Submission to the

Senate Finance and Public Administration Committee
Inquiry into Residential and Community Aged Care in Australia

from

the Office of the Public Advocate – Queensland
21 January 2009

Background to the submission

On 14 October 2008, the Senate referred to the Finance and Public Administration Committee (the Committee) for inquiry and report by the first sitting day of April 2009 issues concerning the funding, planning, allocation, capital and equity of residential and community aged care in Australia.

The Committee invited submissions which were due on 19 November 2008.

Until recently, the inquiry into residential and community aged care in Australia and the call for submissions had not come to the attention of this Office. On becoming aware, this Office contacted the inquiry's Secretariat and enquired about the possibility of providing some input on this matter. We were advised that the Committee has extended an invitation to us to make a submission on the understanding that the Committee would consider whether to make it official.

Interest of the Public Advocate

The Public Advocate was created under the *Guardianship and Administration Act 2000* (Qld) to provide systemic advocacy for adult Queenslanders with impaired decision-making capacity. Broadly, the role of the Public Advocate is to protect and promote the rights and interests of individuals with impaired decision-making capacity through systems advocacy.

Specifically, the functions of the Public Advocate, as set out under section 209 of the *Guardianship and Administration Act 2000* (Qld), are:

- *Promoting and protecting the rights of adults with impaired capacity for a matter;*
- *Promoting the protection of the adults from neglect, exploitation or abuse;*
- *Encouraging the development of programs to help the adults to reach the greatest practicable degree of autonomy;*
- *Promoting the provision of services and facilities for the adults;*
- *Monitoring and reviewing the delivery of services and facilities to the adults.*

An adult is considered the have the capacity to make decisions when they are capable of;

- understanding the nature and effect of decisions about the matter; and
- freely and voluntarily making decisions about the matter; and
- communicating the decision is some way.

Adults whose capacity to make decisions is impaired may include people with intellectual disability, mental illness/psychiatric disability, acquired brain injury and dementia.

Content and scope of the submission

The Public Advocate commends the decision of the Senate to instigate this inquiry into residential and community aged care services.

This Office is interested in the rights and interests of adults with impaired decision-making capacity within the aged care sector. Because of limited data collection, and the fluctuating nature of some cognitive impairments, it is difficult to state precisely how many Queenslanders, or Australians, live with a decision-making disability, including in the aged care system.

However, it is estimated that currently 1% of the Australian population has dementia. In 2005, there were approximately 37,800 Queenslanders with dementia. By 2050, there will be as many Queenslanders with dementia (171,000) as there were in the whole of Australia in 2000.[1] It is reasonable to anticipate that a significant portion of this cohort are, or will be, involved within the aged care system.

In regard to mental health issues, intellectual disability and acquired brain injury, it is estimated that:

- 20% of the population will experience a mental disorder during their lifetime. Around 3% will have a severe mental illness at any one time;
- people who have an intellectual disability comprise 2% of the total population. This figure includes people with mild, moderate or severe intellectual disability;
- In 2003, the incidence of people with acquired brain injury in Queensland was approximately 110,000 people[2];

While it is difficult to ascertain how many people within the aged care system are experiencing mental health issues, or have intellectual disability or acquired brain injury, it would be reasonable to assume that it is not an insignificant portion.

It is reasonable to anticipate that as the population ages, there will be significantly increased calls for residential and community aged care services. Accordingly, the future of aged care is a matter requiring urgent attention if supply is to meet demand and for quality services to be maintained, especially for adults with impaired decision-making capacity.

It has become apparent in recent times that current funding levels for the residential aged care sector are not sufficient to encourage service providers to invest capital to build new facilities. An absence of new services has serious implications for the aged care and health sectors in both the short and long term, especially in the context of Australia's rapidly ageing population. The challenges facing the sector include:

- responding to increasing demand for services;
- ensuring the quality of those services; and
- maintaining a (financially) viable industry.

But as with all challenges, the review of funding arrangements for the aged care system provides an opportunity for genuine change and improvement.

In making this submission, this Office is not seeking to provide a response to all six questions posed by the committee but rather, to focus on the implications of the funding planning, allocation, capital and equity of residential and community aged care for adults with impaired decision-making capacity. The ultimate aim should be a residential and community aged care sector which meets the demand but which does not disadvantage those who are vulnerable.

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[1] Access Economics, 'Dementia estimates and Projections: Australian States and Territories' (Report by Access Economics for Alzheimer's Australia, 2005).

[2] Brain Injury Association Queensland, Australian Statistics on Acquired Brain Injury (2006) http://www.biaq.com.au at 30 March 2007.

Response to Terms of Reference provided by the Committee:

a) Whether current funding levels are sufficient to meet the expected quality service provision outcomes;

The following comments are prefaced by three broad observations:

- The actual cost of providing residential and community aged care services has not been established, which makes a determination regarding the adequacy of current funding levels difficult;
- The current levels of funding for the residential aged care sector are not sufficient to meet the demand for services at an appropriately high level of quality service, as outlined in the *Aged Care Act 1997*. This status is clearly established through comprehensive analysis and documentation[3];
- Current funding levels for the residential aged care sector are not sufficient to encourage service providers to invest capital to build new facilities, which is a problematic issue at this time and one with significant and concerning implications for the future.

In Queensland, most residential aged and community care services are provided by large non-government organisations, providing residential and community aged care services as well as basic community care services. Participation of these non-government providers is dependent on government subsidy, and the continued participation of the non-government sector in providing these services is dependent on adequate levels of government subsidy.

To be considered adequate, the level of government subsidy must be sufficient to cover the actual cost of service delivery, (in excess of that covered by contributions from residents), including capital expenditure. Also, the subsidy must also be adequately indexed to reflect the actual cost of price increases experienced by these organisations, otherwise the subsidy's purchasing power will decline over time.

Inadequate funding levels for the residential aged care sector are likely to result in a reduction of the profitability, with the consequence that service providers are likely to have decreased involvement in the sector. Service providers may manifest this decreased participation in a number of ways, including:

- not applying for additional aged care places, which will result in no additional places in the aged care sector at a time when the demand for such places is increasing;
- returning bed licences to the Commonwealth, which could potentially result in a decrease in the number of places;
- tending to accept new residents that have lower level care needs that can be met with the expected future funding, to the exclusion of those with higher care needs.

There is a potential for the non-government sector's capacity to respond to the demands of people with psycho-geriatric illness or with complex care needs, including those with dementia and those with 'challenging behaviour' caused by dementia, to be diminished. The likely consequence of this would be that the most vulnerable amongst the aged care population requiring residential care facilities would be the most disadvantaged by inadequate levels of funding.

Further, it is apparent that the relative decline in the level of care that can be provided by non-government organisations will increase the demand for care in State-government settings, such as acute hospital settings and residential aged care facilities operated by Queensland Health. In this regard, it is worth being mindful that there are only twenty two residential aged care

[3] For example, the Productivity Commission, *Trends in Aged Care Services: Some Implications*, September 2008, and Chartered Accountants Grant Thornton *Aged Care Survey*, 2008.

facilities operated by Queensland Health, which is a relatively small number, and inadequate to deal with the anticipated numbers.

This is at a time when it is estimated that under the Aged Care Funding Instrument (ACFI), introduced on 20 March 2008 as the primary Commonwealth residential aged care funding mechanism, the Commonwealth subsidy received for Queensland Health's residential aged care services will decrease from $55 million in 2008-2009 to between $45 and $50 million when the full effects of the new funding mechanism take effect.

This will likely have significant impact on the capacity of Queensland Health to provide aged care services, which has the potential to have serious implications for those people with higher level and complex care needs, including those with dementia and 'challenging behaviour' caused by dementia.

A further issue related to the current inadequacy of funding levels in the residential aged care sector, and the consequent unmet demand for places in aged care facilities, is that there are aged residents in Level 3 residential services who have needs that would be more appropriately met through an aged care facility. Exact numbers are not known, but anecdotal information suggests that there are a substantial number of residents in Level 3 residential services who have needs that are not being adequately met through this model, but cannot move into an aged care facility due to lack of available places.

In Queensland, Level 3 residential services are registered and accredited to provide accommodation, food services and personal care services. However, the nature of the personal care services provided in Level 3 residential services is not intended to be at the level of services provided in a residential aged care facility, and is limited to very low-level care and non-medical matters. For example, two accreditation criteria, as set out in the *Residential Services (Accreditation) Regulation 2002* (the Regulation), relate to medication management and health care. The Regulation states:

Medication management

- *If residents ask for support to manage their medication, help is given in accordance with medical directions.*

Health care

- *Residents have a choice of health care provider*
- *Where necessary, residents are encouraged and helped to maintain their physical, dental and mental health.*

The personal care services provided under these criteria are clearly not designed to meet the needs of people who have care needs that would be more appropriately responded to in aged care facilities. The consequence is that many of these aged people are not having their needs adequately met. Further, the presence of these aged people in Level 3 residential services is placing significant pressure on Level 3 residential service providers, as they struggle to respond to needs beyond what the model is designed to provide, and is impacting negatively on this industry's viability.

In considering the funding planning, allocation, capital and equity of residential and community aged care in Australia, the Public Advocate – Queensland urges the committee to consider the implications for the most vulnerable service recipients within this cohort, and to take action to ensure that aged people with complex care needs are able to access quality residential aged care services.

b) Whether there is an inequity in user payments between different groups of aged care consumers and, if so, how the inequity can be addressed;

A review of the submissions provided to the Committee by other agencies in relation to this inquiry indicates a general consensus amongst stakeholders that there is inequity in user payments between low-care and high-care residents.

One of the suggestions put forward by a number of stakeholders to address this inequity is to remove the distinction between low and high care residents and enable providers to request an accommodation bond from high care residents who have financial means. That is, institute common arrangements regarding the accommodation payments able to be applied to clients with sufficient assets and who are able and willing pay, regardless of the level of care a person requires.

This Office is concerned that, in an environment of high demand and under supply, such an approach could disadvantage those aged people who are not in a financial position to be able to pay higher accommodation costs, because service providers may tend to accept those who can pay more.

Concluding comments

The current environment in the residential and community aged care sector is under stress. The requirement for services exceeds services available, and diminishing profitability is challenging the financial viability of the non-government sector.

Some of the suggestions put forward by stakeholders in their submissions to the committee include:

- removing the cap on accommodation charges for high-income residents older people and increasing the charge for medium income people;
- providing an option for older Australians who want to pay an upfront refundable deposit for the high care accommodation;
- removing the distinction between low and high care residents and enable providers to request an accommodation bond from high care residents who have the financial means to pay.

These measures may or may not contribute towards addressing the financial viability of the sector.

However, there is a genuine potential for such measures to advantage those with more financial means than those with less, due to the high demand/short supply environment. This is particularly concerning to this Office, as aged people with impaired decision-making capacity may be more financially disadvantaged than those with capacity, as those with lifelong disabilities are more likely not to have had the same opportunities and earning capacity as non-disabled citizens.

The Public Advocate would urge the Committee to be mindful of the circumstances of aged people with impaired decision-making capacity when considering funding planning, allocation, capital and equity in the residential and community aged care sector in Australia, and ensure that any approaches adopted to address the inequities in the sector, as well as the financial viability of the sector, so not disadvantage this cohort of vulnerable Australians.