



**Aged & Community
Services • Australia**



ACSA Submission

COMPLAINTS INVESTIGATION SCHEME

Submission to the CIS Review Project -
Department of Health and Ageing

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Aged and Community Services Australia Inc is the national peak body in Australia representing over 1,100 church and charitable and community based organisations providing accommodation and care services to over 700,000 older people, people with a disability and their carers.

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INTRODUCTION

Older people, their families and aged care providers need access to a system which deals with complaints fairly; decisively when required; and in which they can be confident.

The aged care industry has consistently alerted the Government to the inadequacies of the current Complaints Investigation Scheme (CIS). It is a punitive system, which fails to properly address issues of concern for residents and providers alike.

One of the major reasons for developing the CIS was the inability of the former mediation based scheme (Aged Care Complaints Resolution Scheme) to investigate and resolve complaints. The CIS has gone too far the other way and now does not allow for any mediation or dispute resolution.

It is imperative that this timely review address the inherent inadequacies of the CIS. We believe an independent complaints authority, including a mediation and arbitration system, is imperative to improve access, due process, transparency and the ability to properly manage issues arising in aged care. Such a system has the support of all stakeholders including consumer groups.

This submission outlines the issues and industry's experience with the CIS and the type of system that is required to properly manage issues arising in aged care. The submission format follows the phases of CIS work – Intake, Investigation and Decisions. The majority of comments reflect the experience of residential care providers. Community Care has had more limited exposure to the CIS and feedback to ACSA on that which has occurred is mixed but generally reflects the residential care experience.

THE SYSTEM WE NEED

Aged care requires an independent complaints authority with a capacity for investigating, resolving and conciliating complaints. The authority should be overseen by an agency or board comprising consumer representatives, provider representatives and other key agencies (not just the Department which funds it as this is a conflict of interest and reduces the independence of the scheme). An independent agency reporting directly to Parliament like the Commonwealth Ombudsman is one possible model.

The complaint system would comply with the Governments 1997 "Benchmarks for Industry-Based Customer Dispute Resolution Schemes". Performance monitoring to this standard would be undertaken. The current CIS does not meet these benchmarks.

The focus of the system would be on resolving the complaint for the complainant and all parties involved. This focus must replace the blame and punitive ethos of the current CIS system.

The National Aged Care Alliance (comprising all the stakeholders in aged care - providers, consumers, professional groups and unions) paper *Resolving aged care complaints. A continuous improvement orientation for the aged care complaints mechanisms* clearly sets out how such a system can be achieved. The paper is available from www.naca.asn.au

THE CURRENT COMPLAINTS INVESTIGATION SCHEME (CIS)

The CIS does not adequately resolve complaints for anyone involved (older people, families, providers) is punitive and creates a major administrative load. It pays insufficient attention to due process or standards of evidence and is regarded with some concern by many of the legal firms who specialise in aged care.

“The CIS plays no part in the active resolution of disputes, ignoring contemporary best practice in complaint resolution schemes. It does not refer complaints to mediation or conciliation and does not give the parties the chance to talk before handing down its decision on whether the approved provider is at fault or not. The CIS acts as the final arbiter of allegations of breach without following due process during its inquiry, not allowing a proper opportunity to be heard and relying on inadequate evidence. The Department does not pay sufficient regard to the Aged Care Commissioner when she finds the CIS got it wrong, ignoring the recommendations on more occasions than a properly functioning appeal system should allow.”

Victor Harcourt Principal Russell Kennedy Solicitors

AGED CARE COMPLAINTS CONTEXT

It is important to note that the aged care industry cares for over a million people per year, in either residential care or their own homes, mostly without incident.

In 2007-08 the Complaints Investigation Scheme (CIS) investigated 7,496 complaints with only 930 cases resulting in a finding of breaches of an aged care provider’s responsibilities.

A Notice of Required Action (NRA) is issued when a breach is found and the provider has not already taken action to address the issue. In 2007-08 there were 214 issued NRA’s (less than 3% of complaints) of which 89% were complied with resulting in no further action being required.

Only 11% of complaints “remained open” at 30/6/2008.

THE COMPLAINTS PROCESS: ISSUES & INDUSTRY EXPERIENCE

Stage 1: Intake

Making a Complaint

ACSA has been advised that all calls to the CIS are logged as complaints even where the caller may be seeking information or advice. This is not a sensible approach. It would be preferable for the caller to receive the necessary and sought after information, to assist them decide whether or not they wish to make a complaint, prior to any action being taken.

When a complaint is received the CIS should ascertain whether the individual has spoken to the provider or taken the issue through the internal complaints mechanism. Where it is appropriate, and certainly on more minor matters, the CIS should encourage this to occur and see if it can be resolved before lodging a formal complaint. Callers may be unaware that there are internal mechanisms for resolving complaints. This would assist in resolving more minor issues in many instances.

The residents of aged care homes and the clients of community care services are in an ongoing relationship with their service provider. Both parties are likely to need to ‘live with each other’ after a complaint is dealt with. For this reason it is important that mediation, including dispute resolution is well explored before any investigatory process takes over. Equally, if it is clear that resolution through mediation is not likely to be achieved; earlier closure through investigation and arbitration should be pursued.

It is important that all complaints made are received in a neutral manner by CIS staff. It seems that the complainant often believes the CIS is “on their side” even before any investigation has occurred. This contributes to an overall view that the CIS operates on the basis that the provider is guilty and must prove their innocence.

Anonymous Complaints

The CIS accepts anonymous complaints. The Aged Care Act offers confidentiality to complainants and CIS officers are not required to disclose details of complaints. Industry acknowledges the need for confidentiality and suggests that this negates the need to accept anonymous complaints. The acceptance of anonymous complaints enables disgruntled people such as ex staff to lodge vexatious complaints. Ultimately this is a cost to the system and should be more proactively managed by the CIS or its successors.

Generally, anonymous complaints are not capable of resolution through a mediation or alternate dispute resolution process. This is a further reason for not accepting them.

Complaints Information

There should be some level of information given to the aged care provider about the complaint even where it is anonymous or confidential. It is not uncommon for providers to still be unaware of the nature of the complaint made against them even when the investigation has been completed. This is a complete denial of natural justice and works against the provider being able to assist with the investigation properly, express their views or position on the complaint or address any issues that arise as a result.

Ongoing/Difficult Circumstances

It is inappropriate for providers to have formal complaints investigations commenced in situations where they have had well-known challenging relationships with families. The CIS should take the opportunity to clarify the relationships/situations with providers before accepting or proceeding with a new complaint, particularly if the complaint is the same as one raised previously by the same complainant and fully investigated by the CIS on a previous occasion.

If the complaint is accepted, the CIS should undertake enquiry work as the first action including referring to its own records of the previous complaint prior to commencing to collect the same information again.

Stage 2: Investigation

The length of time from when a complaint is received, actioned and resolved is generally far too long. It can be months before a complaint is finalised and in some instances there is no real resolution of the complaint. Most effective complaints systems aim for the timely resolution of issues. The CIS would be significantly enhanced by publishing and adhering to a time frame for each step in the process.

It is not uncommon for providers to report being contacted by telephone with requests for copious amounts of information that must be provided within a short timeframe only to have the investigation continue for many months. The amount of information required should match the nature of the complaint (i.e. less should be required for more minor complaints) and reasonable time frames (48 hours) to provide information should be in place.

Where subsequent information is required, it should be requested in writing to ensure clarity about what is needed. Providers report that in most instances it is they who have to maintain contact to find out about progress on the complaint. The CIS should keep all parties to the complaint informed about progress.

CIS Staff

General feedback about the CIS indicates that there is a confrontational approach to investigation with a presumption of providers' guilt from the outset.

While all are agreed on that, providers have mixed experience of the investigation process, which is most likely to be the result of individual CIS officers' approaches. The on site performance and behaviour of all investigators should be monitored. Performance management of CIS staff is essential to ensure that the system operates as required rather than being subject to individual variations and preferences as is currently the case.

Investigators place significant demands on providers' time and for documentation. In some instances this is due to a lack of aged care operational and clinical knowledge. While it is acknowledged that one of the key skills for CIS staff is around investigation, it is important to ensure there is a level of aged care operational knowledge.

Investigate the Original Complaint

The main role of the CIS should be an investigation of the specific issue or matter raised by a complainant. The current process allows a CIS officer to stray from this before it is addressed and resolved. Unless there is a real resident/client health or safety risk discovered in the investigation then the original complaint should be finalised before other issues are investigated. Providers are often not informed when an investigation moves from the original complaint and the reasons for the shift are often unclear. This works against transparency and the provider's ability to contribute to resolving the issues.

It is important that the specific matter or incident is investigated rather than investigating any or all systems related to the general area. Systemic matters are monitored and assessed by the Aged Care Standards and Accreditation Agency (the Agency) or the community quality review system.

Risk Assessment Framework for Escalating Complaints

The framework used to escalate complaints is not well known or understood. Clear criteria should be applied and made available to all parties so there is a transparent process.

Relationship of the CIS & the Aged Care Commissioner & Accreditation Agency

The relationships between these three bodies are unclear and often confusing for providers.

The current model creates duplication of roles between the CIS, the Agency and the Community Quality Review system. Often the different bodies are investigating the same issue at the same time or shortly after each other. They have different requirements of providers and may arrive at different conclusions. This is duplicative, confusing and wasteful of public resources.

It is unclear how it is determined that there is a systemic problem, requiring referral to the Agency, rather than an individual complaint which needs to be resolved. This should be transparent to all involved. The CIS is required to advise the provider if a referral to the Agency is being made. However providers report that they often receive an unexpected visit from the Agency or the community care quality review process, shortly after a CIS visit without receiving advice that such a referral has been made.

The roles of each party must be clear and add value to the provision of care. Currently they add administrative and time burdens, taking the focus away from care, often without resolving the original complaint!

The Commissioner

The Aged Care Commissioner is an ineffective appeals mechanism which lacks any real authority or independence. The Commissioner can only make recommendations to the Department of Health and Ageing which it can accept or reject. Currently 24% of the Commissioner's recommendations are ignored by the Department of Health and Ageing.

Appealing to the Commissioner may instigate a secondary investigation of the original complaint rather than a review of the CIS decision. This adds another, unnecessary layer to the process and just contributes to the general confusion about respective roles. The Commissioner's role should focus on reviewing CIS decisions rather than on undertaking another investigation.

The scheme must include a legitimate appeal body which is independent and its decisions are upheld.

Compulsory Reporting

Aged care providers must notify the CIS and the Police if a reportable assault has occurred. There are many issues with this compulsory reporting approach:

- The police are generally disinterested and unwilling or able to take any action;
- The CIS generally adopts a punitive approach and assume guilt and negligence by the provider. Staff are often required to be "stood down" pending the investigation which may take a protracted amount of time. This has resulted in innocent valuable staff leaving aged care and for a cost to the provider in paying staff who are not working.

Investigations into reportable assaults must be handled sensitively, neutrally and quickly, respecting the rights of all parties.

Stage 3: Decisions

Written information from the CIS is often unclear about the nature of the complaint, the outcome of the investigation (i.e. whether there has been a breach or whether there has been a referral to the Agency) or how performance could be improved. The 2008 Annual Report of the Aged Care Commissioner identified this issue stating that there should be information on the findings, evidence and providing the "real reasons" for decisions. The CIS needs to communicate its findings in a clear and timely manner.

ACTION REQUIRED NOW

Development and introduction of a new and effective complaints system must be a Government priority. However the current system should not be allowed to continue in the interim without addressing industry concerns. Improved transparency and communication should be implemented immediately and include:

- Publicly available process timelines, including a maximum time for complaint resolution and reasonable time frames for providers to meet CIS information requests.
- Introduction of a mediation process to deal with more minor issues (i.e. those not related to a breach of the provider's responsibilities of the Aged Care Act).
- Provision of clear information which maintains confidentiality to the provider including on what the complaint is about, written requests for information after the initial investigation, feedback on the progress of the complaint, clearly articulated decisions citing evidence and trend data that enables providers to improve performance;
- Clarification of the roles and transparency in the relationships between the CIS, the Department of Health and Ageing, the Agency or Community Quality Reporting and the Commissioner.
- Improved training for CIS staff on impartiality and aged care operational/clinical matters.

These actions would improve outcomes and can be achieved relatively easily and quickly enabling instant improvements while a new and better system is introduced.

CONCLUSION

The CIS does not meet the needs of any of the parties it has been established to serve. Aged care in Australia does not have an effective complaints system currently.

This review must address the many serious concerns of consumer groups, the industry and legal experts who attest to the flawed nature of the CIS. A new system must be developed and introduced, with immediate improvements made to the CIS in the interim, as a matter of urgency.

Such action will protect consumers, provide aged care providers with a fair and just system and reduce the current waste of public resources which would be better used to provide care for older people.