



21 March 2011

Mr Gary Banks AO  
Productivity Commission  
Caring for Older Australians  
GPO Box 1428  
Canberra City ACT 2601

Email: aged@pc.gov.au

Dear Mr Banks

Thank you for the copy of your Draft Report on Caring for Older Australians and the opportunity to provide comments.

The comments of my office are as follows.

*Australian Seniors Gateway Agency*

It may be helpful to clarify the extent of the services proposed to be delivered by this agency, in particular, whether the agency will provide advice tailored to an individual's unique circumstances or more general information. Complaints to my office have demonstrated the fact that, even with the assistance of family and friends, not all care recipients are equipped to work out what a particular care package will cost them, taking into account the various payment options and any impact on their pension. In the event that it is not proposed that the agency provide individually tailored advice, this advice should be available through the proposed extended consumer advocacy services or by some other readily accessible means.

Consideration could also be given to whether or not there is any merit in requiring the fees and charges for care packages to be disclosed in a standard comparable manner in order to assist consumer choice.

*Advocacy services*

I welcome the Commission's recommendations in respect of the funding of an extended system of aged care consumer advocacy services. However I would advise caution regarding any restriction on accessing these services at this stage. Older Australians seeking to access aged care, regardless of their funds, may be vulnerable to persuasion from others that they do not need to expend their funds on solicitors, financial advisors or other independent sources of advice. Moreover they may be frail and have physical difficulty accessing their

funds without negotiating with family members, friends or others. A person's family or friends may not be skilled in understanding financial matters or there may be differences of opinion between family members about the best course of action. In other cases family and friends may have a conflict of interest, such as a need for respite from the caring role at the earliest time or concern about inheritance that may influence their capacity to act solely in the best interest of the aged care recipient. Easily accessible independent advocacy and advice services would seem of vital importance in a field which involves the living arrangements of an inherently vulnerable sector of the community.

*Australian Aged Care Regulation Commission (AACRC)*

I welcome the proposed separation of complaint handling from other policy functions which is anticipated to inspire greater consumer confidence in the complaint handling process.

I would be grateful if you could confirm the accessibility of the proposed complaints scheme to ATSI people receiving aged care through Flexible Services.

In relation to the Assessment, Early Resolution and Conciliation stream of the Complaint Handling and Review division, it is unclear how the conciliation stream and the investigation stream fit together and whether the AACRC will have the discretion, following assessment, to offer conciliation but to otherwise refuse to investigate a complaint. In the event that the AACRC is able to direct a particular mode of complaint resolution at any time, I would recommend the development of an internal review process for decisions regarding whether a complaint is to be handled by way of conciliation or investigation. Otherwise complainants may feel dissatisfied by a decision to deny them access to a particular process. I note that the Department of Health and Ageing's Discussion Paper: Proposed Complaints Management Framework (February 2011) proposes opportunities for complainants to appeal to the Aged Care Commissioner if dissatisfied with finalisation of their complaint through non-investigative processes.

I note that decisions of both the Gateway Agency and the AACRC are appealable to the Administrative Appeals Tribunal (AAT). The AAT can involve formal processes and fees which may be appropriate for the review of regulatory decisions involving potential sanctions, but may be less so for the review of a decision by the Gateway Agency about the assessment of a potential care recipient's needs. It is also possible that some appeals will be complex, involving the joining of both the provider and the care recipient as potentially affected parties and may be more costly or slower than the current system. While I envisage that the introduction of a complaint conciliation stream may reduce or change the nature of consumer appeals, consideration should be given to fee waiver for appeals to the AAT by or on behalf of aged care recipients and also to an extension of the allowable time in which to appeal, should they elect to complain to the Ombudsman first.

I would like to acknowledge the importance of the role of the Aged Care Commissioner in the current system. The Aged Care Commissioner's office deals not only with appeals about examinable decisions (which I understand would be heard by the AAT under the proposed model), but also deals with complaints about the investigation process. Often, the outcome

of the Aged Care Commissioner's consideration of a process complaint is that the existing Complaints Investigation Scheme decides to reinvestigate a complaint or to investigate a particular issue that may have been overlooked. It is my understanding of the Commission's recommendations, as illustrated at Figure 12.2 (page 407) of the Draft Report, that complaints of this kind will come to my office.

In the event that a person who is dissatisfied with a decision of the AACRC or the Gateway Agency is dissatisfied with both the process by which their complaint has been handled and the decision on the merits, they may wish to complain to the Ombudsman's office as well as seek merits review by the AAT. Often in these circumstances my office would defer any investigation until merits review is concluded by the AAT, but not always. Given that reinvestigation of a complaint is a possible outcome of aged care complaints to this office, consideration should be given to empowering the AAT to extend the time for lodgement of an appeal until a specified period after a complainant has been notified of the outcome of their approach to my office.

Finally I note that the diagram at Figure 12.2 in the Draft Report connects the Ombudsman's office by way of a line to a box containing the word 'appeals', which is situated above the box containing the AAT. Strictly speaking, my office does not hear appeals and the Ombudsman has no power to substitute a decision of his or her own for that of an agency, rather my office makes recommendations in consequence of its investigation of complaints.

Once again I thank you for the opportunity to comment on the Commission's Draft Report. Should you wish to discuss any matter raised in this letter, please contact Mr George Masri, the Senior Assistant Ombudsman responsible for aged care issues within my office on 02 6276 0129.

Yours sincerely

Allan Asher  
Commonwealth Ombudsman