Commissioner(s)
- > Counsel / Lawyers assisting
- > Administrative support
- > Time frame for Report



Royal Commission



- > Purpose of the Royal Commission
 - > Investigate the Terms of Reference
 - > Report – findings and recommendations
- > Inquisitorial in nature
- > Extensive coercive powers
- > Not bound by strict rules of evidence



Royal Commission



- > Process
 - > Establish the framework
 - > Gather information / documents
 - > Review reference material
 - > Interview relevant witnesses
 - > Public Hearing
 - > Report
 - > Referrals to regulators
 - > Government response



Royal Commission



- > Terms of Reference set the scope or boundaries of the inquiry
- > Touchstone for relevance in the exercise of powers
- > Usually interpreted broadly given the nature and function of Royal Commissions



Royal Commission



- > Policy inquiry v investigative inquiry
 - > Is it more in the nature of an investigation to establish responsibility for certain outcomes?
 - > Or an examination of issues to develop public policy?
 - > Or a combination of the two?



Royal Commission



Investigatory

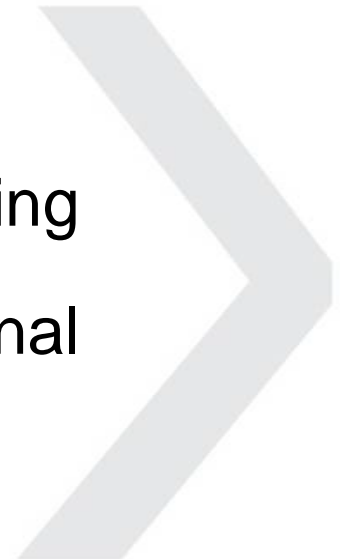
- > The quality of care and the extent of substandard care
- > The care provided to those with disabilities in RACS

Investigatory/policy

- > The increasing number of those suffering dementia and addressing their care needs as they age

Policy

- > The future challenges and opportunities for delivering aged care services in the context of changing demographics, including in remote, rural and regional Australia



Royal Commission Powers



- > Compel the giving of evidence or production of documents
- > Search warrants and arrest warrants can be issued
- > Limits on ability to rely upon:
 - > Legal Professional Privilege;
 - > Privilege against self-incrimination



Royal Commission Powers



- > Various offences punishable:
 - > Failure to attend
 - > Failure to produce documents
 - > Failure to give information or statement
 - > Refusal to swear/affirm evidence
 - > Refusal to answer questions
 - > Intentionally false or misleading evidence
 - > Destroying/concealing documents
 - > Preventing a witness from attending or terminating their employment



Royal Commission Powers



- > Can be excused if:
 - > There is “reasonable excuse” or
 - > The request is “not relevant”
- > Limited scope to rely upon these exceptions
- > Careful consideration and legal advice



Potential Issues



- > Workforce
- > Restraints – chemical and environmental
- > Nutrition and hydration
- > Reportable assaults and serious incident investigation
- > Clinical and behavioural management



Potential issues



- > Greater transparency of regulatory action
- > Surveillance in rooms
- > Funding / Fees
- > Regulatory effectiveness
- > Prescribing the care to be delivered
- > Greater accountability of directors



Lessons learnt from previous Royal Commissions



Lessons learnt

- > Run on tight deadlines
- > RC sets the procedure or timetable to be followed – little flexibility
- > Short time to produce documents
- > The documents produced must follow the RC Document Management Protocol



Lessons learnt



- > Notice to Produce documents:
 - > Assess scope of notice
 - > Identify the documents within scope
 - > Review the documents – internal / legal
 - > Prepare documents for handover
 - > Code and upload



Lessons learnt



- > RC may limit the witness for public hearings to 1 person
 - > Knowledgeable
 - > Time to prepare and appear
 - > Can represent the AP
- > Identify conflict of interests between AP and individual



Lessons learnt



- > Use of case studies
- > Representative sample of providers may be called to give evidence
- > Reputational risk
- > Establish a good working relationship with the Office of the RC



Lessons learnt

- > Does the APs insurance policy cover the costs of preparation and / or appearance at the RC?
- > APs can seek costs for attending to give evidence
- > APs should not destroy documents
- > APs need to be careful with new documents



Strategy and Risk



Strategy and Risk



- > The AP will need to manage involvement in the RC by reviewing their:
 - > Strengths and weaknesses
 - > Concessions, explanation or justification
 - > Reputational Risk
 - > Litigation Risk
 - > Expert evidence required
 - > Responding to allegations against staff



Strategy and Risk



- > Strategy influenced by assessment of risk
- > Audit
 - > Initial review of information and documents
 - > Extensive audit



Strategy and Risk



- > Extensive Audit
 - > Identified areas of weakness
 - > Seriousness and consequences
 - > Improvements
 - > Effectiveness of improvements
 - > Repetition of failings
- > Further Improvement or Action Plan



Strategy and Risk

Scoping and risk assessment

- Review previous issues, concerns and complaints
- Review historical and current workplace issues
- Conduct an internal audit of what was implemented to improve current systems
- Investigate historical issues and gaps and consider what issues might be brought to light
- Review and conduct internal investigations
- Review policies and practices
- Document management
- Engage stakeholders

Preparation

- Get strategic advice and advice about the exposure to risk
- Get legal advice to assess your evidence
- Assess the best way to present the issues and complaints
- Review how you have improved, overcome previous issues and what preventative steps the organisation is taking
- Prepare witnesses
- Implement new policies and procedures
- Draft responses to the Commission if letters received
- Conduct a review of corporate governance
- Assess potential damage to reputation

Appearances

- Assess the damage to reputation
- Manage witnesses
- Manage media and public relations
- If an adverse finding is made, get advice on the best way to address the issue and review how the provider can improve/prevent this from happening again

Review

- Assess the findings and implement Royal Commission recommendations specific to the organisation
- Consider scope for restructuring, system change and policy updates
- Manage adverse findings (if any)

Preparation Action Items



Preparation Action Items



- > Establish the RC Team & Process
 - > Leader
 - > Authority to provide instructions – lawyers, PR, HR, insurer
 - > Portfolio responsibilities
 - > Document management
 - > Audit
 - > Improvement Plan



Preparation Action Items



- > Appoint external supports
 - > Public Relations
 - > Human Resources
 - > Risk Management
 - > Clinical / Behavioural expert



Preparation Action Items



- > Preliminary
 - > Guidance about response strategy or document management
 - > Preparing to undertake legal risk assessments
- > Summons or Notice to Produce:
 - > Advice regarding document disclosure
 - > Witness statements
 - > Strategic advice about evidence
 - > Assessing and complying with Summons and Notices



Preparation Action Items



- > Document Management Process
- > Consider whether a third party information system provider is necessary (Ringtail/Relativity)



Preparation Action Items



- > Implement/address any internal review recommendations
- > Analyse risks and trends
- > Collate documents such as:
 - > Non-compliance
 - > Complaints
 - > Coronial inquests



Resources



- > Guidance, Checklist, Three Year Review
- > Audit Tools
- > Newsbriefs and Alerts



Workforce



Quantity of staff



Does the AP have adequate staffing to provide quality care?

- > How does the AP establish its ratios and skills mix?
- > How frequently does it review its ratios and skills mix?



Quality of staff



What systems does the AP have in place to ensure that staff provide quality care?

- > Pre-employment processes
 - > Screening requirements
 - > Reference-checking
- > Induction processes
- > Policies
- > Training



Quality of staff (continued)



- > Supervision mechanisms
 - > Residential aged care
 - > Home care
- > Managing problem staff
 - > Processes
 - > Track record



Disability and Aged Care



Young People in Aged Care



- > The Data
- > Why are we concerned about YPLIRAC?
- > Policy initiatives and the outcomes sought to be achieved through the NDIS
- > Known challenges to the pursuit of these outcomes



Young People in Aged Care



APs will need to be in a position to:

- > account for the young people in your organisation
- > highlight challenges they have faced and evaluate whether their facility has any exposure in relation to these
- > provide opportunities to support and advocate for young people in their facility to participate in the RC





Questions?





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