

## ***Submission to the Caring for Older Australians Productivity Commission Inquiry***

Thank you for the opportunity to comment on the Inquiry into Caring for Older Australians. The Office of the Health Services Commissioner (HSC) exists to receive and resolve complaints from members of the public who are unhappy with a health service. Most of our work is complaints resolution through mediation and conciliation, however we do have stronger powers of investigation to use as necessary. The HSC also has a duty to promote the guiding principles of health care in Victoria and to suggest ways of improving the quality of health services.

Recently the Minister for Ageing, the Hon Justine Elliot MP, requested Associate Professor Marilyn Walton to conduct a review of the Aged Care Complaints Investigation Scheme (ACCIS) to identify areas of best practice complaint handling in aged care. Professor Walton submitted her findings to the Australian Government in October 2009.

I made a submission to the review by Professor Walton outlining my concerns regarding the current structure and procedures of the ACCIS, in particular in relation to the inherent conflict of being the funder, regulator and investigator. I was also concerned about the provision of natural justice to the parties by the ACCIS. In the submission, I said:

*At the outset HSC submits that the current model is inappropriate. The CIS acts as funder, regulator and investigator as well as decision maker. There are clear conflicts of interest here. The HSC prefers a more 'ombudsman' like body to undertake the investigation function.*

***It is therefore recommended that the powers of investigation be transferred to the Aged Care Commissioner.***

*The current Aged Care Commissioner is grossly understaffed with only three investigators and these resource issues must be addressed if elderly people in Australia are to have their rights respected.*

*HSC understands many families feel excluded from the current CIS complaints process. They lodge a complaint and then hear nothing until the end of the process. Complainants should be involved and kept informed throughout the entire complaint process. HSC also understand CIS staff have tried very hard to do their work appropriately however, there does appear to be a 'public service' culture which is too closed and has an air of secretiveness about it. HSC has also been informed that statements of reasons given by the CIS are inadequate to advise complainants of processes and outcomes and to assure them a thorough investigation has been carried out.*

*Complaints handling is no place for well meaning amateurs and investigators need training which is specific to the handling of complaints. HSC is not satisfied that the CIS provides natural justice to all parties involved. Communication is inadequate, investigators do not have complaints specific training, the CIS's processes are not accessible to the complainant and there is a lack of clinical expertise. There is insufficient referral for expert advice. Recommendations made the by the Aged Care Commissioner are not always accepted but it is not so much the relationship between the CIS and the Aged Care Commissioner, the Aged Care*

*Standards Accreditation Agency Limited and other relevant bodies which is the issue, it is the structure that is the problem.*

***The Aged Care Commissioner should be given resources to report on nursing homes in the public interest. This will resolve the issue of a lack of independence from the Department of Health and Ageing.***

***The Aged Care Commissioner should have determinative powers which are reviewable by the Ombudsman. Clear timeframes for complaint handling should be included in the legislation. The Aged Care Commissioner should be structured on a statute based Commission model. While it should have determinative powers, it should also have the ability to mediate and conciliate appropriate complaints.***

I do not support a suggestion that aged care complaints are appropriate to be managed by the Commonwealth Ombudsman or the Aged Care Standards and Accreditation Agency or State/Territory based health care complaints bodies.

In my view, complaints in the aged care sector are of a particular nature and require specialist attention. The elements that make such complaints different from other areas include:

Unlike other individuals complaining about goods or services, the recipient in aged care is often vulnerable, with failing health and fear retribution and reprisal from service providers; and

The care recipient and/or complainant has an ongoing relationship with the service provider.

Aged care complaints are outside the scope of business for the Commonwealth Ombudsman whose role it is to investigate complaints from people who are not satisfied with a government department/organisation. The Commonwealth Ombudsman considers process rather than care/accommodation complaint issues. The Commonwealth Ombudsman does not have determinative powers or a capacity to require actions or apply levers to approved providers.

Similarly the Aged Care Standards and Accreditation Agency does not investigate complaints.

Anecdotal evidence suggests the community is already confused with the relationship between the Aged Care Standards and Accreditation Agency and the Department of Health and Ageing and the same conflict of interest arguments apply to the current ACCIS arrangements.

I support Model 4 of Professor Walton's review which recommended the establishment of an Aged Care Complaints Commission, completely independent from the Department of Health and Ageing. Her description of the model was:

*The Aged Care Complaints Commission should replace the current CIS and be a statutory body headed by the Aged Care Complaints Commissioner who would be appointed as a statutory office holder appointed by and reportable to the Minister for Ageing. Staff would be employed under the Public Service Act 1999. A separate Aged Care Complaints Commission would establish itself as a best practice complaint handling organisation dedicated to the*

*resolution of aged care complaints and appropriate investigations without the competing demands and potential conflicts which exist within the Department and the Office. It removes any residual concerns about 'partiality' and conflicts of interest. There is a substantial body of evidence supporting the independence of complaint handling. A robust and trustworthy complaint system will be an essential component of age care services of the future. Increasingly older people, many of whom will have grown up with the availability of effective complaint mechanisms, will expect to have access to an effective independent service; this expectation will grow rather than recede.*

(2009: 13)

Consideration should be given to the establishment of a discrete conciliation arm within the independent Commission, similar to the conciliation functions in my office. My experience is that conciliation offers a mechanism to bring the parties to a complaint together in a non-adversarial way to resolve the dispute. This maintains the relationship between the care recipient and the service provider in a way an investigation does not.

An internal review mechanism for decision could be established within the Commission, similar to those of the Commonwealth Ombudsman. This would allow for the review of a decision by a more senior officer of the Commission, would be cost effective and time efficient.

Should you have any queries in relation to this submission, please do not hesitate to contact me.