
Statement of Nigel Murray

Name Nigel Murray
Address [REDACTED]
Occupation Assistant Secretary of the Funding Policy and Prudential Branch, Commonwealth Department of Health
Date 24 May 2019

- 1 This statement made by me accurately sets out the evidence I am prepared to give to the Royal Commission into Aged Care Quality and Safety.
- 2 This statement is true and correct to the best of my knowledge and belief.
- 3 I make this statement on behalf of the Commonwealth Department of Health (**Department**) and I am authorised to do so.
- 4 I am the Assistant Secretary of the Funding Policy and Prudential Branch.
- 5 I provide this statement in response to a Notice to Give a Statement issued to me by the Royal Commission.
- 6 I make this witness statement based on matters within my own knowledge, the books and records of the Department that I reviewed and having made enquiries of officers and employees of the Department.
- 7 This statement has been prepared with the assistance of lawyers in response to and in compliance with a notice to give a statement. It is produced to the Royal Commission into Aged Care Quality and Safety on the basis that it will be tendered and received in evidence by the Royal Commission pursuant to that notice and on the basis that the statement will be treated as evidence which is subject to section 6DD of the *Royal Commissions Act 1902* (Cth).

Professional background and qualifications

- 8 I am the Assistant Secretary of the Funding Policy and Prudential Branch in the Department. I have been in this role since August 2012.
- 9 I have worked for the Commonwealth for over 25 years in a range of areas involving policy development and regulation.
- 10 Prior to my current role I worked in the Commonwealth Treasury focusing primarily on superannuation and retirement incomes policy. Prior to that I worked at the Australian Taxation Office and the Insurance and Superannuation Commission (which became part of the Australian Prudential Regulation Authority).
- 11 I hold a Bachelor of Economics degree from the Australian National University.

Question 4

Does the Department know whether or not people who access aged care services also access palliative care?

(a) If yes, what proportion of residents in accessing aged care services received palliative care in the 2016–17, 2017–18 and 2018–19 financial years? Please answer by reference to both residential aged care services and all other aged care services

- 12 The Department cannot identify the number of people who accessed aged care services who also received palliative care services. There is some data available in respect of residential aged care services but this does not give an accurate indication of residents actually accessing palliative care for reasons I discuss further below. The Department does not hold any data regarding access to palliative care in respect of other aged care services, such as home care.
- 13 In terms of residential care, the Department receives some data in relation to certain forms of palliative care in the context of the information provided for the purposes of funding claims made by providers under the Aged Care Funding Instrument (ACFI). However, this does not provide an accurate indication of people accessing palliative care in residential care for two key reasons:
- (a) the funding claims are only in relation to 'end of life' palliative care not other forms of palliative care; and
- (b) providers may not submit a claim for 'end of life' palliative care if they already have maximised their funding claim for complex health care for an individual.
- 14 The ACFI claim form which is completed after a person has entered residential aged care contains a series of questions with respect to complex health care, one of which refers to palliative care, but does so only in respect of a particular form of palliative care, which is provided close to the point where a person is expected to die, within days or weeks. The relevant part of the ACFI claim form refers to palliative care as a:
- program involving End of Life care where ongoing care will involve very intensive clinical nursing and/ or complex pain management in the residential care setting. (Emphasis added)*
- 15 The provision of a positive response to this item in the ACFI claim form requires that the approved provider maintain the documentation listed at paragraph 22 below.
- 16 The ACFI User Guide provides that a claim for providing palliative care can be made where it involves end of life care. The definition of 'end of life' is taken from the Palliative Approach Toolkit for Residential Aged Care Facilities (March 2016), Fact Sheet 10. The Fact Sheet explains 'end of life' to mean *"the last week or days of their life"*.

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- 17 Accordingly, as indicated by the terms of the question and the ACFI User Guide, an aged care provider is only able to make a claim for a palliative care program under ACFI where a care recipient is in the last week or days of their life. In contrast, the term 'palliative care services' is often used to describe a much wider scope of services, provided for an individual who is diagnosed with a life-limiting illness, often over a much longer duration than the last week or days of life (being end of life services). As a result, the data collected through ACFI claims would not identify the full extent of palliative care services that a care recipient may receive.
- 18 As referred to above, there are also other reasons why the Department considers that it would be unreliable to rely on the ACFI claims data even to indicate the number of people in residential aged care who receive end of life services.
- 19 The Department considers that in some circumstances, if a provider is already claiming other types of complex care which are needed for the individual, and as a result has already reached the maximum ACFI Complex Health Care claim, they will not see any benefit to claiming further additional services such as end of life care in the claim submitted to the Department. This is because doing so will not affect the funds provided in respect of that person. That does not mean that the services are not needed, or provided to the person, as it is possible that the need for or provision of these services is simply not identified in the ACFI claim form. The Department expects that more people than those identified in the ACFI claims process would be receiving end of life or palliative care services.
- 20 For these reasons, residential aged care recipients would receive palliative care services without it being fully and accurately identified in data collected through the ACFI claims process. Notwithstanding these limitations, I provide the available ACFI data at paragraph 25 below.

Question 5

What funding is available for end of life care under the Aged Care Funding Instrument (the ACFI)?

- (a) What is required for a person to receive ACFI funding for end of life care?
- (b) How many ACFI instruments lodged within 2016–17, 2017–18 and 2018–2019 financial years included a claim for end of life care?
- (c) How are end of life claims made under the ACFI reviewed, including through the ACFI reconsideration process?
- (d) How many ACFI reviews have been conducted on end of life care claims in the 2016–17, 2017–18 and 2018–19 financial years?
- (e) As a result of the review processes described above, how many ACFI claims for palliative care were downgraded in the 2016–17, 2017–18 and 2018–19 financial years?

Requirements for a person to receive ACFI funding for end of life care

- 21 In accordance with the ACFI User Guide, and as referred to above, funding can be claimed by an approved provider for palliative end of life care programs where ongoing care will involve very intensive clinical nursing and/or complex pain management in the residential care setting.
- 22 This must be demonstrated through documentation of the following:
- (a) a directive by a Clinical Nurse Coordinator or a Clinical Nurse Specialist (a registered nurse who has at least five years' full time equivalent post registration experience and nursing qualifications in the specialty fields of pain and / or palliative care); or a medical practitioner; and
 - (b) a pain assessment.

Number of ACFI instruments including a claim for end of life care

- 23 The table below sets out the number of ACFI claims for end of life care that were lodged in the 2016 – 17, 2017–18 and 2018–19 financial years.
- 24 As I described in paragraph 19 above, providers may not complete or update the ACFI documentation to identify all cases where end of life care is required. Therefore, the figures in the table below would likely understate the number of residents who require or who are receiving end of life care.
- 25 The number of claims being made by providers for end of life palliative care is as shown in the following table:

Financial year	Number of ACFI claims
2016–17	4,460
2017–18	4,683
2018–19 year to 14 May 2019	3,509

Review process of end of life palliative care claims under ACFI

- 26 End of life palliative care claims are reviewed by ACFI review officers within the Department acting as delegates of the Secretary under the *Aged Care Act 1997 (the Act)*. Reviews are generally undertaken on-site at residential aged care facilities. They may also be conducted 'at-desk' from the Department's offices.
- 27 Review officers examine the ACFI Answer Appraisal Packs prepared by the approved provider, to ensure the ACFI User Guide end of life palliative care evidence requirements have been met. The review officers may also speak with staff and care recipients or request additional documents to

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- verify the accuracy of the information included in the ACFI Answer Appraisal Pack. Approved providers are given a statement of reasons when the Department changes an ACFI classification as a consequence of a review decision.
- 28 If an approved provider is dissatisfied with a review officer's decision, they may request a reconsideration of the ACFI review decision. Reconsideration involves investigation by a separate delegate of the Secretary of the approved provider's appraisal documentation, the evidence collected at the review and the review officer's reasons for changing the classification. This may change or affirm the original review officer's decision.
- 29 If dissatisfied with the reconsideration decision, the approved provider may seek review by the Administrative Appeals Tribunal (Tribunal).

Number of reviews of end of life palliative care claims under ACFI

- 30 The number of reviews involving end of life palliative care claims in the 2016–17, 2017–18 and 2018–19 financial years is set out in the table below. The Department increased its number of reviews of end of life palliative care claims following the decision in *Southern Cross Care (Tas) Inc. v Secretary, Department of Health and Ageing* [2014] AATA 623.
- 31 The decision of the Tribunal examined the definitions of 'palliative approach' and the extent of services that might be provided by a residential aged care facility that may be considered to be 'palliative care' for the purposes of ACFI.
- 32 The Tribunal held that:
- "[T]he words in ACFI 12 at item 14 specifically contemplate a program which involves end of life care and an intensive clinical nursing and/or complex pain management program... The Tribunal accepts the respondent's submission that the term "palliative care" program appearing in ACFI 12 item 14 contemplates care recipients who are in a terminally ill stage"*
- 33 Following the Tribunal's decision, the Department conducted a targeted review of historic claims that had been made by residential aged care service providers against ACFI 12, item 14. In the course of this review, the Department identified that a number of claims did not accord with the Tribunal's finding, adjusted those claims accordingly and recouped extra amounts claimed from providers.
- 34 Gradually the number of reviews has diminished as there are fewer older palliative care claims for the Department to examine.

Royal Commission into Aged Care Quality and Safety
Witness Statement of Nigel Murray

Financial year	Number of reviews of end of life claims
2016–17	333
2017–18	114
2018–19 year to 14 May 2019	68

Number of downgrades of ACFI claims for end of life palliative care in the 2016–17, 2017–18 and 2018–19 financial years

- 35 The number of downgraded ACFI end of life palliative care claims in the relevant financial years is set out in the table below:

Financial year	Number of downgrades of end of life claims
2016–17	287
2017–18	96
2018–19 year to 14 May 2019	57

Signature	<u><i>Nigel Murray</i></u>	Witness	<u><i>Jady Kwong</i></u>
Name	<u>Nigel Murray</u>	Name	<u>Jady Kwong</u>
Date	<u>24/5/2019</u>	Date	<u>24 May 2019</u>