

16 May 2011

Caring for Older Australians
Productivity Commission
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Dear Commissioners,

We are writing to you again to comment on the important submission (number [DR 763](#)¹) from the **Aged Care Standards and Accreditation Agency (ACSAA)**. **Aged Care Crisis (ACC)** in its own submissions ([433](#)² and [DR520](#)³) and in submissions by individual members ([368](#)⁴ and [DR568](#)⁵) has been a strong critic of the Accreditation process as employed in Australia.

The Aged Care Standards and Accreditation Agency (ACSAA) Submission

We welcome the **ACSAA** submission because it so clearly states many of the arguments and problems that have concerned us. We agree with most of the arguments if not with the conclusions reached. It is sad indeed that **ACSAA** has been so reticent in clearly stating its position and has not lobbied government in this regard over the last 15 years. Its claim *“Is the accreditation body a regulator? – No”* goes to the heart of the problems we have with the way it operates.

The ACSAA's position

The Agency adopts a legalistic frame and quotes from the legislation to claim that its primary role is to support and assist the providers in their efforts to improve care. It works with them rather than the community. It is emphatic that it is not a regulator and that the regulator is the **Department of Health and Ageing (DOHA)**.

But the ACSAA is at the heart of the regulatory process

At a practical everyday level the ACSAA's argument is disingenuous. Accreditation is a core component of the regulatory process. Its findings are integral to decisions involving funding and sanctioning of homes⁶. This can only be accomplished by **DOHA** through its use of accreditation findings, as well as its relationships and discussions with the Agency⁷.

¹ Aged Care Standards and Accreditation Agency – Response to Draft Report DR763:

http://www.pc.gov.au/_data/assets/pdf_file/0006/108555/subdr763.pdf

² Aged Care Crisis – Submission 433: http://www.pc.gov.au/_data/assets/pdf_file/0008/102140/sub433.pdf

³ Aged Care Crisis – Response to Draft Report DR520: <http://bit.ly/iEItC6>

⁴ Dr J.M. Wynne - Submission 368: http://www.pc.gov.au/_data/assets/pdf_file/0016/101914/sub368.pdf

⁵ Dr J.M. Wynne – Response to Draft Report DR568: <http://bit.ly/I0D6ZZ>

⁶ Report on the Operation of the *Aged Care Act 1997* 1 July 2009 to 30 June 2010:
Appendix D: Sanctions imposed under the *Aged Care Act 1997*: <http://bit.ly/iiA9QC>

⁷ Nursing home hit with sanctions (*The Chronicle Toowoomba News* – 27 Aug): <http://bit.ly/kw76iM>

The real world

The accreditation process is seen to be integral to regulation by politicians, by the providers, by staff, by the community and by the Productivity Commission itself.

The final report commissioned by **DOHA** to 'Evaluation of the impact of accreditation on the delivery of quality of care and quality of life to residents in Australian Government subsidised residential aged care homes' was completed in 2007⁸.

It examined the role of accreditation and concluded that:



“ ... Accreditation is a key component of a robust regulatory framework ... ”

{Page xii – Executive Summary: The regulatory framework}

Their report described how accreditation fitted into the regulatory process. They indicated:



“ ... The accreditation requirement established by the Act creates a key regulatory link between funding and quality of care and quality of life in aged care homes ... ”

{Page 22 – Section 4: The Aged Care Accreditation System:
4.3 Accreditation in the context of the regulatory framework}

Whatever the words used and however they are interpreted, accreditation is, in practice, central to the regulatory process and as a society we all recognise this.

As one of us has indicated (submission [368](#)⁹) the Agency was set up primarily to assist providers and is responsible to them in this. The Agency now acknowledges this. While it may benefit the community, it is not primarily responsible to them.

It became a de facto regulator without having the primary responsibility to the community that a regulator should have. Those who have examined the operation of the Agency believe that in its thinking and operations it functions for the benefit of the providers and takes their position above that of the community. [Their submission confirms this](#)¹⁰.

Department of Health and Ageing (DOHA) as regulator

ACSAA attempts to distance itself from criticism by claiming that **DOHA** is the regulator. But **DOHA** is largely dependent on the accreditation findings and uses them to justify and validate its decisions.

We have little doubt that had Professor Walton examined **DOHA's** regulatory function when she examined its complaint handling function, her observations would have matched her critical review of the department's Complaints Investigation Scheme processes¹¹. The Department is the funder and there is a conflict of interest. An independent regulator is required. **DOHA** should not do both.

What the ACSAA submission reveals is that Australia does not have an effective, independent regulator. That has been obvious for years, yet successive reviews have refused to grasp this nettle.

⁸ Evaluation of the impact of accreditation on the delivery of quality of care and quality of life to residents in Australian Government subsidised residential aged care homes – Final Report: October 2007: <http://bit.ly/jiy7OJ>

⁹ Dr J.M. Wynne - Submission 368: http://www.pc.gov.au/data/assets/pdf_file/0016/101914/sub368.pdf

¹⁰ Aged Care Standards and Accreditation Agency – Response to Draft Report DR763: http://www.pc.gov.au/data/assets/pdf_file/0006/108555/subdr763.pdf

¹¹ Aged care complaints system found wanting – (ABC Radio National – 16 Apr 2010): <http://bit.ly/aYVzm6>

The problem

It is clear that the conflicts of interest **ACSAA** so clearly identifies between assisting the providers and regulating them (including collecting information for that purpose) is the core problem in the accreditation process and lies at the root of regulatory failure in Australia.

We believe that the Agency's activities should be restricted to accreditation. The collection of information and the oversight of services should be placed elsewhere.

The neglected community

One of our strongest criticisms of the current system, the accreditation process, and the Productivity Commission's Draft Report has been the emphasis on providers, on funding and on providing a commercial service to individuals.

The glaring omission is any real involvement of sections of the community in the processes, in the structure, in the control of information and in decision making. This we believe is because the process has been and is being structured by the Productivity Commission within a market-oriented mind set, as contrasted with that of a cooperative community caring for its frail members.

The thinking of both the Agency and the Productivity Commission is well illustrated by the diagrams in the **ACSAA** submission (pages 17 and 18¹²). There are no boxes representing community structures. In our view any model that will work for aged care will be built around community structures and these will be linked across the other boxes.

Useful data collection

Our other criticism is the failure to collect and use accurate and relevant information. Every section of the system including the Agency requires accurate and independently collected information. This is essential for assessing performance and for "continuous improvement".

We note with interest the offer of assistance by the **Australian Institute of Health and Welfare**¹³ (**AIHW**) and believe that their expertise, advice and involvement would be of value for the collection of information that gives a broad overview of the operation of the aged care system. It would be important for developing policy.

The sort of data collection and the type of data needed about the operation of individual nursing homes and services is not however well suited to the **AIHW**. We believe that involvement of the community is critically important to success in this sector. The **AIHW** proposal is retrogressive in this regard. Locally based ongoing surveillance and monitoring is critically important not only because of the type of information collected but because an outside government agency simply does not have the ability or the capacity to handle the day to day issues that arise.

Aged care is an intimate, personal and emotional milieu and no central "agency" has the capacity to work with empathy in this context or deal with local factors. Local involvement is essential if this market is to work for the community as well as for providers. The support, advice, expertise and assistance of the **AIHW** in collecting and handling information might be beneficial. Assistance in sifting and converting the material collected in this milieu into useful reports would be valuable. We would not oppose their inclusion in the regulatory structure if the Commissioners see this as advantageous. The community should be involved and **AIHW** should not control the release of information.

¹² Aged Care Standards and Accreditation Agency – Response to Draft Report DR763: (pages 17 and 18)
http://www.pc.gov.au/data/assets/pdf_file/0006/108555/subdr763.pdf

¹³ Australian Institute of Health and Welfare – Response to Draft Report DR808:
http://www.pc.gov.au/data/assets/pdf_file/0007/108880/subdr0808.pdf

Finding a way out of a dead end

One of us (submissions [368](#) and [DR568](#)) has suggested that the aged care system should be built around community based structures, responsible for the ongoing collection of information and for supporting their aged members. The information collected would be fed into regulatory, accreditation and policy sections of the system. A central body drawn from these groups would have representation on those administrative sections utilising the data they collect, and on those sections who operate through the community structures.

These suggestions are an attempt to resolve the core issues of independent information collection, community participation, conflict of interest in the collection of information, and transparency.

Maximum transparency can only be expected when those who need to know also control the information. Direct involvement of the community in the regulatory process, and their proximity to providers would stimulate rather than impede innovation.

If the Productivity Commission cannot meet these important objectives in other ways then Aged Care Crisis urges them to give these suggestions careful consideration. Because of its complexity, its variability and the personal issues that arise, the sector is ill suited to a simple top-down structure. We urge the Productivity Commission to move towards a structure that has a major bottom-up component.

On behalf of **Aged Care Crisis**,

Dr J.M. Wynne , Lynda Saltarelli, Linda Sparrow and Rodney Lewis.

web: www.agedcarecrisis.com

References and related links:

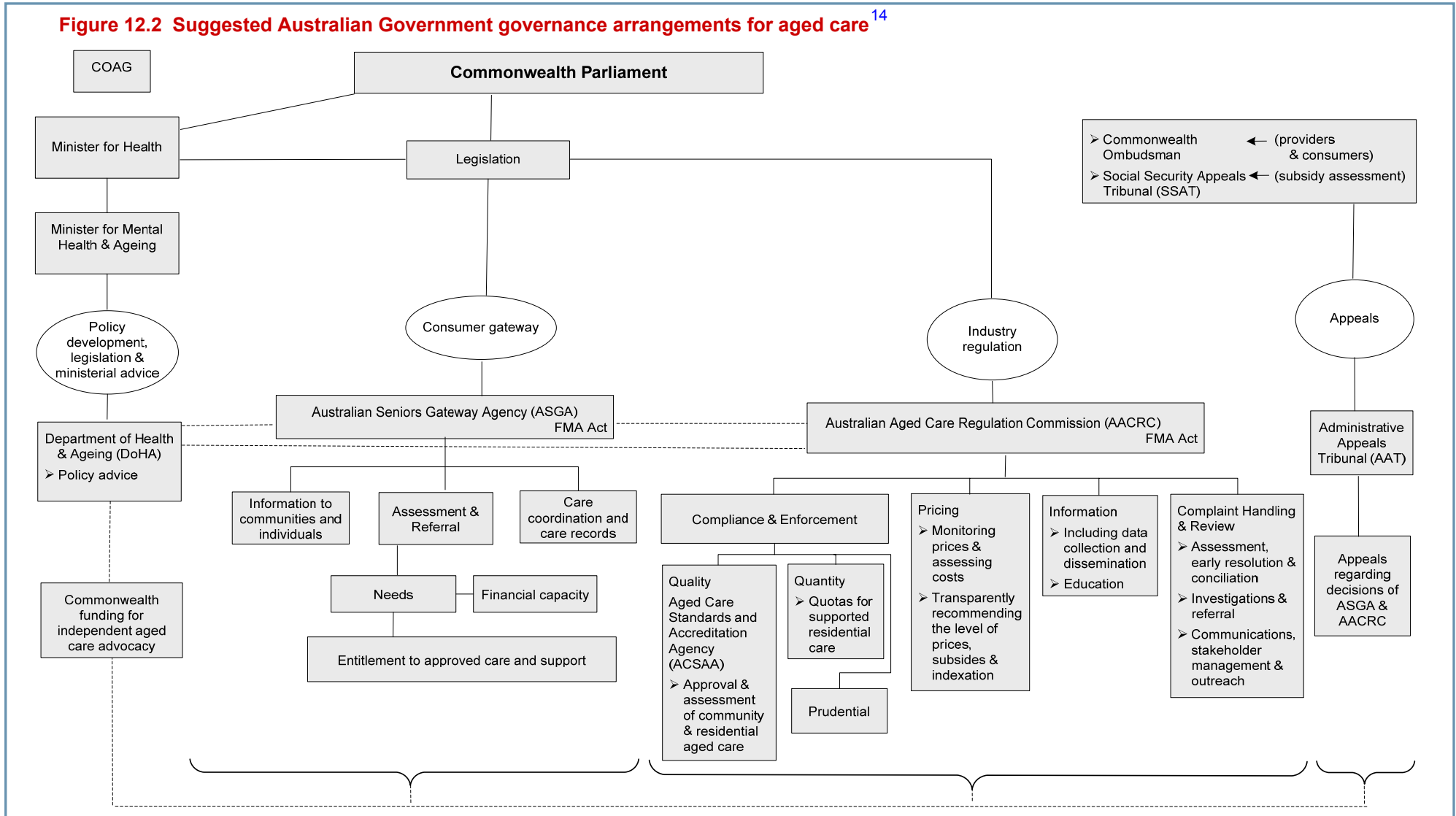
- Evaluation of the impact of accreditation on the delivery of quality of care and quality of life to residents in Australian Government subsidised residential aged care homes - *Final Report - October 2007*:
<http://bit.ly/jjy7OJ>
- Aged Care Crisis – Submission 433: http://www.pc.gov.au/_data/assets/pdf_file/0008/102140/sub433.pdf
- Aged Care Crisis – Response to Draft Report DR520: <http://bit.ly/iEltC6>
- Dr J.M. Wynne - Submission 368: http://www.pc.gov.au/_data/assets/pdf_file/0016/101914/sub368.pdf
- Dr J.M. Wynne – Response to Draft Report DR568: <http://bit.ly/I0D6ZZ>
- Report on the Operation of the *Aged Care Act 1997* - 1 July 2009 to 30 June 2010:
Appendix D: Sanctions imposed under the *Aged Care Act 1997*: <http://bit.ly/iiA9QC>
- Nursing home hit with sanctions (*The Chronicle - Toowoomba News*), 27 Aug 2010: <http://bit.ly/kw76iM>
- Australian Institute of Health and Welfare – Response to Draft Report DR808:
http://www.pc.gov.au/_data/assets/pdf_file/0007/108880/subdr0808.pdf
- Aged Care Standards and Accreditation Agency – Response to Draft Report DR763:
http://www.pc.gov.au/_data/assets/pdf_file/0006/108555/subdr763.pdf
- Aged care complaints system found wanting – (*ABC Radio National – 16 Apr 2010*): <http://bit.ly/aYVzm6>

Appendix:

- **Page 5:** Caring for Older Australians – Productivity Commission Draft Report (Jan 2011): *Chapter 12: Regulation – the future direction, Figure 12.2* (Printed page 407 | Actual: page 473) : <http://bit.ly/kGJ3k0>
- **Page 6:** Aged Care Standards and Accreditation Agency – Response to Draft Report DR763: (page 18) http://www.pc.gov.au/_data/assets/pdf_file/0006/108555/subdr763.pdf
- **Page 7:** Report on the Operation of the *Aged Care Act 1997* - 1 July 2009 to 30 June 2010 (Appendix D: Sanctions imposed under the *Aged Care Act 1997*): <http://bit.ly/iiA9QC>

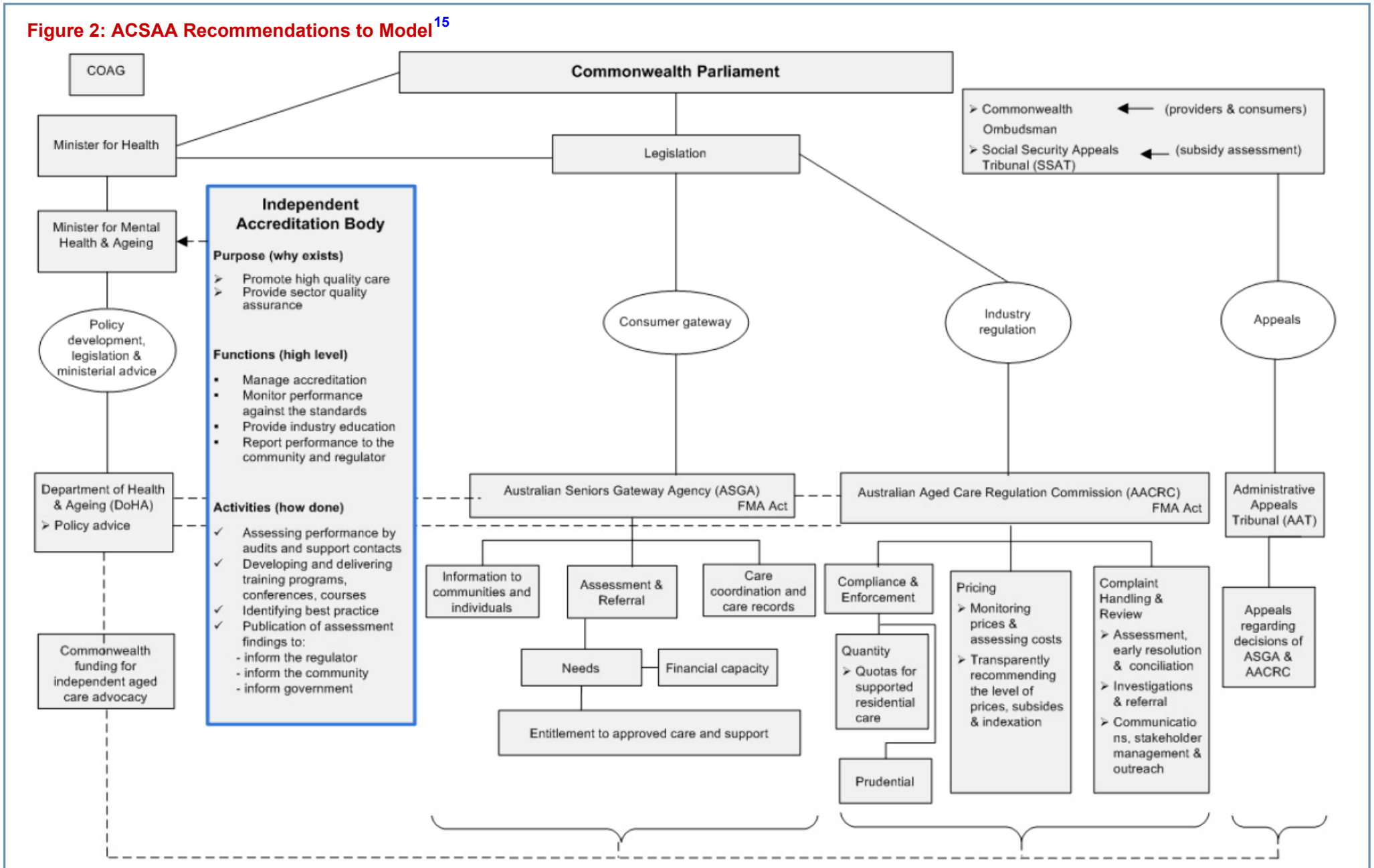
Appendix

The thinking of both the Agency and the Productivity Commission is well illustrated by the diagrams in the **ACSAA** submission (pages 17 and 18 *(as represented below and the following page)*). There are no boxes representing community structures. In our view any model that will work for aged care will be built around community structures and these will be linked across the other boxes:



¹⁴ Caring for Older Australians – Productivity Commission Draft Report (Jan 2011): Chapter 12: Regulation – the future direction, Figure 12.2 (Printed page 407 | Actual: page 473) : <http://bit.ly/kGJ3k0>

Figure 2: ACSAA Recommendations to Model¹⁵



¹⁵ Aged Care Standards and Accreditation Agency – Response to Draft Report DR763: (page 18) http://www.pc.gov.au/_data/assets/pdf_file/0006/108555/subdr763.pdf

Report on the Operation of the Aged Care Act 1997 - 1 July 2009 to 30 June 2010 (Appendix D: Sanctions imposed under the Aged Care Act 1997): <http://bit.ly/iiA9QC>

State and Service	Approved Provider	Sanctions Imposed	Date Imposed	Reason for Imposing Sanctions	Outcomes
South Australia					
The Churchill Retreat	Northgate Aged Care Pty Ltd	<ol style="list-style-type: none"> 1. Approval as an Approved Provider of aged care services revoked unless an adviser with nursing experience is appointed for a period of six months. 2. No Australian Government funding for new care recipients for a period of six months. 	16-Sep-09	The Agency identified serious risk and the Department determined that there was an immediate and severe risk to the health, safety or well-being of residents.	<p>Sanction 2 lifted on 4 February 2010</p> <p>Sanction 1 expired on 15 March 2010.</p>
Copperhouse Court Hostel	Whyalla Aged Care Inc	<ol style="list-style-type: none"> 1. Approval as an Approved Provider of aged care services revoked unless an adviser with nursing experience is appointed for a period of six months. 2. No Australian Government funding for new care recipients for a period of six months. 	4-Feb-10	The Agency identified serious risk and the Department determined that there was an immediate and severe risk to the health, safety or well-being of residents.	<p>Sanction 2 lifted on 2 July 2010</p> <p>Sanction 1 expired on 3 August 2010</p>
Victoria					
Glenlyn Aged Care Facility	Kincsem Pty Ltd	<ol style="list-style-type: none"> 1. Approval as an Approved Provider of aged care services revoked unless an adviser with nursing experience is appointed for a period of six months. 	8-Sep-09	The Agency identified continued non-compliance in relation to the Accreditation Standards.	Sanction expired on 7 March 2010
Radford Private Nursing Home	Margeruite Gerrard Pty Ltd	<ol style="list-style-type: none"> 1. Approval as an Approved Provider of aged care services revoked unless an adviser with nursing experience is appointed for a period of six months. 2. No Australian Government funding for new care recipients for a period of six months. 	26-Sep-09	The Agency identified serious risk and the Department determined that there was an immediate and severe risk to the health, safety or well-being of residents.	<p>Sanction 2 lifted on 3 February 2010</p> <p>Sanction 1 expired on 25 March 2010</p>
Lynch's Bridge Aged Care Facility	Doutta Galla Aged Care Services Ltd	<ol style="list-style-type: none"> 1. Approval as an Approved Provider of aged care services revoked unless an adviser with nursing experience is appointed for a period of six months. 2. No Australian Government funding for new care recipients for a period of six months. 	22-Oct-09	The Agency identified serious risk and the Department determined that there was an immediate and severe risk to the health, safety or well-being of residents.	<p>Sanction 2 lifted on 16 March 2010</p> <p>Sanction 1 expired on 21 April 2010</p>
Lions Club of Sunbury Elderly Peoples Homes Inc	Lions Club of Sunbury Elderly Peoples Homes Inc	<ol style="list-style-type: none"> 1. Approval as an Approved Provider of aged care services revoked unless an adviser with nursing experience is appointed for a period of six months. 	6-Jan-10	The Agency identified continued non-compliance in relation to the Accreditation Standards.	Sanction expired on 5 July 2010
Isomer Retirement Home	Islamic Society of Melbourne Eastern Regions Inc	<ol style="list-style-type: none"> 1. Approval as an Approved Provider of aged care services revoked unless an adviser with nursing experience is appointed for a period of six months. 2. No Australian Government funding for new care recipients for a period of six months. 	23-Jun-10	The Agency identified serious risk and the Department determined that there was an immediate and severe risk to the health, safety or well-being of residents.	Sanctions due to expire on 22 December 2010

Note: Section 68-1 of the Aged Care Act 1997 provides that a sanction that has been imposed on an Approved Provider for non-compliance with its responsibilities, ceases to apply if (a) the sanction period ends or (b) the Secretary decides under section 68-3 of the Act that it is appropriate for the sanction to be lifted. When applicable, the duration of a sanction is fixed by the Secretary and specified in the notice of decision to impose a sanction.