

Date 15th October 2004

**SUBMISSION TO SENATE COMMUNITY AFFAIRS  
REFERENCE COMMITTEE**

**INQUIRY INTO AGED CARE**

**ITEM**

- (b) The performance and effectiveness of the Aged Care Standards and Accreditation Agency in**  
**(i) assessing and monitoring care, health and safety**

**Summary of this submission:**

1. Introduction
2. The reasons for failure of the Aged Care Standards and Accreditation Agency in assessing and monitoring care, health and safety.
3. The effect of failure of the Aged Care Standards and Accreditation Agency in assessing and monitoring care, health and safety.
4. Brief outline of the part of my mother's particular case relevant to the terms of reference of this inquiry.
5. Conclusion

**1. Introduction**

I am a medical practitioner with forty years experience in medicine. I spent the last twenty five years in general practice and looked after many patients in aged care facilities including hostel and nursing home accommodation. I began a complaint in December 2001. It has been an almost three year saga which is ongoing. It concerns the standard of care to which my mother was subjected when in Hostel accommodation in a retirement complex in December 2001. It remains unresolved. I supplied photographic evidence of injuries, detailed reports including a statutory declaration, and names and contact details of independent witnesses. I have written over one hundred letters and made countless telephone calls. I have no reason to believe that residents at the complex are out of danger.

## **2. The reasons for failure of the Aged Care Standards and Accreditation Agency in assessing and monitoring care, health and safety.**

It seems to me that the activities of The Aged Care Standards and Accreditation Agency in practice relate to funding issues not to standard of care.

My reasons for these conclusions are:

- Severe shortage of funding means that there is gross shortfall in beds. Although complexes have to be accredited to access government funding the government is loath to take action which might close beds i.e. direct action to close facilities or funding sanctions resulting in bed closure
- The size of some retirement facilities gives them power, including political power
- Retirement complexes are given advanced warning of accreditation visits and they are expert at fulfilling red tape requirements.
- A number of the residents at the complex are interviewed in the accreditation process but these residents are unlikely to report adversely given their very vulnerable situation. Also in many cases it would be hard to find sufficient numbers of people with adequate cognition to articulate their problems.
- While not disputing that system problems are of prime importance there are incidents requiring individual accountability. The "No blame culture" of government investigating departments is taken to extremes and should be discarded.
- Secrecy. No information is given to complainants following an investigation by the ACSAA. The purpose of The Freedom of Information Act is to address abuses of power. In fact this legislation functions to protect the powerful i.e. the retirement complexes and the government complaints departments and leaves the powerless i.e. the aged without protection. This lack of transparency means accountability of retirement complexes and the investigating government complaints bodies is lacking. Without accountability the whole system becomes a pointless exercise characterised by inordinate delays and inaction.

## **3. The effect of failure of the Aged Care Standards and Accreditation Agency in assessing and monitoring care, health and safety.**

The effect of failure of the Aged Care Standards and Accreditation Agency in assessing and monitoring care, health and safety is poor standards of care because breaches in standards of care go unreported or unaddressed. Without an effective complaints system there is no way to redress an obvious existing gross imbalance of power. On the one hand there are retirement complexes, some with vast assets. On the other hand are the aged who are encumbered with the following disadvantages:

- Short remaining life span limiting legal action, even were this to be affordable.
- Cognitive impairment. Many people in hostels and nursing homes are severely mentally impaired, many in the terminal stages of Alzheimer's disease.
- Physical impairment
- Sensory impairment
- Resident's fear that if they complain they will be subjected to retribution by carers
- Relatives have like fears.
- Whistleblower workers fear job loss.

#### 4. Brief outline of the course of my complaint about my mother's care:

Summary of the progress of the complaint is as follows:

- Failure of the retirement complex concerned to take remedial action
- I took the complaint to The Aged Care Rights Service.
- The Aged Care Rights Service referred to The Commonwealth Department of Health Complaints Resolution Scheme.
- The Commonwealth Department of Health Complaints Resolution Scheme referred to the Detailed Analysis Team and Aged Care Standards and Accreditation Agency.

The complaint was concluded by The Commonwealth Department of Health Complaints Resolution Scheme. No report whatsoever was given to me because of the Freedom of Information Legislation. After their investigation I learnt of another breach of standards of care concerning a lady over ninety years of age at the same hostel. This left me in grave doubt as to the adequacy of this investigation. The complex was accredited at the time of my mother's abuse and in this other case and have since been reaccredited.

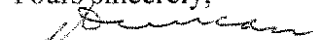
- I wrote to The Commonwealth Department of Health requesting information on the form the investigation took, the problems identified, the remedial action recommended and the action taken to ensure compliance with recommendations. I was told no information at all would be released.
  - I contacted the Commonwealth Ombudsman. After four frustrating months I was told to begin an official Freedom of Information process.
  - First appeal for information about the investigation dismissed by The Commonwealth Department of Health.
  - Second appeal for information to The Commonwealth Department of Health was granted in part i.e. part of the DAT report to be released to me.
  - Appeal lodged with Administrative Appeals Tribunal to obtain whole of DAT report and ACSAA report. Decision of The Commonwealth Department of Health upheld.
  - Legal Costs to date purely in the pursuit of freedom of information equals \$50,000
  - Federal Court to review Administrative Appeals Tribunal decision next year. This is because the retirement complex in question is appealing against release of any part of these documents to me and I am appealing for both to be released to me in full.
- I have NOT contacted the media as I believe that this should not be necessary. Government complaints mechanisms should work.
- I have NOT instituted legal action against the complex or the manager. I am simply trying to raise standards of care and have changes brought about to better protect our aged population.

**Conclusion**

Without the health care knowledge I possess, the average Australian would not have progressed past first base. Nor would the average Australian be able to find the massive legal fees to pursue freedom of information on the off chance that they might be able to find out whether their complaint has been effective or not. Despite my best three year effort, I have no reason to believe that I have achieved anything at all. What incentive is there for residents, relatives or staff to report breaches of care? An ineffective complaint only increases the vulnerability of the aged person concerned.

I feel the single most important necessary reform in aged care is the introduction of transparency in the complaints process. People lodging complaints should have access to findings. Transparency results in accountability of retirement complexes and government investigating bodies. This must lead to higher standards of care.

Yours sincerely,



Dr Norma Jean Duncan  
MBBS FFARCS