



26 August 2009

CIS Review Project
Department of Health and Ageing
MDP 68
GPO Box 9848
CANBERRA ACT 2601
Email: CISreview@health.gov.au

Re: Complaints Investigation Scheme (CIS)

Introduction

Aged Care Crisis (ACC) supports any adjustments/changes to the *Aged Care Act (1997)*, including the *Investigation Principles 2007*, which will provide further protection for vulnerable frail older people.

ACC is an independent group of Australian citizens. Members of our group are engaged with the aged-care sector in a variety of ways – as health professionals, as consumers of services and as volunteers.

Our website, www.agedcarecrisis.com, provides ready access to information and issues relating to the care of frail, older people. The overwhelming response to our website www.agedcarecrisis.com, confirms our own experiences and indicates a high level of community support for reforms to the current aged-care system.

Sadly, most web page correspondents, and those who follow up with personal contact, indicate that fear of retribution prevents them from using the established complaints procedures. Others have found it a frustrating and inadequate experience.

Our key concerns

- **The need for a truly independent CIS.** Currently the CIS is embedded in the Department of Health and Ageing (the Department). The CIS, the Aged Care Commissioner and the Aged Care Standards and Accreditation Agency perform vital, yet separate, roles. Yet they are all interconnected, and to some extent, dependent on decisions/activities with the Department of Health and Ageing. ACC has analysed the inter-dependencies and published the results on our website: www.agedcarecrisis.com/transparency-accountability-disclosure/transparency-in-aged-care
- **Fear of reprisals.** Staff, residents and families tell ACC they greatly fear repercussions if they make complaints. Many do not use the CIS because of this.
- **Lack of timeliness.** It is not uncommon for investigations to begin after a resident has died at a facility.

- **Dependence on documentation** by the home as the primary source of evidence. The ACC is aware of incidents where the accounts by complainants (and **their** documentary evidence) have been either disregarded or not sought by the CIS. It appears that documentary evidence provided by the home is, at times, accepted at face value while the concerns of the complainant are not.
- **Power imbalance.** ACC draws attention to the extreme power imbalance between the frail resident and the aged-care provider and asks that every effort be made to hear the voice of the frail resident.
- **Lack of transparency.** Aged-care consumers are unable to access information about substantiated complaints and breaches that have been made about homes they may be considering. The CIS does not currently provide regular, systemic and comprehensive reports to the community.
- **Responsiveness of the CIS at first contact.** We have had several accounts where the initial contact with the CIS was unsatisfactory – with inaccurate advice being given.

Our submission aims to accurately reflect these concerns.

We welcome the opportunity to respond to this important Review, and look forward to a new, improved complaints investigation scheme which will provide security and protection to all those receiving residential care.

On behalf of ***Aged Care Crisis***

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1 Recommendations

1. The CIS should become a truly independent statutory authority.
2. A reformed CIS should have an inbuilt review process. Final decisions, after the investigation of a complaint, should not rest with the Department.
3. On-going training re dealing with complaints from staff, residents and families should be provided to all aged-care personnel in leadership roles.
4. Aged-care residents and their families should receive regular advice that making a legitimate complaint is their right.
5. The *Aged Care Act 1997* should be amended to mandate that reprisals against those who make complaints are subject to investigation and fines.
6. Further strengthening of whistle-blower protection legislation should occur.
7. The CIS should make every effort to give accurate advice in a supportive manner on first contact.
8. All complaints (both those submitted to the aged-care home and those submitted to the CIS) should be registered via a call centre or a designated web site and allocated an ID number.
9. All investigations should be carried out in a timely manner.
10. Investigators should make every attempt to validate the evidence of residents and families. Documentation by the management of the home should not define the investigation.
11. Investigation techniques should be strengthened in order to determine the accuracy of the complaint.
12. A comprehensive written report of the complaint investigation should be provided to both the provider and the complainant. This should include the nature of the complaint, how the investigation proceeded, the outcome of discussions with both the provider and the complainant, the decisions of the investigators and any resulting action.
13. The CIS should make regular, systemic reports to the Department re issues of concern and interest to all parts of the sector.
14. The recruitment and training of investigators should ensure that there is a sound understanding of aged care from the perspective of the resident.
15. There should be full disclosure of the nature and number of substantiated complaints and breaches made at a facility level as well as an account of actions done to address these complaints.
16. Regular, systemic reporting of the work of the CIS to the general public should occur.

2 Issues

2.1 The CIS must be a truly independent body

Currently, the CIS is embedded within the Department – the very body charged with the responsibility of ensuring that all Australians have access to safe, quality aged care. Therefore, its ability to make decisions which are perceived to be truly independent is compromised.

ACC has analysed the interdependencies of the CIS, the Accreditation Standards Agency and the Office of the Aged Care Commissioner (www.agedcarecrisis.com/transparency-accountability-disclosure/transparency-in-aged-care). Although all three bodies have distinct roles, final decisions regarding regulation and compliance rest with the Department.

Recommendation:

The CIS should become a truly independent statutory authority.

2.2 The role of the Aged Care Commissioner

Currently, those dissatisfied with decisions of the CIS can apply for a review by the Aged Care Commissioner. However, the results of the Commissioner's review may, or may not, be accepted by the Department. ACC believes that, if the CIS was a truly independent body - with an inbuilt review process – then there would be no role for an Aged Care Commissioner. ACC is adamant that the Department should not be the final arbitrary body.

Recommendation:

A reformed CIS should have an inbuilt review process. Final decisions, after the investigation of a complaint, should not rest with the Department as is currently the case.

2.3 Fear of retribution

It is commonly known that many of those who are dissatisfied with their care, or the care of a loved family member, are fearful that making a complaint will jeopardise their well-being. Furthermore, staff who alert others to deficiencies within the system or draw attention to incidents of neglect or abuse often find that their ongoing employment is at risk.

ACC is of the view that this is a critical issue which must be addressed as a matter of urgency. We note that when complaints are not dealt with early they are often compounded and relationships within the aged-care home deteriorate. We therefore urge much more to be done to achieve resolution when issues are first identified.

Recommendations:

- a) On-going training re dealing with complaints from staff, residents and families should be provided to all aged-care personnel in leadership roles.
- b) Aged-care residents and their families should receive regular advice that making a legitimate complaint is their right.
- c) The *Aged Care Act 1997* should be amended – mandating that reprisals against those who make complaints are subject to investigation and fines.
- d) Further strengthening of whistle-blower protection legislation for staff should occur.

2.4 Lodging a complaint

ACC receives some feedback indicating disappointment with the first contact with the CIS. This feedback relates to issues such as inaccurate advice about the legitimacy of the complaint and misunderstanding of key issues relating to the complaint.

Complainants generally wish to resolve issues at the facility level. However, correspondents to ACC indicate that when a complaint is made at the facility level, significant data is sometimes lost, issues may not be recorded at all, or records which are made are not retained.

Trends and hotspots could be identified early if an independent system-wide registration system was introduced.

Recommendations:

- a) The CIS should make every effort to give accurate advice in a supportive manner on first contact.
- b) All complaints (both those submitted to the aged-care facility and those submitted to the CIS) should be registered via a website logged via a call centre or designated web site and allocated an ID number.

2.5 Timeliness of investigations

We are aware of some investigations beginning after a resident has died at a facility. Given the frailty of most residents, the complaints should occur in a timely manner.

Recommendation:

All investigations should be carried out in a timely manner.

2.6 Investigating complaints

A common criticism of the CIS made to ACC is that investigators place most significance on the documentary evidence provided by the provider. Verbal, and written, evidence from the complainant appears to have lesser significance. We are aware of incidents where complainants' accounts of events, as well as documentary evidence they have compiled, have been either disregarded or not sought, by the CIS.

There is further feedback indicating that, at times, significant documentation relating to the complaint is missing.

ACC draws attention to the power imbalance between the personnel managing aged-care homes and the frail residents who live in them. Every attempt should be made by investigators to hear the voice of residents and their families. ACC urges that the investigators seek to discover the underpinning problems relating to the investigation - not merely mediation or surface resolution.

Recommendations:

- a) Investigators should make every attempt to validate the evidence of residents and families. Documentation by the management of the home should not define the investigation.
- b) Investigation techniques should be strengthened in order to determine the accuracy of the complaint.
- c) A comprehensive written report of the complaint investigation should be provided to both the provider and the complainant. This should include the nature of the complaint, how the investigation proceeded, the outcome of discussions with both the provider and the complainant, the decisions of the investigators and any resulting action.

2.7 Complaints with systemic significance

ACC is aware that issues raised by complainants are sometimes ones that are common to many aged-care homes. Therefore, a vigorous, independent complaints investigation scheme should be well-placed to inform consumers of beneficial reforms and improvements.

Recommendation:

The CIS should make regular reports to the Department re issues of concern and interest to all parts of the sector.

2.8 Training of investigators

ACC has already drawn attention to the power imbalance between the management team of an aged-care home and the frail resident. We are concerned that industry culture too often prevails – with a resulting desensitisation towards the plight of the vulnerable, frail resident. We therefore urge that investigators be required to show an understanding of aged care from a consumer perspective.

Recommendation:

The recruitment and training of investigators should ensure there is a sound understanding aged care from the perspective of the resident.

2.9 The lack of transparency, accountability and disclosure

Currently, people considering residential aged care are unable to receive any information about substantiated complaints and breaches made against an aged-care home under consideration. Although families are in the situation of entrusting the health and well-being of their loved one to a provider, the number, nature and resolution of substantiated complaints, as well breaches by providers, remain unknown.

Regular reporting is an important part of developing, and maintaining, public trust in the CIS.

Recommendations:

- a) There should be full disclosure of the nature and number of substantiated complaints and breaches made at a facility level as well as an account of actions done to address these complaints.
- b) Regular, systemic reporting and publishing of complaints statistics and the work of the CIS to the general public should occur.

3 Conclusion

Caring for frail, older people is a collective responsibility which guards and protects the welfare of one of the most vulnerable groups in our society. An independent, effective complaints scheme which inspires public confidence is an essential component of our aged-care system. It not only ensures that individuals have a point of redress when things go wrong, it underpins the well-being of all residents.

The quality of residential care, the proper monitoring of homes and a mechanism whereby complaints can be thoroughly investigated is not only imperative to those individuals who live within our aged-care homes and their families. It is also important for the general community. Awareness of any neglect or maltreatment of those who live in residential settings weighs heavily on the minds of all of us, knowing that we too may require full-time residential care at some future time.

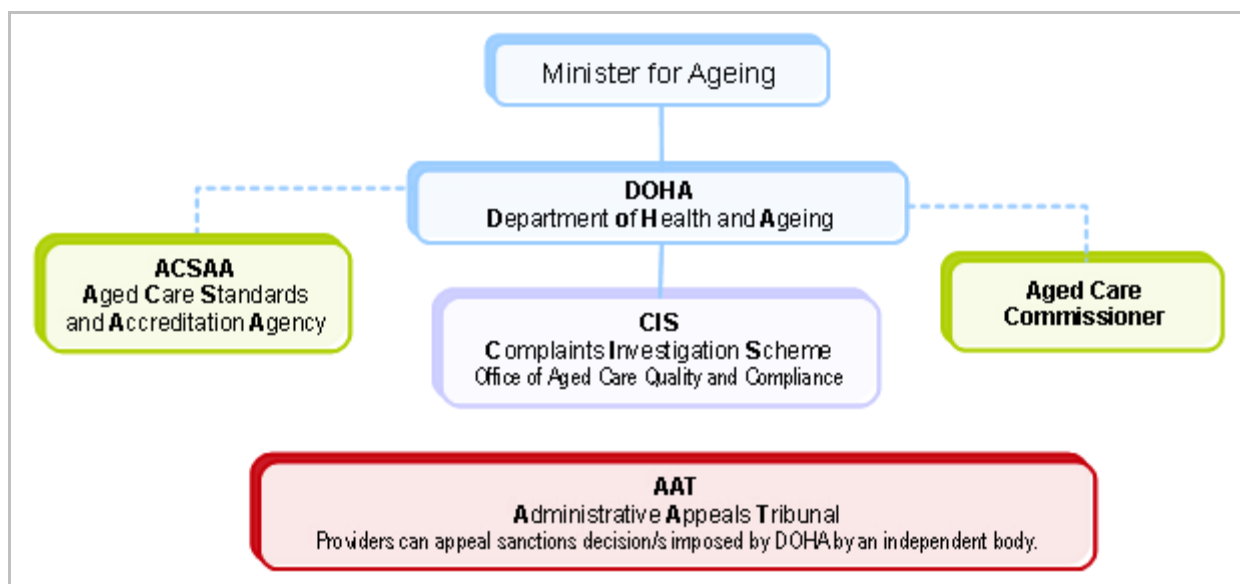
4 Appendix and explanatory notes

4.1 Complaints and compliance relationships

Currently, both the **Department of Health and Ageing (DOHA)** and the **Aged Care Standards and Accreditation Agency (ACCSA)** have a role in monitoring aged-care homes. DOHA monitors compliance by approved providers.

ACSAA manages the accreditation process and monitors compliance with the Accreditation Standards¹.

DOHA is responsible for taking action when approved providers breach their responsibilities, which includes: implementing sanctions, dealing with breaches, issuing Notices of Non-compliances (NNCs) and, Notices of Required Actions (NRAs), conducting complaints investigations and overriding the Aged Care Commissioner's rulings on complaints appeals on occasions.



¹ Accreditation Standards: www.accreditation.org.au/accreditation/accreditationstandards/

4.2 Transparency, accountability and disclosure


"...What is clear is that useful information, on which public policy and democratic debate should be based, is not fully available..."

Aged Care Crisis

Of the nearly 8,500 visits and/or reports made to Australia's close to 3,000 nursing homes by the Department of Health and Ageing in the 2007-2008 year, and the Aged Care Standards and Accreditation Agency, there are only 517 reports publicly available.

The vast majority (426), of these reports relate to the 3 yearly audit visits. Homes have weeks, or even months, to prepare for these visits.² These reports tell us that the aged-care home knows what it is supposed to do but gives no information about what happens on an everyday level.

The current, limited system of late release, and early removal, of adverse reports from the Agency website is also unsatisfactory. Consumers are entitled to the full disclosure of all past, as well as present, reports. Furthermore, information should be presented in a readily accessible format.

What little information is provided makes it difficult to even identify the number of substantiated complaints. For example, the Report on the Operation of the *Aged Care Act 1997* - 1 July 2007 to 30 June 2008 ( [www.health.gov.au/internet/main/publishing.nsf/Content/44AC5B9CB3577BD0CA256F19001013FE/\\$File/ROACA08.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/44AC5B9CB3577BD0CA256F19001013FE/$File/ROACA08.pdf)) states:

"...of the 11,323 contacts it (the CIS) received between 1 July 2007 until 30 June 2008, that 7,496 of these contacts were considered 'in-scope' cases - that is, relating to an Approved Provider's responsibilities under the Act - and subsequently investigated.

Breaches of an Approved Provider's responsibilities were identified in 930 cases..."

The Report uses terminology such as 'in-scope' or 'out-of-scope' cases. ACC presumes that either all, or a portion of, the 'in-scope' cases were substantiated or confirmed complaints.

As already stated, consumers are denied information about substantiated complaints made against aged-care facilities in Australia – as well as breaches of the *Aged Care Act 1997* by the approved provider.

The website of the Office of Aged Care Quality and Compliance (OACQC) claims to publish information on the operations of the CIS. Yet the "**Six monthly report on operation of OACQC**" is now nearly 2 years old³. www.health.gov.au/internet/main/publishing.nsf/Content/ageing-quality-report-operation.htm

Most consumers have no way of knowing that complaints information for the 2007-2008 time period was released by the Minister for Ageing (www.health.gov.au/internet/ministers/publishing.nsf/Content/mr-yr08-je-je225.htm) in November 2008 - in the annual report to parliament: **Report on the Operation of the Aged Care Act 1997 - 1 July 2007 to 30 June 2008**

The *Aged Care Act 1997*⁴ stipulates that a home's response to an adverse finding be made publicly available. Yet, in spite of this requirement, responses can also be made in a form which is not available to the public.

How a home responds to an adverse report is a critical part of understanding the practices and policies of that facility.

² Commonly referred to as **Site Audits**

³ *The previous complaints scheme published basic statistics on a quarterly basis.

⁴ *Aged Care Act 1997 - Accreditation Grant Principles 1999: 9.1 Publication of original decisions (2)*
www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200400954?OpenDocument

No information or reports are released to consumers about:

- the **nature and number of substantiated complaints made at a facility level**;
- the **nature and number of substantiated complaints about a facility received by the CIS**;
- the **nature and number of substantiated breaches**⁵ an aged care facility receives (as a result of complaint where an approved provider has breached the *Aged Care Act 1997*);
- what the provider may have done to **address a substantiated complaint, breach, sanction, Notice of Required Action (NRAs) or Notice of non-compliance (NNC)**;
- the **nature and number of Notices of Required Action** (requiring providers to address a breach) issued to an aged-care facility by the CIS;
- the **nature or number of identified deficiencies including injuries or deaths** caused by negligence at a facility;
- The **nature or number of substantiated reportable assaults** an aged care facility receives (including physical or sexual).

⁵ **Breach:** Is where an Approved Provider has breached its responsibilities under the *Aged Care Act 1997* or Principles

The exploded pie chart coloured slices below, outlines information that **is publicly available (5% of total monitoring activities)**, and illustrates that the majority of information *indicated by the slices and pie chart markers in grey*, remain outside the public domain:

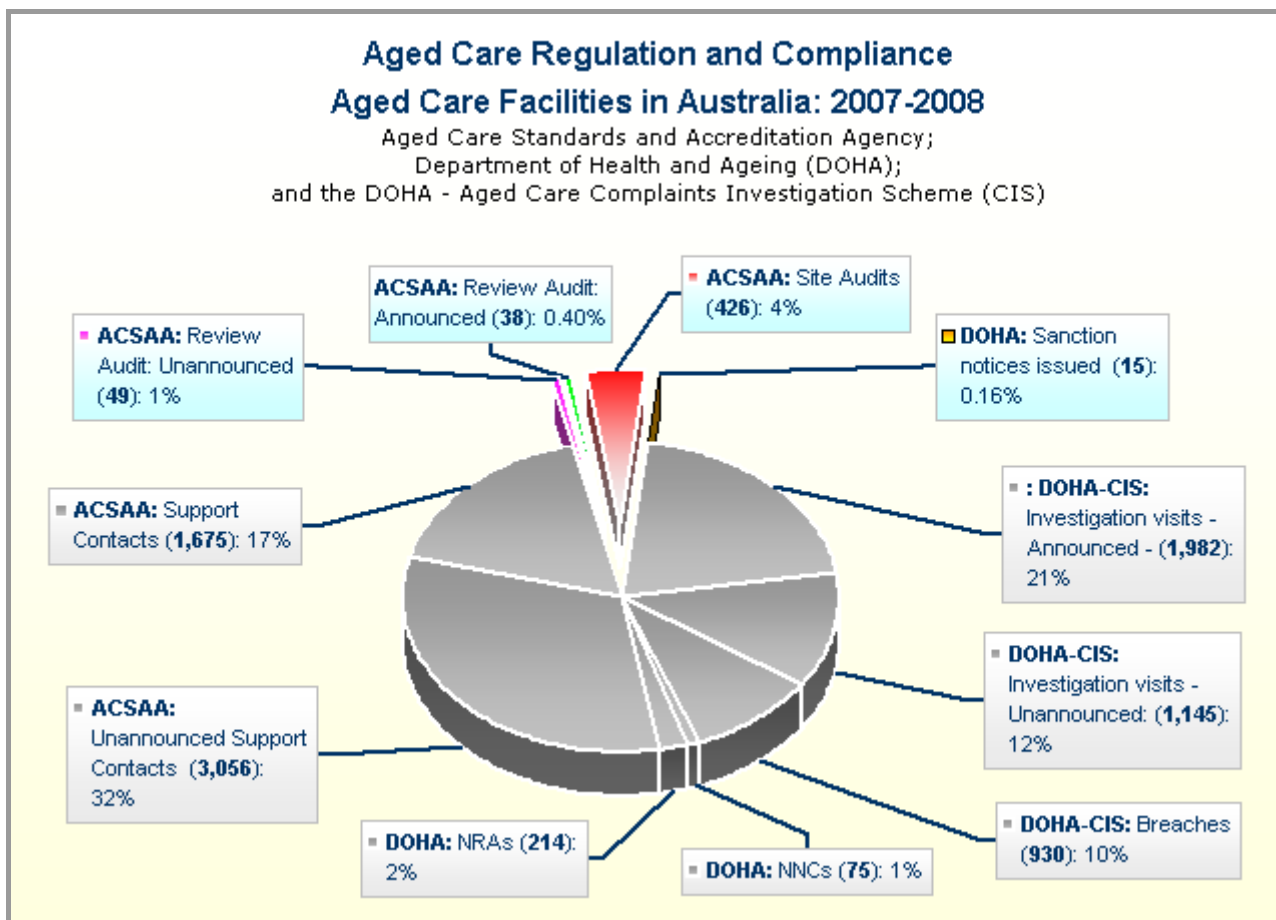


Table of supporting information for pie chart (above):

Table 1: Aged Care Regulation and Compliance - Aged Care Facilities in Australia for 2007-2008

Supporting information:	Agency conducting visit/activity	Type	Purpose of visit/activity	Totals	%
unavailable	ACSAA	visit	ACSAA: Unannounced Support Contact	(3,056)	31%
unavailable	ACSAA	visit	ACSAA: Support Contact	(1,675)	17%
available (limited time)	ACSAA	visit	* ACSAA: Review Audit: Unannounced	(49)	0.50%
available (limited time)	ACSAA	visit	* ACSAA: Review Audit: Announced	(38)	0.40%
available (limited time)	ACSAA	visit	* ACSAA: Site Audit ("cyclic" 3 yearly visit - known and prepared for in advance)	(426)	4%
available	DOHA	Sanction	DOHA: Sanction notices issued	(15)	0.16%
*available from: 1/7/09	DOHA	NNC	DOHA: Notices of non-compliances issued (NNC)	(75)	0.78%
DOHA - CIS	DOHA - CIS	visit	DOHA-CIS: Site visit - Announced - during course of investigating a case	(1,982)	20%
DOHA - CIS	DOHA - CIS	visit	DOHA-CIS: Site visit - Unannounced - during course of investigating a case	(1,145)	12%
DOHA - CIS	DOHA - CIS	Breach	DOHA-CIS: Breach of Approved Provider's responsibility	(930)	9.68%
DOHA	DOHA - CIS	NRA	DOHA-CIS: Issued Notice of required action (NRA)	(214)	2.23%
Total visits for 2007-2008:				(8,371)	

Source of information: Report on the Operation of the Aged Care Act 1997 - 1 July 2007 to 30 June 2008

[www.health.gov.au/internet/main/publishing.nsf/Content/44AC5B9CB3577BD0CA256F19001013FE/\\$File/ROACA08.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/44AC5B9CB3577BD0CA256F19001013FE/$File/ROACA08.pdf)

4.3 The undue emphasis on documentation by Investigators

The following example is a typical case presented to ACC, and one which we documented in a joint submission to the **Inquiry into Older People and the Law**, along with law firm Slater & Gordon⁶.

Source:  www.aph.gov.au/house/committee/laca/olderpeople/subs/sub86.pdf

Example Case: Documentary evidence

"...After my father's death, upon reviewing the documentation from the nursing home (sent to me by the **ACCRS** [Aged Care Complaints Resolution Scheme], I was astounded to discover that some of the documentation supplied by the nursing home to the **ACCRS** appeared to have been 'altered'. Additionally, the documentation provided by the nursing facility to the **ACCRS** was full of inaccuracies, yet the **ACCRS** failed to identify these inaccuracies.

For example, an audit of the nursing home documentation revealed many inaccuracies, including:

- missing documentation;
- over prescribing of drugs (which were never consumed by my father), yet we were charged for those drugs;
- a photocopy of a document signed by the General Practitioner and the Charge Nurse, which I had never seen before, also supposedly containing my signature on it;
- drugs were (apparently) prescribed on the doctors day off;
- on another occasion, my father was transferred to hospital, and further medication and pharmaceutical items were also charged to his account during that time;

No adjustment was ever made to the pharmacy account, presumably indicating that no drugs were returned to the pharmacy.

Although my father has since passed away (*he begged me not to send him back to "that place" whilst recovering in hospital*), I feel it is my duty as his daughter, to try and discover the truth, and to afford my father some type of justice. My background is of a Registered Nurse (University Lecturer) which was useful in identifying the extent of anomalies. *What if I had no training or knowledge at all?*

To try to address the anomalies connected to my father's care, I am now in the process of:

- Reporting the Charge Nurse to the Nurses' Board for care issues, as well as document forgery;
- Reporting the Doctor to the Medical Practitioner's Board for over-medication, over-prescribing and possible Medicare fraud;
- Contacting the Ombudsman regarding how the initial complaint to the Aged Care Complaints Resolution Scheme was handled.

I was and am, stunned at the amount of apparent cover-up and the lengths the nursing home provider went to protect their own interests, rather than the interests of my father."

How does the legal system purport to protect people like my father?

⁶ www.slatergordon.com.au

5 Lack of transparency: Information

Currently, information published about aged-care homes excludes substantiated complaints or breaches of the Act by an approved provider. Information published on the Department's site is a repeat summary of non-compliances usually found as a result of a facility's cyclical 3 year site audit⁷.

Consumers must be able to see what the company or provider is capable of when no one is watching - not just when they have been given time to prepare for a site audit and not simply after providing a response to an adverse finding in order to stay in business.

5.1 Example

The example⁸ below illustrates how little relevant information is available to families when faced with choosing an aged care-home. Although this facility was found to breach the Aged Care Act, information about the six breaches of the Act was not disclosed on official web sites.

Background:

Family lodged a complaint with the CIS – as a result, six breaches were found.

Media article: A family's anguish (13 June 2009 – Western Weekender – Penrith online)

www.agedcarecrisis.com/news/3577-a-familys-anguish

Sample of information available on official Department and Agency websites⁹:

(a) Aged Care Australia (federal government): www.agedcareaustralia.gov.au

Home finder search result on a **particular facility**:

Very little information on each home is published on this website – most of the information is published as: **"Information not available"**.

www.agedcareaustralia.gov.au/internet/AgedCare/Publishing.nsf/content/aged+care+home+record?OpenDocument&id=535&from=matching%2Bhomes%3FOpenDocument%26name%3Djamison%26care_level%3Dany%26special_needs%3Dnone%26btnSubmit%3Dgo

(b) Department of Health and Ageing : www.health.gov.au

www.health.gov.au/internet/main/publishing.nsf/Content/ageing-rescare-sanction.htm

www.health.gov.au/internet/main/publishing.nsf/Content/ageing-rescare-sanction-sancarch.htm

This home is not listed under Current Sanctions or Archived Sanctions.

www.health.gov.au/internet/main/publishing.nsf/Content/ageing-rescare-nnc-current.htm

www.health.gov.au/internet/main/publishing.nsf/Content/ageing-rescare-nnc-archive.htm

This home is not listed under Current Non-compliances or Archived Non-compliances.

(c) Aged Care Standards and Accreditation Agency : www.accreditation.org.au

Report date: 22nd November, 2007. ; Passed all 44 standards and accredited for 3 years

**Report published and publicly available on: 15 January, 2008*

 www.accreditation.org.au/upload/documents/JamisonGardensAgedCareCentre5_120035943376089.pdf

⁷ Site audit: www.accreditation.org.au/residents-relatives/audits/

⁸ This is just one example - more examples are available on request

⁹ As at 26 August, 2009 (web site information checked)

6 Appendix: References

Below are a series of links and resources which demonstrate the significance of the issues raised in this submission. nervous



denotes PDF file

Government and Agency information on nursing homes in Australia:

1. **Aged Care Standards and Accreditation Agency:** www.accreditation.org.au
 - Reports on homes: www.accreditation.org.au/report-advanced/
2. **Department of Health and Ageing:** www.health.gov.au
 - Current sanctions: www.health.gov.au/internet/main/publishing.nsf/Content/ageing-rescare-sanction-sanccur.htm
 - Archived sanctions: www.health.gov.au/internet/main/publishing.nsf/Content/ageing-rescare-sanction-sancarch.htm
 - Current Notices of non-compliances: www.health.gov.au/internet/main/publishing.nsf/Content/ageing-rescare-nnc-current.htm
 - Archived Notices of non-compliances: www.health.gov.au/internet/main/publishing.nsf/Content/ageing-rescare-nnc-archive.htm
3. **Office of Aged Care Quality and Compliance – Complaints Investigation Scheme:**
6 monthly report: www.health.gov.au/internet/main/publishing.nsf/Content/ageing-quality-report-operation.htm
 - Web page checked as at 26 August 2009: information published is for 1 July 2007 – 30 December 2007
4. **Aged Care Australia:** www.agedcareaustralia.gov.au
 - Aged Care Home Finder: www.agedcareaustralia.gov.au/internet/agedcare/publishing.nsf/Content/aged%20care%20home%20finder

Supporting information in this submission:

Report on the Operation of the Aged Care Act 1997 - 1 July 2007 to 30 June 2008



[www.health.gov.au/internet/main/publishing.nsf/Content/44AC5B9CB3577BD0CA256F19001013FE/\\$File/ROACA08.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/44AC5B9CB3577BD0CA256F19001013FE/$File/ROACA08.pdf)

Aged Care Report Card – 1 July 2007 to 30 June 2008

Source: Aged Care Crisis - www.agedcarecrisis.com/aged-care-report-card

Aged care legislation and principles

Links on this page go to the [ComLaw](http://www.comlaw.gov.au) website.

www.agedcarecrisis.com/residents-rights/legislation

ABC Radio National: Australia's ageing aged care system

Source: ABC Radio National - Peter Mares: 29 May 2009 - www.abc.net.au/rn/nationalinterest/stories/2009/2583237.htm

Nursing Home Transparency and Improvement Hearing

Source: United States Senate - Special Committee on Aging (15 Nov 2007)

David Zimmerman, Professor and Academic Director of the College of Engineering, University of Wisconsin, Madison, WI



aging.senate.gov/events/hr183dz.pdf

Nursing Home Transparency and Improvement Act of 2009

A bill to amend titles of the Social Security Act to improve the transparency of information on skilled nursing facilities and nursing facilities and to clarify and improve the targeting of the enforcement of requirements with respect to such facilities.



www.govtrack.us/congress/bill.xpd?bill=s111-647