

**Report of an Own Motion Investigation into
the Department of Health and Aged Care's
Complaints Resolution Scheme**

Report under section 35A of the *Ombudsman Act 1976*

July 2000

EXECUTIVE SUMMARY

This own motion investigation under Section 5(1)(b) of the *Ombudsman Act 1976* arose from an investigation commenced in December 1999 in respect of a complaint by a relative of a nursing home resident.

The own motion investigation into the Complaints Resolution Scheme began in February 2000 with the full cooperation of the Department of Health and Aged Care. It focussed on the processes and procedures of the Scheme nationally. Discussions were held with officers of the Department during the course of the investigation to facilitate early appreciation and remediation of the issues identified.

Perhaps the most important discovery of the investigation was the lack of clarity and understanding of the Scheme by all the parties. Issues identified included:

- Residents, their families and advocates were uncertain about how they should make complaints and their rights to assistance and review.
- There was insufficient guidance given to Nursing Home Proprietors about the way in which they were required to respond to complaints.
- The role of the Aged Care Standards and Accreditation Agency in resolving complaints and its relationship with other parties was not clearly understood by all stakeholders.
- Complaints Officers of the Department were not always clear about when their role was as a resolver or referrer of a complaint.
- Departmental Management was not closely involved in overseeing and using the system better to deliver outcomes for residents of aged care.
- The Complaints Resolution Committee was unclear about its role and powers of determination.

The recommendations of the report (p 21) flow from this lack of clarity.

The Department has agreed to all the Recommendations. In this regard it should be noted that since the commencement of the investigation it had already initiated action to address many of the issues that had become evident.

OWN MOTION INVESTIGATION INTO THE DEPARTMENT OF HEALTH AND AGED CARE'S COMPLAINTS RESOLUTION SCHEME

COMPLAINT

In late November 1999 the Office of the Commonwealth Ombudsman received a complaint from Ms A about the Department of Health and Aged Care's (DHAC) Complaints Resolution Scheme (the Scheme). Ms A complained about the ineffectiveness of the Scheme's processes. She was also concerned about the Complaints Resolution Committee (the Committee) and its lack of action and commitment to ensure the standards set out in the Aged Care Act were being observed. During the investigation of this matter a number of complaints were located on the DHAC files which suggested that the issues identified were not confined solely to Ms A's complaint nor the State office of the Scheme as its guidelines were those of the Scheme Australia wide.

On this basis, an own motion investigation was commenced under section 5(1)(b) of the *Ombudsman Act 1976* into the complaints handling arrangements in place to ensure that the wider issues identified were addressed. The Secretary of the DHAC was formally advised of this step on 9 February 2000.

BACKGROUND

In brief, the existing mechanisms for handling complaints have the following features:

- the Quality of Care Principles require each provider of residential aged care services to have complaint handling procedures in place at the service
- DHAC has established the Scheme for resolving complaints
- the Scheme must arrange for complaints to be mediated, if appropriate
- the Scheme may also refer complaints to State based Committees comprising external appointees following mediation
- appeal from a Committee is to a Review Panel consisting of the national chairperson of the Committee and a Departmental officer
- the Secretary of DHAC has a decision making role in relation to the imposition of sanctions on service providers
- decisions of the Secretary are open to review by the Administrative Appeals Tribunal

- the Aged Care Standards and Accreditation Agency is an independent body which may also take action on complaints where these have been referred by DHAC.

In July 1996, Ms A's elderly mother was admitted to a Nursing Home. At first, Ms A was relatively satisfied with conditions at the Home, but she said that towards the end of 1998 conditions had deteriorated to an unacceptable level. She raised her concerns with Mrs C, one of the owners, without satisfaction.

On 8 February 1999, Ms A set out her concerns in a letter to the DHAC State office after speaking to Mr B, a Complaints Resolution Officer employed in the Scheme. Also, Ms A raised concerns about the Home being run by persons who had criminal convictions. She informed the Scheme that there had been publicity in the media about Mr and Mrs C's convictions for fraud in 1996. The question of Mrs C's involvement in the running of the Home was still an issue to Ms A.

In June 1999, an attempt was made by the Scheme to negotiate/mediate the complaint under the mediation processes as required by the legislation. As Ms A was unhappy with the process at this stage, the matter was then referred to a Committee. At the Committee hearing on 17 August 1999, Ms A was aided by a Community Advocate, who was employed by an advocacy organisation funded by DHAC. Ms A felt that the system let her down and said that the Committee accepted the veracity of the witnesses "with only a cursory glance".

Ms A understood that, at the Committee hearing, the proprietor Mr C was asked to prepare a statutory declaration stating that his wife did not and would not take an active role in the management of the facility. Ms A was concerned that the determination was not followed through by either the Committee or the Scheme. She was also concerned that there was no mention of these discussions in the minutes of the Committee hearing.

Ms A then complained to the Ombudsman in November 1999, stating that she had photographs and other evidence, along with her own observations, to show how bad the conditions were at the Home. My Office is continuing to deal separately with Ms A's complaint.

INVESTIGATION

During the investigation, a number of the Scheme's officers and other witnesses were interviewed including:

- Ms A - Complainant
- Mr D - Employee of the Nursing Home

- Mr E - a former employee of the Aged Care Standards and Accreditation Agency
- Mr F - Witness re conditions at the Nursing Home
- Mr L - DHAC Officer and Manager of the Scheme in a State
- Mr B - DHAC Officer and Complaints Resolution Officer in the Scheme
- Mr G - DHAC Officer and Manager of Compliance
- Ms H - CEO Community Advocacy group
A Community Advocate
- Ms J - A Chairperson of a Complaints Resolution Committee

In addition, DHAC documents, the material provided by Ms A and other documentary evidence were taken into consideration. The Scheme's office in the State was also visited on 9 February 2000.

The *Ombudsman Act 1976* provides that an investigation under this Act shall be conducted in private and in such a manner as the Ombudsman or his delegate thinks fit (subsection 8(2)). Most interviews were tape recorded (particularly those with the DHAC officers) to ensure an accurate record of the interviews was available.

- **Ms A**

Ms A said that her reasons for complaining included:

- . lack of action by the Scheme in pursuing her complaint about the Home;
- . the Scheme failed to advise her of her mother's rights and the Home's obligations in relation to the provision of care;
- . the failure of the Scheme to advise her of the role of the Community Advocacy group; and
- . the failure of DHAC to pursue the issue of Mrs C's criminal conviction for fraud.

Ms A was particularly concerned about the Committee's handling of the matter and said that the Committee "appeared to treat the hearing as an academic training exercise and seemed to be indifferent to the fact that this was about the health and welfare of 30 vulnerable people".

She provided photographs of conditions at the Home in support of her complaint, including photographs of patient medical records held in an area accessible to visitors to the Home. While she acknowledged that her mother had since been moved to another home and the Nursing Home was closing, she considered that the Scheme's handling of the matter warranted investigation.

Ms A also raised concerns that Mrs C, the wife of the proprietor of the Home and previously a registered owner, had been convicted of fraud and was still taking an active role in the management of the Home. She

considered that the conviction raised the issue of Mrs C being a suitable person to be involved in the management of a nursing home. I have not formed an opinion on the allegations made about Mr and Mrs C.

- **Mr D**

While the Departmental file principally contained material relating to Ms A's complaints and the subsequent Committee hearing, there was earlier material on the file relevant to Ms A's complaint about the Nursing Home. For example, at one folio, there was a record of a complaint made by Mr D regarding conditions at the Nursing Home. Mr D was an employee of the Home at the time and had telephoned the Scheme to raise concerns about conditions in the Home, particularly residents having to provide their own food, pay for their own continence aids, inadequate fire safety and inadequate disposal of infectious waste.

Mr D was contacted by my officer telephoning the number recorded in the Scheme file. When interviewed he said that he had first complained in "about July 1997" and no action was taken. He again complained in January 1999 because "the home was going down hill". He confirmed the details of his complaint. In addition, he provided an account of Mrs C's involvement in the day to day management of the Home after her criminal conviction. For example, he said "she (still) did the accounts" and the Director of Nursing was under her day to day control.

Mr D also confirmed Ms A's complaint that patient's records were kept on shelves behind the nurse's station, where they were accessible by anyone. He also said that the Scheme's officer, Ms K, failed to contact him about his complaint. His evidence can be summed up by his comment that "I would never have put my own mother in there".

- **Mr E**

A further witness, Mr E (a person who wishes to remain anonymous to DHAC), who previously worked for the Aged Care Standards and Accreditation Agency (the Agency), said he was aware that other people (apart from Mr D) had made complaints to DHAC about the Home and "nothing had ever been done about it".

- **Mr F**

There was also a number of complaints from Mr F on the DHAC files about the treatment of his aged mother in the Home. At one folio of the DHAC file there was a letter dated 25 March 1999 complaining about the treatment of his mother. There were a number of other records, documents and file notes about the conditions at the Home on the same file, including an anonymous complaint from a former employee raising similar issues about the Home.

Based on my investigation, it is fair to say that both Ms A and Mr F were seen by the Scheme as problem complainants. Ms A, because she went to the media and Mr F, because of his persistence. For example, at another folio there is a reference to “another relative who has previously been a serial complainant and is known to the Department”.

While both persons held strong views about the alleged mistreatment of their aged mothers, both were considered by my Office to be credible witnesses whose evidence has not been disputed by officers of the Scheme.

• **Mr L Manager Complaints Resolution Scheme**

Mr L was interviewed on 16 December 1999 and 21 December 1999. The interviews were tape recorded. Mr L had previously provided the Scheme’s files on the Home. He outlined the role and function of the Scheme.

He confirmed that the Scheme’s Guidelines lacked detail on the referral of complaints to other areas of DHAC, for example Compliance. He also pointed out that his Section had identified this as an area requiring attention. In support of this he provided a copy of the Scheme’s Improvement Plan where one goal was to:

Establish protocols for determining interaction between Compliance and Complaints scheme both prior to and after compliance action has been taken.

He was also of the view that mediators should receive guidance to ensure consistency in mediations.

He acknowledged that there were insufficient guidelines for when a matter should be referred to the Agency and commented that the procedure manual should be upgraded in this regard.

• **Mr B, Complaints Resolution Officer**

Mr B was interviewed on 6 January 2000. Mr L also sat in on the interview, at Mr B’s request.

Mr B acknowledged that he had first received a complaint by telephone from Ms A. After receiving her written complaint on 8 February 1999, he wrote to Mrs C at the Home on 15 February 1999 outlining Ms A’s complaint and seeking comment. This letter also appears to outline Mr D’s complaints, although these are not attributed to him. On 21 April 1999 he again wrote to Mrs C seeking a response to his earlier letter. It is not clear why both letters were addressed to Mrs C, bearing in mind that the DHAC

file shows that she resigned as an officer of the company which owned the Nursing Home on 14 May 1998.

Mr B had no explanation why the document “Trial Goods Application” was on the Nursing Home file although it clearly did not relate to the A complaint.

Mr B acknowledged that there were copies of newspaper clippings on the file which related to Mr and Mrs Cs convictions for fraud.

Mr B appears to have shown little initiative in this matter, receiving Ms A’s complaint; referring it to the Home; chasing up a response at Ms A’s request; visiting the Home; arranging a mediation session and referring it to the Committee following the failure of the mediation process. There appears to have been little assessment of the seriousness or otherwise of either the A complaint or the earlier complaints, notwithstanding a strong theme of systemic issues.

In his response to these criticisms, Mr B said that his actions were “no more or less” than what he “was instructed and trained to do”.

- **Mr G, Compliance Manager**

Mr G was interviewed on 3 February 2000. At that time he was acting Section Head of the Scheme. He said that he was also responsible for compliance under the Aged Care Act.

When questioned on the relevance of criminal convictions of key personnel under the Aged Care Act (with particular reference to Mr and Mrs C), Mr G appeared to have a limited understanding of the legislation and his role in this regard. While the issue of the C’s convictions had been brought to his attention by Mr L, he had taken no action to ascertain the relevance of the convictions, nor sought advice on the matter.

He acknowledged that he sent Ms A a letter on 13 July 1999 regarding her complaint about Mrs C in which he stated that “the other party must be informed of the allegations you have made before further consideration can be given to this matter”, despite Ms A wishing to remain anonymous. The tone of the letter was of concern to Ms A.

He also acknowledged that he believed there was little guidance in the Scheme’s manual on the referral of complaints to either Compliance or the Agency.

- **Ms H**

On 13 December 1999 Ms H, the Chief Executive Officer of a community advocacy group, provided detailed information about the Group's role.

The organisation is funded by the Commonwealth to provide assistance to people to take complaints to the Scheme and the Complaints Resolution Committee.

While Ms H was supportive in general terms of the Scheme's officers, she did raise concerns about the Committee's role and function. These concerns were also supported by the advocate who assisted Ms A. In particular, the advocate raised the issue of the lack of a complete record of the proceedings of the Complaints Resolution Committee in that proceedings are generally not tape recorded. She also questioned the rules regarding lawyers not being able to appear on behalf of applicants or witnesses before the Committee and the inability of the Committee in the A matter to make a determination regarding the status of Mrs C. The advocate was also concerned about the lack of action by the Compliance Section of DHAC. She had spoken to Mr G regarding the criminal convictions of the Cs and DHAC's lack of action in relation to the Cs role as key personnel.

The advocate also raised the issue that the Community group was not supposed to have direct dealings with the Agency but was to raise any complaints with the Scheme.

- **Ms J**

On 29 February 2000, Ms J, a Chair of a Complaints Resolution Committee was interviewed. She provided draft comments on the Aged Care Principles and raised a number of issues, including procedural matters; the lack of tape recording facilities for the Complaints Resolution Committee Hearings; representation before the Hearings; the Committee informing itself and her dealings with DHAC.

Ms J was of the view that tape recording the proceedings would be a useful way of ensuring the integrity of the process. She also considered that the Committee should have the discretion to allow the parties involved in the proceedings to be represented by lawyers.

Ms J commented that the function of the Committee is limited and its role is quite different to that of a Tribunal, for example the Administrative Appeals Tribunal.

Ms J emphasised that to ensure the perception of the independence of the Review Panel (the Panel), there should not be a DHAC officer sitting as a

member of the Panel as the inference could be drawn that the officer may be biased in favour of DHAC.

Ms J also raised concerns about her belief that the Committee was unable to make a binding determination on the parties other than in relation to moneys overpaid. Ms J was also of the view that the complaint, negotiation, mediation, Committee hearing and appeal process was too long and suggested that there should be a minimum of three steps. She said that if the matter was unlikely to be resolved by mediation it should go straight to the Committee. Also, she said that there seemed little purpose in having a pre-mediation (or negotiation) meeting. However she has since reported that some mediators find them a useful way to prepare the parties for mediation. Ms J also considered that delay contributes to a loss of confidence in the Scheme.

Ms J also emphasised that in her view there was a need for DHAC to have spot checks on premises. These could either be conducted by officers of the Scheme or Compliance.

- **State Office of the Scheme**

A State office of the Scheme was visited to gain an appreciation of how the Scheme operated in practice. In February 2000, the office consisted of the State Manager and 127 staff. Of these staff 84 worked in Aged Care with seven staff, including Mr L, dedicated to complaints handling. There were approximately 130 complaints on hand. All current complaints were being transferred to the new data base and a temporary employee was finalising this work. No data for closed cases was being entered on the new data base.

Staff members interviewed acknowledged a lack of guidance on referrals and follow ups, particularly with the Agency.

The staffing level for the numbers of complaints; their complexity; and their sometimes sensitive nature, suggested that the area was under resourced. Since the investigation commenced, more staff have been placed in the Scheme. 15 officers are now employed in the State office, split into four teams.

- **Departmental records**

The DHAC files relating to the Nursing Home were examined.

Examples of poor record keeping were noted during an examination of the files, including:

- . the filing of a record unrelated to the complaint on file of a “Trial Goods Application”
- . failure to record contacts with clients
- . a file was not folioed.

This later point, while minor in itself, is symptomatic of problems associated with poor record keeping.

Also, there did not appear to be any system in place for following up letters or referrals to Aged Care facilities or other agencies.

- **Mediation**

The manual states that:

“where negotiation has not been successful, the matter may be referred for mediation provided that the parties agree” (Section 2.5.5).

Mediation must be used when the Complaints Resolution Officer is unsuccessful in resolving the complaint by negotiation (8.2). The manual does not provide sufficient advice for either Scheme officers or mediators on how to conduct a mediation, nor is any material provided to mediators in this regard. The Scheme pays for the services by external accredited mediators. Mediators do receive a brief factual outline of the issues.

- **Criminal Record Checks**

An examination of the DHAC file regarding the Home revealed that a criminal record check was done of Mr C on 4 August 1999 via the Australian Federal Police (AFP), with a nil result. This was despite the criminal conviction in September 1998 referred to in the press articles which were located on the files. The issue of the Cs’ criminal records has been taken up separately with DHAC.

- **Role of Central Office**

Central Office of DHAC oversighted the Scheme in each State. While there statistics were collected nationally, monitoring of national trends was limited in scope. Identification and follow up of significant complaints was monitored by Central Office.

Since this investigation commenced, the Department has acknowledged the need for closer and more active management of all complaints cases. In response, a number of structural and procedural initiatives have been implemented. These include an enhanced tracking and notification capability within the complaints system database; the generation and distribution of detailed weekly reports on all new cases received by the Scheme and progress with existing controversial cases; and revised

management procedures whereby greater responsibility for scrutiny of the Scheme's operations is now exercised at State Office level by senior managers.

- **The Aged Care Standards and Accreditation Agency**

The Agency is an independent body partially funded by the Commonwealth with the balance funded by the industry. In some cases it determines what action to take on complaints referred by the Scheme. Additionally, the Secretary may direct that the Agency conduct a review audit, including in response to information received through the Scheme. Inquiries made suggest that, like the Scheme, the Agency lacks guidelines on the assessment of the seriousness of complaints. Based on the interviews conducted it appeared that liaison between the Agency and the Scheme was conducted on an ad hoc basis.

DISCUSSION OF ISSUES

The Scheme was established to provide a basis for the resolution of complaints about Commonwealth funded aged care services. During the investigation, it soon became apparent that the Scheme's guidelines and procedures were deficient in a number of material areas and its objectives were not being met.

- **The Complaints Process**

We discussed the Complaints Resolution Scheme process with a number of people ranging from junior to senior DHAC officers, members of the Scheme and community representatives. We also examined a wide range of documents relevant to the investigation. This revealed a considerable lack of clarity about how the Scheme was operating and how it was intended to perform.

For example, there was some uncertainty as to the purpose of the complaints process with evidence to suggest that little distinction was made between routine complaints about the delivery of aged care and the more serious health care complaints.

The following describes the process and includes our observations:

<u>Process</u>	<u>Comment</u>
1. Complaint is made to Home	<ul style="list-style-type: none"> – Advice on how to complain is supposed to be given to new residents and their carers/family by the facility – A record of complaints is meant to be kept – No requirement by DHAC that a register of complaints be available for

- examination by DHAC and the Agency
 - Lack of guidelines on recording, reporting and monitoring complaints
2. Complaint is made to officer of Scheme
 - Inadequate guidelines on how to deal with the complaint, including how to assess seriousness and referrals, role of community advocates
 3. Negotiate settlement with Home
 - Complaints Officer's inspection role unclear
 - Inadequate guidelines re responsibility for investigation and closure
 4. Arrange mediation
 5. Send to Complaints Resolution Committee
 - Lack of specific guidance on mediation
 - Lack of training for staff of Scheme
 - Lack of clarity on authority of Committee
 - Lack of a complete record of hearings
 - Issue of representation, particularly by lawyers
 - Issue of responsibility for follow up of determinations
 - Links with Compliance and Agency not clear from guidelines
 6. Review Panel
 - Does not hear a matter de novo, only on the papers
 - Perception of bias with member being Departmental officer
 - Unclear if Secretary can seek a review of Panel decision
 7. Review by AAT
 - Only of a decision of Secretary, not Committee or Panel
 8. Follow up
 - Lack of guidelines on responsibility
 - Role of Compliance, Scheme and Agency in this regard
 - Need for monitoring to ensure finalisation of matters

Further lack of clarity arises when the complaint is about serious health care.

1. Complaint made to Home
 - See previous comment
2. Complaint made to officer of Scheme
 - See previous comment
3. Complaint referred to Agency
 - Are these complaints only referred to Agency?
 - Who remains responsible for complaint - Scheme (DHAC) or Agency?
 - Who deals with complainant?
 - Do the CRS and CRC have a role?
 - What are the links with Scheme, Compliance?
 - What are the links with DHAC, recording

- and monitoring?
- Does the Agency follow up with Home?
- What is the appeal process for the Home?
For the complainant?
- Can Secretary require Agency review?
- Does the Agency have authority to inspect without notice?
- 4. Appeal to AAT
 - No provisions for complainant to appeal to the AAT
 - If Agency imposes sanctions are they reviewable by AAT?
- 5. Follow up
 - Who is responsible? Agency? Scheme? Compliance?
 - How is this recorded on system, facility file?

- **Failure to recognise serious and systemic complaints**

While it cannot be said that the Scheme's officers were indifferent to the concerns raised by complainants, from the interviews conducted there does appear to be a lack of understanding of the seriousness of complaints. For example, there seemed to be a lack understanding of what defines a serious or systemic issue which would warrant further investigation. A number of similar complaints about conditions and treatment of patients in the Home had been overlooked, or ignored.

The Scheme's manual does not provide adequate advice to staff on what is a systemic complaint and what amounts to a 'critical mass' of complaints that would trigger further investigation. In this regard, the decision of the Industrial Relations Court of Australia in Schroeder and the Health Services Union of Australia and others versus the Mildura Base Hospital in 1997 is relevant. This case relates to complaints by relatives about the mistreatment of patients in a nursing home by staff. The Court's findings spell out in some detail the types of conduct considered to be sufficiently serious to warrant dismissal of a number of employees.

- **Providers' Complaints Mechanisms**

Section 56-4 of the Aged Care Act 1997 requires each provider of an aged care service to set up and use an internal complaints resolution mechanism. The Act and the Scheme's manual are silent on what form this should take. To ensure that a complaint system is effective, the provider should maintain records of all complaints in a form compliant with DHAC provisions and which can be inspected by the Scheme, other DHAC officers or the Agency.

- **The Scheme's Procedures Manual**

The Aged Care Complaints Resolution Scheme Procedures Manual provides limited guidance to staff on the referral of complaints to another

body. For example, at page 2.2 the manual states that “where a Complaints Resolution Officer comes across information that raises a concern about a service, in the course of their normal duties, this information is referred to the relevant other body. This referral is the only involvement in compliance a Complaints Resolution Officer has.” At 2.3 it also states “referral to other agencies may be made where that is appropriate or where there is a serious risk to the safety, health or well being of a Care recipient”.

Chapter Five provides some detail as to what is a referral and when a referral should occur. However, there is insufficient detail as to where complaints are referred (paragraph 5.4) as, for example, no detail is provided about the Department’s Compliance Section, its functions, or what issues should be taken into account for a referral to Compliance or other areas including the Agency or whether these referrals should be followed up. Other types of complaint are mentioned at paragraph 5.3.4 ie ‘criminal matters’, but no reference is made to State or Federal Police or the role of relevant State Government agencies.

Paragraph 3.7.2, on the issue of confidentiality and anonymity, states that “if anonymity is requested, the issue can only be approached on a broad systemic level. This may mean that a particular issue affecting a specific care recipient is not addressed. Depending on the nature of the complaint, this will need to be explained to the complainant”.

Of course, this guideline is clearly unsatisfactory. Where a complainant wishes to remain anonymous to the aged care facility and providing there is sufficient detail to raise concerns, I consider that it is the responsibility of the Scheme to make at least preliminary enquiries to determine whether further action should be taken.

Also, there is a lack of guidance on identifying what is a systemic issue. In the A matter, despite a number of similar complaints, including from current and former staff, the issues raised by Ms A were not identified as possibly being systemic.

The guidelines for deciding if a complaint should be accepted or rejected (paragraph 4.4.2), while based on the Committee Principles, appear to be too narrowly focused. For example, the guidelines state that the complaint should be rejected if it “is frivolous, vexatious or not made in good faith” (subparagraph 1). A further ground is if “there is an alternative way of dealing with the complaint and the complainant agrees to have the complaint dealt with that way” (subparagraph 3). Rather than using the term ‘rejected’ and not registering a complaint, a more appropriate course of conduct might be to register the approach as a complaint and exercise discretion not to investigate the matter, providing there are appropriate grounds for this course of action.

Paragraph 4.8.1.1 refers to urgent complaints. Examples are given including assault and harassment but interestingly, not health care matters. Timeliness has been identified as important and the manual states “the complaint should be resolved within seven days. In some instances, where there is an immediate threat to a resident, a 24 hour or less response may be required.” However, the manual lacks the guidance on the next step. That is, who should take “urgent attention”? Should the matter be referred to the police? Is it a matter for the Agency?

Paragraph 6.2 states that Complaints Resolution Officers “will not be looking at the truth or otherwise of the complaint” and “will not be looking to determine whether a service is complying with its responsibilities as an approved service provider”. Bearing in mind that the objective of the Scheme is to resolve complaints, this paragraph is poorly worded and does not necessarily reflect the role of a Complaint Resolution Officer. After all, there must be some initial assessment of the substance of the complaint and the credibility of the complainant. If this level of assessment (preliminary though it may be) is not made then no complaint would ever be referred to other agencies for action.

In the manual, there is a serious lack of clarity and guidance on who is responsible for follow up and closure of complaints, including those referred to other areas, in particular, the Agency. I am of the view that if the Secretary has the authority under the Aged Care Act, the overall responsibility for this function lies with DHAC.

- **Complaints Resolution Committee**

It is important that an accurate record is made of Committee hearings and their outcomes. The proceedings should be tape recorded. This would provide the Committee, Scheme staff and complainants with an accurate record of what took place. Transcripts need only be obtained on an ‘as needs’ basis. The A complaint highlighted how misunderstandings over the Committee’s determinations can occur.

In response to Ms J’s views on legal representation, the Department does not favour representation by lawyers at Committee hearings because this could largely benefit service providers at the expense of complainants.

- **Determination Review Panel**

The Determination Review Panel (the Panel) is made up of two persons, being the national chairperson of the Committee and an officer of DHAC. The jurisdiction of the Panel is to confirm, vary or set aside the Committee’s determination. Where the function of the Panel differs to a tribunal is that

it is the Secretary and not the Panel who has the authority to impose sanctions.

The principle concern about the Panel is the perception of lack of independence from DHAC. There is a real risk of the Panel being seen to be biased. Also, it does not hear matters de novo, only on the papers. There is a risk that this will be seen as rubber stamping the Committee's findings.

- **Complaints Review Arrangements**

When a complaint has not been resolved by negotiation/mediation it can be referred by the Scheme (ie the Secretary's delegate) to the Complaints Resolution committee. This does not appear to be a 'right' of either the complainant or the provider but may be requested by either party. However, it does not appear that it is envisaged that the Committee would have competency over serious health care matters that are referred to the Agency.

The Committee conducts hearings and arrives at determinations which are made available to the parties. If this requires a provider to do or not do something, the provider can seek to have the determination reviewed by the Review Panel.

The Secretary can impose sanctions on the provider in line with the legislation. However, if the provider does not comply with the determinations of the Committee and/or the Panel, the Secretary (our emphasis) may take action. If the provider does not accept the Secretary's decision, he or she can appeal to the AAT and/or the Federal Court.

Where can the complainant go if not satisfied? The Scheme's literature is silent on this. They can request a referral to the Panel but are not informed of the role of the Ombudsman. The role of my Office is particularly important in this regard as a complainant would appear not to have a right of appeal to the AAT if the Secretary takes no action.

The Secretary does not appear to be able to refer a Committee determination back to the Committee for review and the Panel would seem to only consider matters on the papers and not de novo.

- **Whistleblowers**

The Scheme has no guidelines for dealing with whistleblowers. While DHAC has a draft policy on public interest whistleblowing, no reference is made in the Scheme's manual to dealing with an internal reporter, for example, an employee of a nursing home. Thus the significance of Mr D's complaint would appear to have not been identified or acted upon. As an

employee of the Home, he would have been a possible source of significant information regarding the conduct of the proprietors and the management of the Home generally. Bearing in mind the subsequent matters raised with the Scheme about the criminal convictions of the Cs, Mr D's complaint is of greater significance. However, it was not adequately pursued by the Scheme and a valuable source of information was lost. As late as December 1999 Mr D was still working at the Home.

- **Informing Clients of Scheme**

One important area of good administration that has not been catered for in the Scheme is that recipients of aged care are not informed about the Scheme or their rights when they first enter a facility by the Scheme. However, it is a requirement of facilities that all residents are told about the role of the Scheme, the arrangements for using internal complaints mechanisms, their rights and responsibilities as residents and the Government funded advocacy body that exists to contribute to the improvement of the quality of aged care.

Also, the Scheme's pamphlet "Working together to Fix the Problem" makes no reference to a complainant's right to internal or external review. Even though the pamphlet asks the question "What if I am not happy?" the only option stated is "your comments and suggestions about how the complaint is handled are welcome at anytime during the process". Nor does it make reference to the Ombudsman.

CONCLUSIONS

The following conclusions have been reached:

- ***Failure to pursue systemic complaints***

Notwithstanding the prior history of complaints about the Nursing Home (eg F and others) no linkage was made between the earlier complaints and Ms A's complaint. This indicated an inability to track or identify systemic issues. While it is acknowledged that all complaints systems will attract their share of minor or vexatious complaints, in this investigation each of the complaints identified in relation to the nursing home appeared, on the surface, to have some substance. When taken as a whole, they certainly should have rung warning bells in terms of identifying possible systemic problems within the Home.

In addition, there is a need to have access to historical complaint data to ensure that systemic issues are identified. I understand that this data is not being incorporated into the new complaints data base, but remains available both on files and electronically.

- ***Timely Resolution of Complaints***

Dealing with complaints in a timely manner is also an issue. While the Scheme does provide guidance for its officers on timeliness, in the A matter, Ms A had to seek information from the Complaints Resolution Officer some time after the complaint had been lodged, rather than the officer following up with the Home and giving her timely feedback.

- ***Responsibility for Complaints***

The role of Compliance and the Agency needs to be clarified. For example, if the complaint relates to a serious health matter, it appears that it should be referred to the Agency. However, the responsibility for following up the complaint and bringing the matter to closure still lies with DHAC. Consideration also needs to be given to an appropriate form of internal review of the Agency's determinations.

- ***Review Arrangements***

The role and function of the Committee should be reviewed to clarify its authority and whether or not it should have determinative powers and in respect of what matters. In addition, having a DHAC officer as a member of the Review Panel raises concerns about the perception of impartiality. If the Committee were to have determinative powers, the role of the Panel would become redundant, particularly if the Secretary of DHAC could refer matters back to the Committee for further consideration.

- ***Lack of objectivity and impartiality***

Our publication "A Good Practice Guide for Effective Complaint Handling" is a useful source of advice on establishing a complaints service that is client focused. For the public to have confidence in a complaints handling system, it must be impartial and treat the complainant in an unprejudiced fashion.

- ***Dealing with persons who wish to remain anonymous***

It is of concern that Mr G wrote to Ms A in the terms of his letter of 13 July 1999. Mr G's basis for the letter was that "the rules of natural justice would require the Department" to inform the Home. Of course, the rules of natural justice do not in themselves require the identity of the complainant to be made known to the accused party but rather require that sufficient detail be provided to the party to make them aware of the nature of the allegations. Both the tone and content of the letter create the perception that it was written in order to intimidate Ms A from pursuing her complaint. Certainly Ms A was concerned by the letter. DHAC has since advised that this was not a standard letter.

- ***Dealing with whistleblowers***

The Commonwealth recently recognised the importance of making provisions for dealing with whistleblowers in a public sector environment. While an employee of a facility is not covered by the recently released *Public Service Act 1999*, the principles remain the same. That is, it is important to ensure that a whistleblower is able to make a complaint in good faith and without fear of victimisation in the workplace. Having mechanisms in place to effect this encourages confidence in a complaints handling system and provides a safeguard which helps bring to notice serious cases of neglect or mismanagement.

- ***Inspections conducted without notice***

While the guidelines provide that inspections will generally be conducted only after notice is given to the proprietors of a nursing home, there is ample provision for inspections without notice where the matters alleged are serious. Division 91 of the Aged Care Act empowers authorised officers to enter premises with the occupier's consent, to monitor compliance. In the A matter, an inspection was not made of the Home until well after Ms A's complaint was received notwithstanding other similar complaints. It is clear that there is need for spot inspections by DHAC and/or the Agency to be made of nursing homes from time to time, particularly where the home has a history of difficulties, where the complaint raises serious issues, or where the matter requires urgent attention.

Since my Office commenced this investigation, the Department has implemented revised procedures, including devolving delegation for authorising spot checks to be conducted by the Agency down to State/Territory Manager level, to ensure timely action occurs in all cases where this is considered appropriate.

- ***Provider's Complaints Mechanism***

Records Principles made under the Aged Care Act provide that certain types of records should be kept by approved providers. The kinds of records are set out at Principle 19.5. This principle could be amended to include the keeping of records of complaints made to the approved provider, available to the Scheme on request. This would assist in providing greater accountability to the complaints process.

- ***Inadequate Criminal Record Checks***

For a police record check to be accurate, a search needs to be undertaken of both State and Federal Police records. I understand that DHAC has subsequently made enquires with the AFP to ensure that full details of criminal convictions are provided when a check is sought.

- ***Information Provided to Clients***

It is a matter of good public administration and quality service delivery that complainants are provided with an avenue for seeking internal redress of their concerns. At a minimum, people should have the capacity to complain at the service delivery level to the provider and DHAC should have the ability to monitor complaints made at this level. The second tier of internal review is that provided by the Scheme.

In addition, it is good practice to inform a client of their right of external review, for example by the Ombudsman. Most Commonwealth agencies provide this information in their pamphlets and literature available to the public.

It is also important that recipients of aged care be provided with information about the Scheme and Community Advocacy groups at the time they enter a facility so that they and their relatives are aware of their rights from the commencement of their stay.

- ***Training of Staff and Guidelines***

Training is a key factor in ensuring that a consistent approach is made to complaints handling. Educating staff on procedures, including dealing with difficult people; handling anonymous complaints and complaints from whistleblowers; exercising discretion; prioritising workloads; what is capable of mediation and referrals to other agencies and follow-up, will assist in creating an effective complaints handling environment.

Such training should also cater for temporary staff, particularly those with the day to day responsibility for dealing with complainants.

- ***Advice to Mediators***

Alternative dispute resolution is a useful tool in resolving complaints, particularly when the parties are likely to have a continuing relationship, as is often the case with aged care complaints. To ensure that mediators adopt a consistent approach, the Scheme should develop guidelines for mediators and provide them with advice on the Scheme's expectations in relation to the resolution of complaints.

- ***Poor record keeping***

While the issues identified during the investigation were minor in themselves, poor record keeping can be symptomatic of a lack of training of staff and/or lack of attention to detail and supervision.

RECOMMENDATIONS

The following recommendations are made:

1. The respective roles of the Department and the Scheme should be clarified and promulgated without delay, to ensure that responsibility for receiving, recording, managing, following up, closing and remedial action in respect of all complaints is, and is understood to be, that of the Department. This responsibility should preferably be in one management area, with a clear line of responsibility to the Secretary. ***The Department has agreed to amend the manual to provide greater clarity.***
2. An appropriate level of resources and training should be provided to the Scheme. ***The Department has agreed that this was an ongoing process and steps are currently being taken to review both staffing levels and training requirements. DHAC has advised that resources were made available in the recent Federal Budget to enhance resources.***
3. The recording and collection of complaints should be enhanced to enable improved analysis, particularly of urgent and systemic issues to be undertaken by complaints section managers, state managers and Central Office. ***The Department agrees that in particular, senior staff, including State and Territory Managers, have been reminded and directed to take a much greater and active role in reviewing complaints handling in their respective jurisdictions.***
4. The role, responsibility, authority and membership of the Complaints Resolution Committee, in particular its powers of determination and recommendation in respect of all complaints; and the ability of the Secretary to require de novo review of its determinations, should be clarified. In this context, the role of the Panel and the potential conflict of Departmental membership should be reviewed. ***The Department has agreed to review the role of Departmental Officers on Determination Review Panels and is considering a range of options which may include recommending possible changes to the Committee Principles.***
5. The Committee's hearings should be tape recorded to ensure that an accurate record is made of the proceedings. ***The Department has agreed to implement appropriate procedures to enable recording of Committee procedures.***
6. The Scheme's literature and pamphlets should be amended to include reference to the role of the Ombudsman and complainants' rights to external review. This information, together with information about the role of Community Advocacy groups, should be provided to residents, their carers/families when they first enter an aged care facility. ***The***

Department has agreed to examine the most appropriate form and process for providing this information.

7. The Aged Care principles should be amended to ensure that records of all complaints kept by facilities are available to the Scheme on request. ***The Department supports this recommendation.***
8. Guidelines on their role and function should be provided to mediators. ***The Department agrees to implement appropriate procedures to ensure this occurs.***
9. Both State and Federal criminal records should be searched when a name check is undertaken. ***The Department agrees to implement appropriate procedures to ensure this occurs.***
10. The Scheme's manual should be reviewed to ensure that appropriate guidance is given on when a complaint should be referred to another area of DHAC or an external agency; the treatment of anonymous complaints and whistleblowers; exercising discretion on complaints and prioritising workloads. ***The Department agrees to implement appropriate procedures to ensure this occurs. It has advised that a review of the Scheme's manual has already commenced.***