Dr Norma Jean Duncan submission 46

As requested at the Hearing for Inquiry into Older People and The Law held in Sydney on the 15th May 2007 please find enclosed further information:

1. IMPOSITION OF SANCTIONS

At the hearing I was referred by the Committee to the following statement in my written submission of the 1st Dec 2007, which was: *In practice these penalties are usually not imposed even when the Accreditation System finds a provider in breach of more than half the 44 Accreditation Standards.*

I was asked: *Could you outline such an instance?* I took the question on notice.

The information was harder to retrieve than I anticipated due to changes introduced by the Agency about twelve months ago which severely limit public access to past reports. This is discussed more fully below.

For this reason the following list is by no means complete but is given to show examples I have come across and have been able to find stored on my computer.

I was unable to find one that had failed more than half the standards and not been sanctioned but have found one that had failed equal to half and not sanctioned and others that had failed miserably, scoring in the 20's out of 44 and not sanctioned.

Examples Of Homes With Very Poor Accreditation Scores That Were Not Sanctioned Are:

Calvary Retirement Facility	Accreditation score = 22/44 on 27.03.06 To my knowledge this home was not sanctioned but the report is no longer available on the Agency website to check
Coogee Private Nursing Home Number of high care residents=39/40	Accreditation score = 23/44 on 5.9.06 Accreditation score = 44/44 after 5.09.06 but undated

Ginninderra Gardens Hostel	Accreditation score = 28/44 on 16.01.2006
	Accreditation score = 40/44 on 6.06.2006
	Accreditation score = 44/44 subsequently? Date
Ginninderra Nursing Home	Accreditation score = 23/44 Jan 06
75/75 high care patients	Accreditation score = 37/44 June '06
	Accreditation score = 44/44 subsequently? Date
Graceland Manor	Accreditation score = 27/44 on 08.08.06
	= 43/44 on 20.02.07

If a home gets a score under 30 usually important parameters like 'Clinical Care', 'Medication', 'Nutrition and Hydration', 'Behavioural Management', 'Pain Management', have not been met. This may be the case even when a home scores higher e.g. Ginninderra Gardens Hostel rating rose from 23/44 to 37/44 but still failed a number of these parameters. As a doctor with experience equal to forty years in the fulltime practice of medicine including twenty five years in General Practice I find failing in these areas totally unacceptable.

<u>The Accreditation Agency Remodelled Its Website About Twelve Months Ago With Loss of Transparency.</u>

Until about a year ago, previous reports on all nursing homes could be viewed and the history of a particular home's scores tracked over successive assessments. But now the ability of the public to easily access any but the last visit and Agency Report on a nursing home via the web is very difficult.

It is virtually impossible to access the Accreditation history of a facility in a timely manner as this excerpt from their website shows: *If you would like a copy of a report which is not current or cannot be viewed on this website, please write to national@accreditation.org.au or to the General Manager, Accreditation, PO Box 773, Parramatta NSW 2124. Please state which home, suburb or town and state, and the date of the archived report you are seeking (if you know it), and provide a return name and email or postal address.*

In one instance known to me the report took six weeks to arrive. Commonly residents enter nursing homes when their needs are urgent, sometimes on being discharged from hospital and they don't have six weeks to find a facility.

The change in the website means that if a nursing home was to get a very low score but was not sanctioned and then was reassessed and scored higher, then the previous low scoring unsanctioned report would now disappear from public view. This is why the report on any homes unsanctioned despite scoring less than half marks i.e.22/44 would become inaccessible to me once reassessment at a future date had put them in either a sanctioned group or a higher scoring unsanctioned group.

Similarly, now when a home is sanctioned you can see the score it now gets but you don't know what the previous score was.

No doubt the Agency database would have a system for applying filters so that the question I was asked and others of importance in relation to accreditation scores could be easily answered and would be able to be released to the Committee on request.

<u>This Inability to Obtain Previous Reports Removes Accountability of the Agency to Explain Large Variations in Assessment Scores over Short Time Frames</u>

e.g. Mrs. A. W. (name available) died after being attacked in October 2003 by another resident with dementia. After an Accreditation visit one month before the attack the home received a score of 43/44 but three weeks after the attack the Agency returned and gave the home a score of 23/44. The score changed 20 points in less than 2 months.

<u>Delay in Publication of Adverse Reports</u>

It is also unreasonable that when a home is sanctioned it can take up to six months for the report to appear on the website, (see examples below). The Australian public has a right to know if a facility has areas of non-compliance and should not have to wait months to learn the truth. It means that anyone looking for what they hope to be a good standard home will be misled for this period of time. One reason for this is that publication of the report is delayed until the expiry of the appeals period after a sanction is imposed. Thus the home is protected while the public is not.

Date/s of Audit:	Publish date of report:	Min. time to publish:	Facility details/non-compliances recorded:
19 Oct 2005 - 21 Oct 2005	8 March 2006	20 weeks (5 months)	Maxine Louise Facility (NSW) 80 residents with special needs; failed 20 standards
19 Sep 2005 - 21 Sep 2005	7 April 2006	28.5 weeks (6.5 months)	Brighton Gardens Aged Care Facility (Vic) 60 bed facility - 30 high care residents; failed 13 standards
7 Nov 2005 - 14 Nov 2005	13 April 2006	22.4 weeks (5.5 months)	Warley Nursing Home (Vic) 30 high care residents; failed 23 standards; 2.5 months later, still failing on 16 standards
28 Feb 005 - 1 Mar 2005	18 May 2006	11.2 weeks (2.75 months)	Wallsend Aged Care Facility (NSW) 103 high care residents; failed 16 standards

2. A FLAWED ACCREDITATION PROCESS

In the Hearing I was asked to give my view as to why the accreditation process is flawed.

A. THE OVERALL PICTURE

The basic flaw in The Aged Care Standards and Accreditation Agency process called Accreditation is that it does not reflect the true standard of care in a nursing home. It seems that the home is judged on its paper work, not its performance. The home is judged on what it says it does and not on what it actually does.

The record of complaints lodged against a nursing home is a better measure of standards than accreditation because it reflects standards delivered. This record could be a valuable tool to raise standards but is rendered ineffective because of lack of transparency and hence public accountability.

The collecting of accurate information during accreditation is also prevented in the following ways:

- Prior Notice:

  I have been told by staff that because of the notice given to homes prior to the Accreditation visit that the home spends about six weeks getting ready. Staff may be asked to write up faulty documents in retrospect, told what to say and how to behave when the Accreditors are there; extra members of the home's own staff are present rather than agency staff; extra equipment may be brought in temporarily; meals on Accreditation day are above usual standards; staff are interviewed but because of the fear of job loss will usually say what they have been told to say; residents are interviewed but 60-70% have a degree of cognitive impairment which makes communication difficult; the fear of retribution is not only a common perceived fear residents and relatives have, but is also a very real one. (See Hogan Report 2004 and Senate Committee of Inquiry Report 2005); larger providers with greater resources may employ someone to go around their various establishments to make sure the documentation is in order, - this means they are more likely to pass Accreditation but does not correlate with standards of care.

- Spot Checks

  Spot checks are to be increased under the impending reforms. I understand homes may receive one spot check per year with only something like thirty minutes to 24 hours notice. This should help to avoid some of the subterfuges. However these spot checks will not be comprehensive and so the 44 standards will not be checked. It is not clear how many of the standards will be checked or in what detail.

- Conflict of Interest

  Some Accreditors also work as advisers to homes under the threat of sanctions.

- Large Variations In Accreditation Scores Over Relatively Short Time Frames

  This could mean that there is too much variation in the quality or approach of the assessors. It could also mean that a different approach to Accreditation is taken by the Agency once the public has been alerted to poor standards.

- The Accreditation Agency Has Virtually No Public Transparency.

  As I have shown above the availability of Accreditation Reports is very limited.

  When a complaint is lodged with the Office of Aged Care Quality and Compliance (OACQC) which is part of the Federal Department of Health, it is only handed on to the Agency if the OACQC deems there to be either a serious problem or a systemic problem within the home. Where that is the case, the Agency visits the home. From this visit a Support Contact Site Record is generated.

  This Site Record is never released to the complainant or the public. It goes back to the Department of Health and Ageing which decides on compliance action, if any. Note that Department of Health and Ageing is not independent of government and so is either not independent of political pressure or is not seen to be independent of political pressure. It is not politically astute for the government of the day to admit to poor standards of care for which it is responsible.

B. THE PERFORMANCE of THE ACCREDITATION AGENCY IN MY MOTHER'S CASE.

I quote the complaint I lodged about my mother's care because it is an example of how Accreditation fails to function in practice. It illustrates the systemic problems of an ailing Complaint and Accreditation System and the resulting cost in human terms. It is in this context only that I draw it to your attention.

Note photographs taken as confidential exhibits.

To show that this was a complaint where standards were indisputably below the acceptable I have enclosed photographs of my mother's injuries and excerpts from the DAT Report.

Please note: Because I do not wish this addition to my evidence to be kept from public view I have de-identified the documents. If you would like copies without de-identification I will send you particulars of my mother's name and that of the facilty concerned so that you can obtain the original documents from the Department of Health and the Accreditation Agency. (For the sake of my mother and my family please do not publish photographs of her face.)

The Hostel concerned had an accreditation rating of 44/44. I lodged the complaint with the Complaints Resolution Scheme (now renamed the Office of Aged Care Quality and Compliance) and their investigation generated the DAT Report which was then sent to the Aged Care Standards and Accreditation Agency. The Agency visited the home and this visit generated the Site Record.

EXCERPTS FROM DETAILED ASSESSMENT TEAM (DAT) REPORT.

"Progress Notes

- *Repeated issues highlighted with lifting — resident continually complaining of pain and discomfort related to the use of lifter.*
- *Left on bed pan for 25 minutes attempting to urinate (4/12/2001) Resident repeatedly expressed she was unhappy with the lifting process due to the pain it caused, dignity issues and the fact she felt insecure (almost daily for the month of December)*
- *Entry indicating that staff rights must come before resident rights -lifter to be used at all times and resident not to have underpants on at any time day or night.*
- *Expressing wish to die (6/7/12/2001, 8/12/2001)*
- *Resident sat on a bed pan for 30 minutes but couldn't do anything because she doesn't feel safe (10/12/2001)*

- *Large 'blood sac' noted at back of calf and two red marks noted on back (11/12/20..)*
- *'Huge blood blister' noted on back of left leg as well as blood blisters and bruising on shoulder and back (12/12/2001)*
- *Noted that resident was bruised on left inner thigh, vaginal area and lower stomach (14/12/2001)*

Medical Notes:

- *13/12/2001 large superficial haematoma to left calf*
- *18/12/2001 extensive bruising left leg, lower abdomen/vulval area- ?due to lifter*

Summary

- *A review of the documents provided by the service indicates*
- *... staff at the facility appeared unable to provide the level of care required by the resident ... progress note entries that repeatedly indicate the resident was unhappy with the use of the lifting device due to continued injury, pain and fear. Numerous incident forms and progress note entries also indicate extensive bruising, blistering and skin tears caused by the use of the lifting machine. It is not clear that the facility was able to accurately assess the needs of the resident and implement a system that ensured both staff and resident satisfaction. ... it is not clear that the service took appropriate steps to implement a safe medication management system;*

  The nursing care plans provided contains contradictory information and does not clearly indicate the needs of the resident or provide clear direction for staff

One year after I lodged my complaint, a distressed patient came to me in my surgery and reported that her mother had just been subjected to a breach in standards at the same Hostel in the same area of care, - lifting and handling the patient. I knew then that my complaint had not been effective. Her mother was in her early 90's and had fallen on the floor. Two members of staff told the daughter that they had stood and watched the elderly lady crawl across the floor for 15 minutes until she managed to pull herself up using a chair leg because it was against the lifting policy of the home to help her. This lady weighed about 40 kgs and died about three or four weeks after this event. If you want this verified by the daughter I know that she would certainly do so as would her General Practitioner.

(Note excerpt from the Accreditation Agency Site Record from my complaint quoted below: ***Expected Outcome: 1.6 Human resource management*** *... One resident stated that when help is required, staff assist immediately ...)*

I decided that I needed to know where the investigation process was flawed because I naively hoped to help fix it. I applied for Freedom of Information to obtain the DAT Report and the Site Record. This took approximately three years and $93,000+ in legal costs. I obtained half the DAT Report. I obtained none of the Site Record from the Agency through FOI processes.

However the Site Record fortuitously came into my hand outside the FOI process.

Support Contact (Site) Record

This is the record of a support contact (site), conducted in accordance with the Accreditation Grant Principles 1999 with: ... Hostel ... on...

Was a Plan for Continuous Improvement submitted prior to the support contact?

No

If 'Yes' did it include a Progress Report?

No

Part 1 - Continuous Improvement

... Hostel is actively pursuing continuous improvement. The service used informal suggestions, written suggestions and complaints, discussion at meetings, surveys and the results of audits (conducted by the service and by the regional manager) to gain ideas for improvement. Policy 1.01.000 (Continuous Improvement) was sighted by the team.
The team sighted the audit schedule, It was noted that all standards are covered in this schedule, although to a lesser extent Standard Three which is covered largely by the resident satisfaction survey (also sighted by the team). Evaluation of the actual audit and survey processes is also performed by the service.

The service is currently reviewing its formalised suggestions process. Although staff, residents and visitors can currently write letters and notes detailing suggestions, the service is drafting a formalised suggestion form to make access easier.
The regional manager stated that the organisation reviews its policies according to an annual schedule. Each service is consulted during this process.
To communicate improvements to the service, an extensive committee and subcommittee structure is in place (minutes sighted). Continuous improvement is discussed at each of these meetings. Results of audits are also conveyed at meetings. The quality committee discusses the overall process of quality management. Memos and notices are also used to convey continuous improvement information.

Two residents indicated that improvements are announced at resident/relative meetings and at meals (confirmed by hostel manager). Both residents indicated that although they did not believe improvements needed to be made to the service that they felt free to make suggestions and complaints to staff if required.

Improvements resulting from suggestions and audits include:

- *Changes in staff duties*
- *Increase documentation education*
- *New forms created to regulate medication management (resulting from an increase in medication errors)*
- *Blister packs changed from 30 day supply to 7 supply*
- *Extra areas scheduled for cleaning*

Part 2 - Accreditation Standards

Part A: Expected Outcomes in respect of which improvements were required to achieve compliance:

Nil

Part B: Expected Outcomes with non-compliance identified during this support contact

Nil

Part C: Other matters identified during the support contact

Expected Outcome: 1 A Comments and complaints

Each resident (or his or her representative) and other interested parties have access to internal and external complaints mechanisms.

Four residents were interviewed who stated that they feel free to make comments and complaints if necessary. The residents stated that they would do this by talking directly to staff or by making comments at residents/relatives meetings. The hostel manager stated that residents can discuss any issues with staff members freely.

The team sighted the suggestion box located near the administration office. The regional manager stated that the service is temporarily swapping service managers with another service to increase continuous improvement opportunities which has resulted in the drafting of a generic form for suggestions, although residents can still write their own letters and place them in the box. The box is checked fortnightly. .

Complaints Resolution Scheme brochures were sighted throughout the building. The complaints log was sighted and it was noted that five complaints had been logged in [date] (all of which were resolved within a few days). The actions and review dates were also documented on the log. The comments and complaints policy [date} was sighted by team, which included a flow chart for management of comments and complaints. The policy's aim is "to actively encourage feedback, comments and complaints on all aspects of its services, [in]form residents, their representatives, staff and other interested persons" which was reflected in the service's individual management of each complaint/suggestion sighted on the log.

Expected Outcome: 1.6 Human resource management

There are appropriately skilled and qualified staff sufficient to ensure that services are delivered in accordance with these standards and the residential care service's philosophy and objectives.

Six residents were interviewed by the team. No resident indicated a shortage of staff. One resident stated that when help is required, staff assist immediately.

The team interviewed the hostel manager and regional manager. They also reviewed the rostering system and policies pertaining to human resource management (1.06.000, 1.06.009, 1.06.010, 1.06.019).

The roster has been changed in consultation with staff. There are now two full-time staff members during the day, with other shifts overlapping to make changeover smoother. The hostel manager stated that this new roster will be reviewed after three months, with necessary changes made. The hostel manager stated that high care residents do not require more staffing at night due to the nature of their needs (predominantly behavioural). There is currently a stand-up nurse on shift of a night. The regional manager stated that if more staffing is needed, further staff would be employed by the service. Non-clinical staff (for example, hotel service staff and recreational activities officers) are also employed by the service.

The service also incorporates education and a staff appraisal systems to ensure all staff are adequately qualified. All staff are required to keep a log of their education which is reviewed by the hostel manager. The education schedule was sighted by the team, and it was noted to incorporate all four of the Accreditation Standards. Performance on certain issues is also monitored (for example, all staff have been reviewed for their manual handling skills).

The service's recruitment process was reviewed by the team. All staff on commencement of employment are given a copy of the staff handbook and are orientated to the service to ensure

familiarity with the policies and procedures of the service.

Expected Outcome: 1.8 Information systems Effective information management systems are in place.

The team reviewed the communication system of the service. The use of meetings, meeting minutes (staff must sign minutes to ensure they have read meeting minutes), noticeboards, memos and announcements at meals is used to convey information to staff, residents and representatives.

It was observed by the team that resident files were in a locked filing cabinet accessible only to staff. Archived files are sent temporarily to a locked room on the premises. When two boxes are full, these are sent to the head office's locked storeroom.
Five clinical records were reviewed by the team. Although all required information was present in these records, it was noted that information is often replicated in the progress notes from the care plan. The regional manager stated that although the service would like to simplify its documentation processes, large amounts of documentation are necessary "in order to meet validation issues". The regional manager also stated that the system is sustainable due to the lack of staff turnover.

Expected Outcome: 2.4 Clinical care

Residents receive appropriate clinical care.

The team interviewed six residents; the hostel manager; the team leader; and two care service employees (level III). They reviewed five clinical records and the policy and procedures covering health and personal care.
The service refers to the Policy and Practices Manual (last review date ... and the Procedure Manual (last review date ...) for health and personal care policies and procedures.
Five clinical records were reviewed by the team. AI! records contained comprehensive assessment charts, a current care plan for each resident, progress note reporting and three-monthly evaluations. Global reports are documented in the progress notes every three months as well. The team noted that this information is often replicated in the progress notes from the care plan. The service uses integrated progress note reporting which included regular reviews by the residents' medical practitioners.

The service has a regular case conferencing procedure. These are attended on a rotational basis and all the care staff are involved as well as the resident and family if there are issues to be resolved. The team reviewed the case conference notes of one resident.
A procedure to include the resident's input when staff are completing the "working care plan" has just been introduced. The team leader told the team that this has been very successful and ensures the residents' care needs are discussed with them. A new data base assessment has also recently been introduced. The team leader said this tool was more comprehensive than the previous data base tool.

Three residents interviewed stated they were satisfied with the care given by staff and their medical practitioner. They said the staff were very attentive and caring and would notify their medical practitioner if they felt it were necessary or if requested by the resident.

Expected Outcome: 2.5 Specialised nursing care needs

Residents' specialised nursing care needs are identified and met by appropriately qualified nursing staff.
The team interviewed the hostel manager and team leader. They reviewed five clinical records and the policy and procedures covering specialised nursing procedures [date].
The hostel manager is a registered nurse and works full time Monday to Friday. The team leader is an enrolled nurse and works full time Monday to Friday. A number of care service employees

hold the Level III Certificate.

The team leader interviewed stated the resident's medical practitioner is notified for any change in the residents' conditions. After hours calls are made to the Radio GP. The service is able to access the community base team (TACT) for IV therapy follow ups. One resident is on peritoneal dialysis and is followed up by the renal unit at Wollongong hospital. The service can also access health specialists at ... hospital.
Resident 1: care plan noted blood sugar levels to be recorded daily. These were noted on an observation chart.
Resident 2: care plan noted blood pressure to be recorded fortnightly. These were noted on an observation chart.
Resident 3: identified skin tear on the day of the visit. This was noted in the progress notes as well as in the dressing procedure.
Expected Outcome: 2.10 Nutrition and hydration
Residents receive adequate nourishment and hydration.

The team interviewed the team leader and a care services employee (level III). They reviewed five clinical records and the policy and "procedures covering nutrition and hydration [date]
A nutrition sheet is used to identify residents' nutrition and hydration needs. The kitchen is notified of any special requests. A functional assessment of residents' eating and drinking ability is also completed. Five of these two forms were reviewed by the team. The care plans of these residents noted their nutrition and hydration requirements and three-monthly evaluations.

The team leader informed the team that a resident's weight would be regularly recorded if there were an identified need. The service is able to access the dietician from ... _ if necessary. The team leader said that this service was used frequently.
Six residents interviewed by the team stated they were satisfied with the food service.
Expected Outcome: 2.11 Skin care
Residents'skin integrity is consistent with their general health.
The team interviewed the team leader and one care services employee (level III). They reviewed five clinical records and the policy and procedures covering skin care and wound care [date].
The team leader stated that all resident skin tears are reported to residents' medical practitioners. An accident/incident report is completed and given to the hostel manager for follow up. Incident reports are compiled for statistical analysis then filed in the resident's notes. Only one resident has a skin tear at present. The team noted that this had been recorded in the progress notes as well as in the dressing procedure. It was noted in two residents' care plans the need for sorbolene cream applied to dry skin after showering:
The service has a supply-of skin care aids for residents' needs. These include lambs wool, a ripple mattress and a foam mattress. The team leader stated that if a resident required any special skin care aid that it would be provided.
Expected Outcome: 2.14 Mobility, dexterity and rehabilitation Optimum levels of mobility and dexterity are achieved for all residents.
The team interviewed the team leader and one care services employee (level III). They reviewed five clinical records and the policy and procedures covering mobility, dexterity and rehabilitation and manual handling procedures [date].

A functional assessment is completed in relation to residents' mobility on admission. Two of these forms were reviewed by the team. All five care plans reviewed noted mobility needs/interventions

and three-monthly evaluations.
The service is able to access physiotherapy services and a number of residents visit the physiotherapy services at ... Nursing Home several times per week. One resident interviewed by the team confirmed this.
The team leader stated that the service has two lifting machines and makes use of Pelican belts for resident transfers. Residents were seen to be freely mobilising using a range of mobility aids. The physical environment provided easy access for residents with mobility problems.

You will see that the complaint about my mother's care, which was the purpose of the Agency visit, is not mentioned and none of the evidence of abuse (witness accounts, DAT Report, photographs etc) discussed. Presuming that this is the entire report (and I have no way of knowing), there is also no recommendation for action that would help to prevent similar problems.

The home maintained its perfect accreditation score of 44/44.

Faced with indisputable evidence that standards had fallen short, the procedure adopted by the Accreditation Agency was to ignore the evidence and to do a mini-accreditation visit. Once again it asked the hostel what it did. It should have looked at the evidence and asked for an explanation. It should have made recommendations and put monitoring systems in place to ensure compliance.

How could anyone see this system as effective in maintaining or raising standards? It is simply a disgrace. Is it any wonder that the complaint I lodged did not prevent the episode of cruelty to the other lady? While ever the Agency is allowed to clothe its activities in secrecy by hiding behind FOI laws it remains unaccountable. Without accountability this sort of abysmal performance will continue. The Aged Care Act 1997 and the FOI laws must be amended so that these Acts serve their purpose of protecting the elderly residents who are powerless to defend themselves.

IN CONCLUSION

Transparency is needed as follows:

- There should be no requirement to sign confidentiality agreements during the mediation process for handling complaints with the Office of Aged Care Quality and Compliance.
- Complainants should be given meaningful reports at the end of an investigation of a complaint. Contrast this with the seven words I was given over the telephone and nothing in writing. The complainant should be told what happened, why, what measures have been taken to prevent similar breaches of standards, what monitoring will be put in place to ensure compliance.
- Accreditation Reports both previous and current should be easily accessible on the net and reports should appear promptly without delay whether or not there is an appeal lodged by the nursing home.
- DAT Reports and Site Records resulting from the investigation of complaints should be freely accessible to the complainant.
- Department of Health and Agency databases should be in the public domain so that research into elder abuse and prevention can be addressed.

In regard to Transparency we can say:

Everyone who does evil
hates the light and will not come into the light for fear that his deeds will be exposed[1].

In regard to Standards in Aged Care we can say:

The only thing necessary for evil to triumph is for good men to do nothing[2]

[1] Bible John 3:20

[2] Martin Luther King Jnr Chicago 1964