



November 20, 2019

Hon Greg Hunt MP  
Minister for Health  
PO Box 647  
Somerville VIC 3912

Hon Richard Colbeck  
Minister for Aged Care and Senior Australians, Minister for Youth and Sport  
Department of Health  
GPO Box 9848  
Canberra ACT 2601

Re: Human rights and chemical restraint in aged care facilities

Dear Ministers Hunt and Colbeck:

Aged & Disability Advocacy Australia (ADA Australia) is a not for profit, independent, community-based advocacy and education service with more than 25 years' experience in supporting and improving the wellbeing of older people and people with a disability.

Human Rights Watch is an independent, nongovernmental, human rights organization that conducts research and advocacy in over 90 countries on a range of human rights issues, including on the [rights of older people and the rights of people with disabilities](#).

On October 16, 2019, Human Rights Watch published a report documenting [chemical restraint of people with dementia in 35 Australian aged care facilities](#) in Queensland, New South Wales, and Victoria. It found that instead of providing support to older people with dementia, facilities use drugs to control their behavior. In connection with this report, its representatives had the opportunity to meet with you, Mr. Colbeck, as well as the

Department of Health's Ageing and Aged Care Group, and the Aged Care Quality and Safety Commission.

We are writing today with regard to the Joint Parliamentary Committee on Human Rights' recent report on F2019L00511, the [Quality of Care Amendment \(Minimising the Use of Restraints\) Principles 2019](#) as well as the Royal Commission of Inquiry into Aged Care Quality and Safety's October 31 interim report, in particular regarding chemical restraint.

As the Joint Parliamentary Committee's dissenting report states, those dissenting "do not consider that Recommendation 1 of the majority report will rectify, to the extent necessary to adequately protect the human rights of vulnerable residents in aged care, the concerns raised in the evidence to the committee." We agree that the Quality of Care Amendment's regulations regarding chemical restraint are not consistent with Australia's human rights obligations.

In its interim report of October 31, the Royal Commission of Inquiry into Aged Care Quality and Safety recommended urgent government action to address – rather than merely minimize – use of chemical restraint in aged care. We note Mr. Hunt's important statement on ABC's Insiders program that the Ministry of Health's "approach is to look at the elements outlined in the Royal Commission and to adopt them."

Australia's international human rights obligations require it to prohibit inhuman and degrading treatment. In 2013, both the United Nations Committee on the Rights of Persons with Disabilities and the United Nations special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment urged the banning of restraint, in order to ensure the right to be free from ill-treatment.

Australia has also agreed to uphold the right to the highest attainable standard of physical and mental health. The right to health also encompasses the right to informed consent, and the right to receive health care on a non-discriminatory basis. Allowing aged care facilities to use chemical restraints, particularly antipsychotic drugs, particularly over periods of months and years as Human Rights Watch documented in its recent report, is inconsistent with the right to health.

The Joint Parliamentary Committee also found that the use of chemical restraints is inconsistent with Australia's human rights obligations to prevent discrimination and ill-treatment. It stated that:

A key issue raised ... was the lack of requirement that aged care facilities develop positive behaviour support plans which are standard in the disability sector, and that there is disparity between the instrument and the regulatory framework established under the National Disability Insurance Scheme, representing an

unjustifiably lower level of protection which may amount to discrimination against older Australians.

Despite the Joint Parliamentary Committee analysis that the Quality of Care Amendment “may engage and limit a number of human rights, including the absolute prohibition on torture, cruel, inhuman or degrading treatment or punishment; the rights to health, privacy and liberty; and the right to equality and non-discrimination and rights of persons with disabilities,” its recommendations do not address the shortcomings it has identified.

We would like to share our recommendations to strengthen the Quality of Care Amendment to protect older people’s human rights.

We recommend the following immediate changes to the Quality of Care Principles, reorienting it toward the prevention of chemical restraint:

1. Include an explicit prohibition on chemical restraint;
2. Require informed consent for all medical treatment;
  - a. This could require approved providers to verify and record informed consent for all medical treatment.
  - b. Every effort should be made to make the best interpretation of an individual’s will and preferences. Consideration should be given to all forms of verbal or nonverbal communication, as well as a person’s relevant previously manifested preferences, values, attitudes, and actions. Note, a “best interests” standard, used for children, is not applicable to adults, including older people with dementia, whose will and preferences are primary.
3. Explicitly require support such as behavior support plans that analyze and seek to understand underlying origins of the behavior of a person with dementia. These plans should consider physical illness and unmet needs, and address underlying environmental issues.
4. Where restraints are used, each use should be reported in a digital national register that is publicly available, for the purpose of increasing oversight, and the effective reduction and elimination of the practice.

A strong regulation prohibiting restraint is necessary to protect older people’s rights. This prohibition should be accompanied by other steps, as Human Rights Watch has outlined in the recommendations in its October report, including: staffing levels adequate to meet older people’s support needs; staff training to provide quality support to older people with dementia; an effective, transparent complaints system; and adequate and accountable enforcement through the Aged Care Quality and Safety Commission.

We would be happy to discuss these matters further and answer any questions.

Sincerely,



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