ORGANISATION

Board governance in the aged care sector

The Interim Report of the Royal Commission into Aged Care Quality and Safety, *Neglect*, released on 31 October 2019, said the system designed to care for older Australians was woefully inadequate.[1]

Commissioners Richard Tracey AM, RFD, QC and Lynelle Briggs's AO comment:

The neglect that we have found in this Royal Commission, to date, is far from the best that can be done. Rather, it is a sad and shocking system that diminishes Australia as a nation. [2]

While there were no specific governance recommendations, the report highlighted the poor practices used in the sector – worth $18billion in government subsidy, providing services to 1.2million Australians – and the challenges in recruiting and retaining the right people. It reflected on the "demographic, social and economic pressures" facing the industry, which are critical issues for directors of aged care organisations. Compounding sector disruptors include population growth and financial sustainability.

The Final Report, due in November 2020, will focus on governance and accountability in the sector and the need for a fundamental overhaul of the design, objectives, regulation, and funding of aged care in Australia.

It is against this backdrop of due diligence that directors and boards of aged care organisations are assessing their policies and practices – to both ensure that governance frameworks comply with the new Aged Care Quality Standards,[3,4] and to establish a robust organisational culture of diligent and authentic service quality and safety.

This tool is designed to assist directors consider their duties to protect the vulnerable people under their organisational care and appropriately discharge their director responsibilities. It is not intended to interpret or provide specific guidance on compliance with individual standards nor is it intended as a prescriptive one size fits all solution. Instead, it aims to stimulate thinking and discussion for boards to consider their own governance framework.

1. AICD, 2019, *Aged Care Royal Commission interim report released: Impacts for NFP Governance*, Not-For-Profit Resources, 8 November, https://aicd.companydirectors.com.au/resources/not-for-profit-resources/nfp-resources/aged-care-royal-commission-interim-report, (accessed 12 November 2019).

2. Royal Commission into Aged Care Quality and Safety, 2019, *Interim Report: Neglect*, Volume 1, Commonwealth of Australia, 31 October, p12, phttps://agedcare.royalcommission.gov.au/publications/Documents/interim-report/interim-report-volum e-1.pdf, (accessed 12 November 2019).

3. AICD, 2019, "New aged care standards apply from July 1: ACSA's Pat Sparrow", *The Boardroom Report*, Vol 17, Issue 4, 10 April, https://aicd.companydirectors.com.au/membership/the-boardroom-report/volume-17-issue-4/new-aged-care-standards-acsa-pat-sparrow, (accessed 12 November 2019).

4. Aged Care Quality and Safety Commission, Quality Standards, [resource page website], https://www.agedcarequality.gov.au/providers/standards, (accessed 11 November 2019).

Quality and safe care is a core responsibility

The board has ultimate accountability for the quality and safe care provided to its clients. Quality, safe care is core business and thus needs to be a key focus of the board.

What structures, processes and systems should the board make sure are in place and what questions should a director ask to make sure they gain adequate 'line of sight' on quality and safety of the services provided?

The board should satisfy itself that its governance framework is appropriate to ensure proper oversight of the organisation, recognising that its consumers may have vulnerabilities particular to their age, health, abilities and isolation. The following responsibilities are of particular importance for boards of aged care organisations:[5]

1. A clear understanding of their organisation's service quality and safety performance
2. The establishment of a robust framework for complaints and incidents
3. Compliance with accreditation/standards
4. Authentic engagement with stakeholders, while acknowledging the role distinction between board and management

Governing a quality and safety care culture

A quality and safety care organisational culture starts with the tone set from the top by the board. At the highest level, the board sets expectations and standards and holds management accountable. Accreditation, in itself, should be viewed in light of a minimum standard that the organisation must reach to be allowed to operate in the sector. It is the board's responsibility, not the regulator's, to ensure that services and care are fit for purpose.

Boards and management should have explicit conversations about where on the continuum, between meeting the minimum standards on the one hand and the highest standard they could possibly deliver on the other hand, their organisation sits. This means the board needs to be clear on the purpose of the organisation and approve a strategy that is focussed on delivering on its purpose. In order to achieve this, directors should set priorities and make sufficient resources available to deliver on the organisation's purpose to deliver quality and safety care.

Having set expectations, the board's role is to continually test whether those expectations are understood and brought to life in the way the organisation operates through its leadership practices, policies and structures.

Characteristics of a quality and safety culture:

- Leadership – the organisational tone is set from the top, with the board delivering active interest, discussion and decision making regarding a quality and safety culture;

- Behaviours are clearly defined – what is acceptable and expected is articulated and regularly referenced;

- Commitment to embedding standards – subpar behaviours and incidents are immediately ceased and addressed, and there is no tolerance to breaching minimum standards;

- Prioritisation of safety and quality – safety and quality is set above profit and other performance measures;

- Regular employee development – training is mandated, with attention paid to lesson learned;

- Aligned incentives – consideration given to how incentives impact the quality and safety culture, and consideration is also given to disincentives for failure to meet minimum standards;

- Compliance to quality standards is business-as-usual (BAU) and mandatory – a culture of respect for the regulator is supported and, equally, a culture of complaining about the regulator is minimised;

- Sanctions demonstrate consequences – a just culture is supported (over a blame

5. J Rowbotham, 2019, "Lessons for boards from the Aged Care Royal Commission", *Company Director*, 1 April, https://aicd.companydirectors.com.au/membership/company-director-magazine/2019-back-editions/april/aged-care-royal-commission, (accessed 12 November 2019).

culture) through clear consequences for breaching standards.

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Questions for directors:

- Does the organisation's strategic plan explicitly outline its commitment to providing high quality and safe care?

- Is culture a regular topic on the board agenda?

- Has the board defined measures for success in quality and safety, with the same rigour that it defines measures of financial success?

- How can we as a board understand our current culture and know whether it's the same as our desired culture?

- Does the board model ethical behaviour by framing decisions not just around 'can we' but 'should we'?

- Is there a culture of root cause analysis and continuous learning to incidents and complaints?

- Is there a consistent model of care philosophy across all aged care facilities/ services within the organisation?

- Does the board take the opportunity to appropriately visit with/observe employees, consumers and families?

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The board's role in clinical governance

Clinical governance (for those providing clinical services) is an integral part of the governance framework and should be viewed in context with the rest of the framework.

Clinical governance is an integrated set of leadership behaviours, policies, procedures, responsibilities, relationships, planning, monitoring and improvement mechanisms that are implemented to support safe, quality clinical care and good clinical outcomes for each aged care consumer.[6]

Clinical governance is part of organisational governance and should be integrated into the board's 'business as usual' oversight.[7] There is no single best practice approach to clinical governance. However there are core elements, as highlighted by the Aged Care and Quality Commission, that will form part of a well-designed clinical governance framework:

- **Leadership and culture**
  - Leaders develop and oversee a culture that prioritises quality and safe care;
  - Roles and responsibilities of management and the workforce are clear with a culture of learning and continuous improvement;
  - Appropriate consequences are in place for non-compliance.

- **Consumer partnerships**
  - The needs of consumers are central to decision making;
  - Effective mechanisms are in place for encouraging feedback from consumers.

- **Organisational systems**
  - There exists an easy to follow policy framework that prioritises safety and quality.

- **Monitoring and reporting**
  - The regular collection and review of data provides meaningful information;
  - The consumer experience is regularly reported;
  - Clinical risk – practice and outcomes – is regularly monitored.

- **Effective workforce**
  - Employees are appropriately qualified and skilled for their roles, with regular training and performance assessments.
  - There exist effective mechanisms for the workforce to raise quality and safety issues, including whistleblower protections.

6. Aged Care Quality and Safety Commission, 2019, *Fact Sheet 1: Introduction to clinical governance*, July, https://www.agedcarequality.gov.au/sites/default/files/media/Fact_sheet_1_Introduction_to_clinical_governance.pdf, (accessed 11 November 2019).

7. Aged Care Quality and Safety Commission, 2019, *Fact Sheet 4: Roles and responsibilities for clinical governance*, July, https://www.agedcarequality.gov.au/sites/default/files/media/Fact_sheet_4_Roles_and_responsibilities_for_clinical_governance.pdf, (accessed 19 November 2019).

- **Communication and relationships**
  - There exists a good culture of good internal communication as well as communication with consumers and other stakeholders to support continuous improvement.

The complexity of the organisation's clinical governance framework will depend on the nature of services provided and the needs of the consumer. An organisation with multiple residential care facilities, caring for consumers with several co-existing complex needs will require a more detailed system for clinical governance than an organisation providing only home care services limited to consumers who are generally well and require less intensive support.

Board committees

Many boards in the aged care sector have established a dedicated clinical governance or quality and safety committee whose role is to oversee and monitor the organisation's performance in this area. The board's risk committee may also have a role in overseeing quality and safety risks.

These committees review and recommend the quality and safety plan to the board, oversight the key systems and policies in place to ensure high quality care and review audit findings and any remediation action plans.

The board still retains overall responsibility for quality and safety of care and therefore proper communication between the committees and the board is essential to make sure the key risks are understood and are being managed appropriately.

Questions for directors:

- Does the board understand and effectively oversight the clinical governance framework?
- Are there clear lines of responsibility and accountability for quality and safety of service?
- Is there a clear understanding of client and family needs?
- Is there an organisation-wide strategic approach to clinical governance and service quality?
- Is the reporting from the board committees adequate for the whole board to understand the key risks, any gaps in quality and the plan to remediate these?
- Are there high-risk audit findings which have not been adequately addressed by management?

Further boardroom priorities in aged care[8]

Fulfilling the Board's duty of care to older people requires thoughtful application of fundamental good governance principles. A blanket approach is not the answer, rather Boards should regularly question and assess their governance framework.

Board skills and composition

Having the required skills and experience on the board is critical to make sure that the board is asking the right questions and is appropriately attuned to what good quality service looks like.

An effectively diverse aged care organisation board should include directors with experience in aged care, human services and/or clinical governance to test management and ensure that the organisation is delivering on its purpose. This attention to board composition may be even more

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8. The AICD offers a range of public, in-house and self-paced programs that offer practical guidance to directors and boards of aged care organisations across private and NFP sectors:

Foundations of Directorship, public and in-house course, https://aicd.companydirectors.com.au/education/courses-for-the-director/foundations-of-directorship;

Governing to Protect Vulnerable People, public and in-house course, https://aicd.companydirectors.com.au/education/courses-for-the-director/short-courses/governing-to-protect-vulnerable-people.

challenging for smaller, regional and/or NFP aged care organisations, that may be reliant on volunteer boards or constitutional requirements resulting in directors being selected from a small pool. Notwithstanding, poor practices have been exposed across all sectors including large commercial providers. An effective review of board composition should also take into account tenure and succession planning.

All directors need to be knowledgeable about aged care quality and safety issues and this area should be a focus of regular board professional development.

Questions for directors:

- Does our boardroom composition deliver a sufficiently independent line of sight?
- Do we have enough people on our board with appropriate experience and skills to understand the complexity of delivering care and services to older people?
- Do our board members undertake professional development to make sure they understand their obligations for the quality and safety of services provided?
- Do we regularly conduct a board skills matrix review and are we effectively managing our tenure and succession practices?

Board agenda, reporting and information flows

Structuring the board agenda to allow sufficient time for conversations about quality of service is key in aged care organisations. Safety and quality should also be central to all board deliberations and decision making.

Seeking board reports that provide insight to the quality of care with data, trends and appropriate narrative are also key. Boards should consider the quality of information flows and whether there are gaps in critical areas. Exception reporting is useful when

the risk appetite is clear. It is important that the data is not so aggregated that it fails to provide meaningful information, neither should it be so detailed that it is difficult to interpret the key themes.

Questions for directors:

- Is our board reporting providing adequate insight into the quality of care and service?
- What are the priorities of our safety and quality plan?
- Do the data trends presented indicate improvement or decline?
- Do we allow for an adequate line of sight to frontline employee feedback?

Strategy

An effective board sets strategic priorities that align organisational activities to organisational mission or purpose. These priorities will depend on the organisation's setting, size, age and nature of the aged care services on offer. They will include clinical care (if clinical care is provided), financial sustainability, workforce policies and regulatory compliance, and may include merger and acquisition planning, specialist provider resourcing and information and communication technology.

Organisational variances in the aged care industry, especially when taking into account NFP and charitable organisations, make it difficult to be prescriptive about effective strategic priority setting. Good governance principles suggest it is prudent to take both a long-term and short-term view, and to dedicate boardroom time to set and periodically review strategy.[9]

9. Australian Institute of Company Directors, 2018, *Not-for-Profit Governance Principles*, 2nd edition, AICD, January, https://aicd.companydirectors.com.au/-/media/cd2/resources/director-resources/not-for-profit-resources/nfp-principles/pdf/06911-4-adv-nfp-governance-principles-report-a4-v11.ashx, (accessed 19 November 2019).

Questions for directors:

- How will our organisation achieve its goals?
- How do we make sure that the vulnerability of the people in our care is front and foremost in our strategic planning?
- Are there restrictions around our board membership that inhibit board upskilling (for example, directorships are voluntary or are tied to an association body profile)?

Risk management

Leading boards are enhancing their focus on risk management. A clearly defined risk appetite statement defines the type and degree of risk the organisations is prepared to accept in pursuit of its strategic objectives. It sets the parameters or tolerances within which management operate and provides for reporting by exception to the board when behaviours and incidents fall outside risk tolerances. Using risk tolerances to drive exception reporting is an effective way for the board to identify issues of concern. Boards are also seeking evidence of continuous dynamic assessment of risk and tasking audit functions to focus on those highest areas of risk.

Boards are also challenging management on whether all employees understand their responsibilities to identify, manage and escalate risks.

Questions for directors:

- Does our risk appetite statement signal the level of risk we are prepared to accept and, accordingly, where we expect resources to be applied to reduce risk to an acceptable level?

- Is the framework for identifying, capturing and escalating risks effective? How do we know?

- Do we have access to external professional advice on risk management?

- Do all our employees understand their responsibilities to identify and escalate risks?

- Do our systems support a culture of sound risk management?

Workforce planning

Workforce is the key asset to driving strategy and delivering safe and quality aged care services. Aged care boards need to satisfy themselves that their organisation's workforce plan is appropriately designed to attract suitable people to their organisation, invest in proper training and supervision, and provide adequate reward and support to their people. Staffing levels and continuity of care are also key issues. Boards should probe and have a sufficient understanding of their organisation's overarching position on workforce matters.

Questions for directors:

- Do we have a workforce strategy?
- How is our employer brand perceived in the market?
- Are our systems and processes for recruitment and screening designed to screen out unsuitable people?
- Are the workforce metrics in our board reports providing adequate line of sight to the key issues?
- Do we provide attractive remuneration and employment conditions?
- How do we ensure adequate staffing levels and appropriate continuity?
- Do we adequately invest in our workforce training, development and career pathways?

Compliance obligations

The board should oversee the framework established by management to ensure that the organisation is meeting its compliance obligations, in particular with respect to aged care standards. Regular testing of this framework through internal and independent audits should assist in providing the board with information about the robustness of this system and whether there are any compliance breaches that need to be addressed as a matter of urgency.

Questions for directors:

- Are we meeting all our compliance obligations? How do we know?
- Is bad news escalated swiftly to the board?
- What processes are in place to protect whistleblowers?

Aged Care Quality and Safety Commission Quality Standards

Organisations providing Commonwealth subsidised aged care services are now required to comply with the Aged Care Quality Standards. These organisations will be assessed and need to provide proof of compliance with and performance against these eight quality standards from 1 July 2019:

1. Consumer dignity and choice
2. Ongoing assessment and planning with consumers
3. Personal care and clinical care
4. Services and supports for daily living
5. Organisation's service environment
6. Feedback and complaints
7. Human resources
8. Organisational governance

The quality standards focus on consumer outcomes and reflect the level of service the community can expect from Commonwealth subsidised aged care providers. For the purposes of this document, Standard 8[10] specifically emphasises the board's accountability for the delivery of safe and quality care and services.

The above suggested boardroom activities aim to prioritise the areas of focus for directors of aged care organisations. They emphasise sound governance principles that support directors in discharging their duties and responsibilities to protect vulnerable people.

Red flags for aged care directors

Effective board directors triangulate information and critically think about the issues rather than accepting matters at face value. The following are some organisational red flags that point to specific areas that require the board's attention:

- incidents dismissed by management as one-offs or unavoidable;
- tolerance to policy breaches;
- low compliance with training/screening checks;
- chronic workforce vacancies;
- unresolved client complaints;
- treating a complainant as the problem rather than an opportunity to take action and improve the organisation;
- prioritising collegiality and harmony (particularly between the board and management) over accountability;
- insufficient time in board meetings spent discussing quality and safety of care;
- lack of meaningful data and trends on quality and safety or the data lacks insightful narrative;
- siloed and inward-looking leadership and culture;
- lack of clear roles and responsibilities for service quality and safety;
- tolerance of behaviours which do not align with the stated organisation values; and
- high-risk internal audit actions that are overdue and/or have not been addressed.

10. Aged Care Quality and Safety Commission, *Standard 8: Organisational governance*, Quality Standards, [resource page website], https://www.agedcarequality.gov.au/providers/standards/standard-8, (accessed 19 November 2019).

About the author

Rosina Hislop FAICD is an experienced director serving on boards across aged care, health and education, and a strategic advisor to boards on strategy, finance and governance. Rosina is also a national facilitator, presenter and author with the Australian Institute of Company Directors.

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