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Caring for Older Australians
Productivity Commission
PO Box 1428
Canberra City ACT 2601

28 July 2010

To the Secretary,

RE: Caring for Older Australians

Thank you for the opportunity to comment on the Productivity Commission's inquiry into caring for older Australians.

Background

As noted in the Productivity Commission's inquiry *Terms of Reference*, significant reform is required in order to deal with increased the demands of an ageing Australian population. Liberty Victoria welcomes this inquiry into existing regulatory frameworks, and other related inquiries, with a view to recommending changes for the better care of older Australians.

Why rights protection for older Australians is important to Liberty

Liberty Victoria is one of Australia's leading human rights and civil liberties organisations. Liberty works to defend and extend human rights and freedoms in Victoria.

Liberty believes advocacy for the protection and advancement of rights of older Australians is particularly important as there is a negative community perception about ageing and the aged. The perception of older Australians as burdensome on the community feeds the idea that the treatment of older Australians is a problem to be dealt with.¹

We believe that this negative community perception also encourages age discrimination which can impact on sector funding and regulation. *Age Matters: a Report on Age*

¹ Studies such as Parsons, A. (1993) *Attitudes to the Elderly*, found at www.ciap.health.nsw.gov.au show that negative perceptions of the elderly held by both nursing staff and the wider community were an ongoing concern.

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*Discrimination*² notes that insufficient funding, inequalities in access to treatment, and methods of treatment represent indirect discrimination against older people.

Liberty believes strongly in advocacy for the protection and advancement of social and economic rights of older Australians, not only because of negative community perceptions and indirect discrimination but also because of the particular vulnerability of many of older people, and the difficulty they may find in having their concerns heard and addressed.

Liberty's concerns

Given the issues outlined above, it is troubling to Liberty that the Commission's Terms of Reference make little mention of the necessary relationship between review of current systems or regulatory overhaul and the protection of basic rights and dignity of older persons.

Liberty are also concerned with the use of the term 'consumers'; in relation to older Australians. We believe that the use of such a term has the tendency to relegate the concerns of older Australians in this inquiry to those of a commercial contract. Marginalisation and exclusion are, as previously noted, problems that older Australians have to deal with. Employing language such as 'consumers' will only exacerbate issues that are under investigation.

Liberty does, however, welcome the Issues Paper's Objectives of the Enquiry detailing the relationship between an overhaul of regulatory systems with clear reference to the rights of older Australians.

Liberty's recommendations

We believe that in dealing with increased demands for aged care services – particularly health and residential care – it is essential that the Commission make recommendations which acknowledge the rights of older Australians and which are compatible with these rights. Recommendations should also provide additional safeguards guaranteeing older Australians are treated with dignity and compassion. Liberty believes that, in many cases, the aims of improving the aged care framework are likely to be complementary to the protection of the rights of those who are exposed to it. For example, if an overhaul of regulatory frameworks provided an increase in available beds at aged care residences, this would be complimentary to the principle that all older Australians should have access to accommodation as they require it.

The Commission asks at page 15 of its *Issues Paper*:

"whether the objectives should have equal weighting or whether some should have higher weighting...[w]here conflicts might arise, which objectives should be given priority?"

Liberty's initial response is that the Commission should recommend changes which maintain the right to access health services and residential or other care of an acceptable standard and the right to treatment with dignity and compassion regardless of economic circumstances.

² Human Rights and Equal Opportunity Commission. (2000) *Age Matters: A Report on Age Discrimination*, National Library of Australia Cataloguing-in-Publication entry.

Where the Commission's stated aims are in conflict, Liberty asks that the Commission keep the objective of ensuring that "all frail older Australians have timely access to appropriate care and support services as they age... through a safe and secure aged care system" at the fore of the inquiry. Further, Liberty agrees to the key themes espoused in the inquiry *Issues Paper* at page 15.

Other important reference materials

Regrettably, Australia does not have legal guarantees of rights for older Australians. This contrasts with nations such as Estonia, Spain, Lithuania, Malta and Portugal; all of which have various social or economic rights for the elderly enshrined in their constitutions to varying degrees.

In light of this it is particularly important that the Commission uses the tools at its disposal to deal directly with the protection of rights. We urge the Commission to conduct its review and make recommendations which accord with the Department of Health and Ageing *Charter of Rights and Responsibilities for Community Care*³.

Further, Liberty believes that Article 26 of the *International Covenant on Civil and Political Rights (ICCPR)*⁴ creates a positive obligation to eliminate age discrimination in federal legislation. As Australia is a party to the ICCPR, Liberty urges the Commission to apply to the principles of the ICCPR in making any recommendations for change to the aged care system.

Liberty believes that in reviewing the current regulatory systems affecting older Australians, the Productivity Commission has a significant opportunity to propose changes which also protect the social and economic rights of older Australians.

We look forward to providing a further submission exploring how we believe the Commission can make the most of this opportunity to ensure the protection and advancement of human rights for older Australians.

Yours faithfully,

Michael Pearce SC

President

³ Aged Care Act 1997, Schedule 2, User Rights Principles, *Charter of Rights and Responsibilities For Community Care*,

⁴ International Covenant on Civil and Political Rights, by which Australia became bound on 13 November 1980.