



**Aged & Community Services
SA & NT Inc**

SUBMISSION

AGED & COMMUNITY SERVICES SA & NT

DEPARTMENT OF HEALTH AND AGEING

CIS REVIEW PROJECT

August 2009

Aged & Community Services SA& NT Inc (ACS) is the peak industry body providing strategic leadership to 95% of the not-for-profit aged and community sector in South Australia and members in the Northern Territory. ACS represents a wide range of community care, retirement housing and high and low care residential providers.

ACS is part of the federation of State Associations which comprise Aged and Community Services Australia – the national peak body.

ACS provides members with practical information and support in operating aged care facilities, retirement housing and community care services. ACS assists its members by promoting their work to the community and to Governments, and by keeping them informed of matters that affect their operations.

Introduction and Overview

Older people, their families and aged care providers need access to a complaints system which deals with complaints fairly and decisively and in which they can be confident. While it is preferable that complaints and concerns be resolved informally on site between families and management, ACS supports the need for an external authority, to which enquiries and complaints may be directed should internal processes fail or prove unsatisfactory for any reason.

This submission questions whether the current complaints model is the right model. (This issue was not included in the review consultation paper.) Our basic position is that the current Complaints Investigation Scheme (CIS) should be replaced by a new scheme that is actually focused on working with the complainant and provider to resolve complaints and encourage positive relationships between parties.

The current CIS process is fault finding and punitive in nature. Ideally complaints investigations should be focused on the particular incident or matter that is the subject to the complaint and not an exhaustive investigation into the organisation's policy and systems which includes detailed examination of large amounts of documentation. This review provides a real opportunity to break the current nexus between the Department, the CIS and the Accreditation Agency which has become blurred in recent times.

ACS acknowledges that there are problematic behaviours both by some CIS officers and some staff of providers which has impacted on the effectiveness of the current complaints system. Regrettably some CIS officers have been reported by ACS members as having taken an unnecessarily adversarial approach in undertaking their investigations and some aged care staff reactions have not assisted relationships during the complaint investigations.

Rather like police officers in the community who only see the worst elements of society, regulators tend to only have negative experiences of the aged care system. To improve relationships it would be of significant benefit if DHA should endeavour to ensure that all staff have the opportunity to experience the excellent work of aged care providers under other circumstances. ACS would welcome the opportunity to facilitate such interactions with its members.

The Current System

- In 2007-08 the Complaints Investigation Scheme (CIS) investigated 7,496 complaints with only 930 (12%) of cases resulting in a finding of a breach of an aged care provider's responsibilities. While any breach is unacceptable there must be improvements implemented to a system that creates distress and disruption to 88% of those investigated and demands that staff services are redirected to the immediate needs of the CIS process rather than to the Residents.
- The CIS is not adequately resolving complaints for those involved (older people, families, providers). The current system is punitive and creates an unnecessary and significant administrative load.
- The current system fails to meet acceptable standards of due process or evidence and is viewed with some concern by many legal practices who have been consulted by ACS members.
- The current system is focused on fault finding and blame, rather than on identifying the systemic underlying causes, which upon rectification, could then be used to improve whole-of-industry performance.
- The relationship between the CIS and the Aged Care Complaints Commissioner needs to be reviewed. The Commissioner appears to have no authority or power to action any of its decisions if these decisions contradict the Department CIS findings. Indeed it appears the Department has the power to overrule the Commissioners findings and recommendations.
- There appears to ACS members to be a relationship problem between CIS and the Aged Care Accreditation Agency especially relating to data exchange which might assist in investigations.
- At times, there are excessive requests for written information concerning the provider's systems which may relate to the issue being investigated. On occasions the CIS appears to have no, or very little, specific information on the issue being investigated (the complaint).
- The CIS can take many months to finalise a complaint. This situation creates significant stress for providers and staff. Because the CIS is not proactive in keeping the provider up to date with the progress of the investigation, it consistently appears to be the provider who has to contact the CIS for progress updates.
- The CIS investigations generate an enormously intrusive and resource-intensive processes in the provider organisations, which can dominate and overpower vital service provisions to Residents.
- The process of investigation seems to operate from a position of assumed shortcoming in the provider's staff or systems.
- The CIS does not appear to comply with the 1997 "Benchmarks for Industry-Based Customer Dispute Resolution Schemes" which covers principles of accessibility, independence, fairness, accountability, efficiency and effectiveness.
- A Notice of Required Action (NRA) is issued when a breach is found and the provider has not already taken action to address the issue. In 2007-08 there were 214 NRAs issued of which 89% were complied with and resulted in no further action being required.

The System We Need

- An independent complaints authority (ICA) with the capacity to investigate, resolve and conciliate complaints.
- The authority to be overseen by an agency comprising consumer representatives, provider representatives and other key agencies.
- It is enormously discouraging to providers to have formal complaints investigations commenced in situations where they have experienced ongoing challenging relationships with family members in the past. While it would be unjust for any genuine complaint not to be investigated because of previous relationship problems it would seem a better system for the CIS to take the opportunity to clarify the relationships between the provider and complainant with both parties before commencing any formal investigation. This method would highlight any past or ongoing problems, especially where a new complaint is made which is the same as one raised previously by the same complainant which may have been fully investigated by CIS. Initial CIS enquiry work, as the first part of any investigation, including reference to its own records, would significantly improve the current process.
- The specific matter or incident that is the subject of the complaint, is the matter that should be investigated and not subjecting all of the provider's systems that might relate to the particular topic area to investigation. Providers' systems are already subject to regular and ongoing audits by the Accreditation Agency via announced and unannounced visits.
- There should be clear time frames around the CIS investigative process i.e. responding to the initial complaint, updates and notification of outcomes.
- A system which complies with the Government's 1997 "Benchmarks for Industry-Based Customer Dispute Resolution Schemes". Performance monitoring of the scheme should be undertaken.
- The focus of any new system must be on resolving the complaint for the complainant which will then replace the blame and punitive ethos of the current CIS system.
- The National Aged Care Alliance (comprising all the stakeholders in aged care – providers, consumers, professional groups and unions) paper *Resolving aged care complaints. A continuous improvement orientation for the aged care complaints mechanisms* clearly sets out how such a system might be achieved. The paper is available from www.naca.asn.au.

A suggested model could work as follows:

1. Complaint made to Independent Complaints Authority (ICA) – referral back to provider's system if appropriate.
2. Mediation – ICA scheme attempts to resolve issue before taking any further action.
3. Investigation – full investigation occurs if issue is unable to be resolved. Investigation includes consultation with all relevant parties.
4. Resolution – fair and unbiased decision for both the complainant and the provider.
5. Appeal mechanism – that has 'teeth' and that DHA can't overturn/ignore.

GENERAL COMMENTS

- All calls to the CIS are currently logged as complaints. This distorts any statistical reports.
- A complaint can not currently be withdrawn once it has been logged by the CIS.
- The method of accepting the complaint has created the impression with complainants that the CIS is “on their side” rather than independent and unbiased.
- Anonymous complaints are accepted which provides no protection for providers against vexatious complaints.
- Complainants should be required to have been through a provider’s internal complaints process prior to it going to the CIS. While the CIS currently asks if the complainant has been through the provider’s process there is no requirement that the CIS insist it occurs. This process would also assist with minor complaints.
- Some form of performance monitoring/quality control should be introduced to identify any perceived inappropriate behaviours by CIS officers undertaking investigations.
- ACS members have commented on CIS staff taking a confrontational approach and making unreasonable demands on provider’s time. It is not uncommon to have two investigators on-site for six hours. Significant documentation demands are made. Investigators are found to lack aged care operational and clinical knowledge/experience and we recommend that this should be a priority for ICS staff training.
- Providers should be given information about the specific complaint that has been made against them. Some providers have reported that even at the end of the ICS process they remain unaware of the details of the complaint. This does not enable the provider to learn from the experience or take any steps to improve practice.
- Where there is a reportable offence staff have to be ‘stood down’. In these circumstances an investigation should occur quickly. Some aged care staff have resigned as the result of this process having felt that they have already been judged as guilty, regardless of the ICS outcome. This situation adds to the workforce difficulties experienced in Aged Care where the significant shortage of professional nurses has become a national concern.
- It is a growing concern that the current trend is to explore other aspects of the provider’s care processes and services. It is important that the original complaint is addressed and resolved before other issues are explored.
- Despite providers being given exceptionally short timelines to respond/provide information regarding a complaint, the length of time taken by CIS before a complaint is finalised is often several months. For example many providers have reported being asked to fax copious amounts of information to the CIS late on a Friday afternoon only to discover when calling to confirm receipt, that there is no one in the office as all CIS staff have gone home.
- Providers are not able to confidentially raise issues about individual officers with CIS management. When providers have had issues to raise management has included the officer in the discussion. Providers should have the ability to raise issues confidentially.

- Providers should have information on CIS findings provided to them on the complaint outcomes prior to the outcomes being forwarded to the Standards & Accreditation Agency.
- Written information from the CIS is often unclear about the outcome of the investigation (i.e. provider is in breach, referral to the Agency will occur). This needs to be revised so that it is clear and up front.
- A strong and transparent appeals mechanism should be included in the CIS process. Under the current system the Aged Care Commissioner appears ineffective as DHA can ignore the findings.
- It is currently unclear as to how CIS determines when a complaint indicates there is a systemic problem or just an individual incident. The determination process should be clear and transparent for all involved.

Trend data should be available to the Aged Care industry to enable providers to learn from the CIS experiences and assist in improving practices.

EXAMPLE

CIS VISIT TO AN AGED CARE FACILITY (ACF) FOLLOWING A COMPLAINT

Without any notification two investigators appeared at Administration about 0930 am.

*They presented their IDs and stated they **MUST** be seen or there would be consequences. Any plans or meetings that were arranged for that day were now gone!*

The investigators were pleasant enough and proceeded to explain the allegations (it was a 'cluster' of claims that had been orchestrated by a 'difficult' relative of one of the residents.) The ACF had NEVER had any previous claims against it. It appeared the instigator had canvassed other community members that may have expressed some dissatisfaction (gossip) with the organisation at some time over the previous years. The Approved Provider (AP) was told the allegations were treated as true until they could prove (by documented evidence) otherwise! The allegations were scathing and the recall of the events by the complainants VERY clouded by emotion and not based on truth.

The investigators interviewed the AP and staff for 4 ½ hours on Day 1. They then left to visit another site – with plans to return the next day to collect documented evidence.

After the investigators left the AP informed senior staff of the allegations. AP then developed a plan to collect the HUGE amount of evidence required to support the reputation of the home. Five senior staff and 2 photocopiers worked until 10.00 pm that evening to collect all the information required. A number of the issues raised were from past residents and required searching the archives and years of notes to substantiate the ACF had acted in accordance with professional practice at all times.

The investigators returned the next day and another 3 hours of interview, site inspection and resident interviews followed. The AP sent the investigators away with approx 1500 pages of copied notes and was pleased with the content of all the evidence presented and

very confident all claims would prove unfounded. However the AP found the exercise very stressful as the feeling of ‘guilty till proven innocent’ weighed heavily.

“The intent of ‘guilty until proven innocent’ is in breach of natural justice”

The investigators suggested they ‘should’ have a result within one month.

Three months passed with NIL communication from the CIS.

The AP was then informed by another investigator of the CIS that she had ‘inherited’ the job and now the AP needed to explain many of the issues yet again. Extra information was found and re-sent just to make the process more time effective for the CIS.

More weeks passed. The AP rang a couple of times – always fearful that if more information was demanded re the progress of the case this may prejudice the judgement. CIS staff always promised to find information and get back to the AP ASAP. This never happened.

The ACF had an Unannounced Visit from Accreditation & Standards Agency two months after the CIS visit. The visit was not the norm and the assessors seemed to be VERY intent in their pursuit of finding fault with medication management. (If you look hard enough you will always find fault.) The visit was difficult and by the end of the day the assessors had managed to find some non-compliance. There were issues the AP tried to explain but simply did not understand the Agency’s unusual fervour! The AP ‘gave up’ and just accepted their findings. (The AP had the follow-up visit two months later and the next assessor queried the findings of her predecessors! Compliance was restored.)

The next month was challenging when the AP succumbed to a Rota-Virus Gastro Outbreak: rampant throughout the region at that time. Another opportunity for contact with the CIS. (This is the branch of the Dept that investigates outbreaks.) The outbreak was major and we were in ‘lock down’ for 11 days. The home provided EXTENSIVE documented reports daily (as demanded) by the CIS tracking the progress of the residents and staff illness. The Home was required to phone in daily and give verbal reports: usually at least 30 minutes in duration and usually just going over all the information supplied in the written reports. The CIS had contacted senior staff and was unreasonably harsh in their demands for explanations of events that had occurred at the onset of the outbreak. The AP contacted the CIS and reminded them the info they demanded of staff had been faxed through to them in a VERY comprehensive report on Day 1! The CIS proceeded to tell me they had not read the reports sent and wanted verbal confirmation. The AP was unhappy that all the time and efforts were being wasted! During such a stressful and clinically challenging episode staff time was needed on the floor – not wasting time administratively! The CIS then sent the Accreditation Agency to the ACF unannounced on Day 11 of the Gastro Outbreak! The unannounced visit proved

confirmation all infection control issues were operational and effective. The Home opened the doors that day and no problems since.

FINALLY seven months after the first and original complaint letters started to 'filter in' from the CIS stating 'nil breaches found'. When the home received the first letter re 'nil breach' it stated they had notified the Accreditation Agency and now understood the agency had arrived in March with an agenda! (Why did the agency not state their intent at the outset?) A month later another letter arrived stating 'nil breaches found.' The home has been advised another letter is imminent with 'nil breach found.' The timeliness of the reporting is NOT good and is there a formalized program of how these issues are replied to. The AP is unsure exactly how many letters will complete the process!!??

The Home had another contact with the CIS just recently. One of the original complainants having received a letter stating 'nil breach found' has now lodged another complaint. At least this time CIS wrote a letter outlining the complaints and allowing the home time to send them the evidence to disprove the ridiculous claims. However, again they appeared unannounced to do a site visit, interview and more photocopying! Another 3 hours gone. Again pleasant and understanding staff – no doubt frustrated by what they can see is a vexatious allegation. The investigators on this occasion would not commit to any time frame of resolution but did encourage the home to contact them at any time to enquire as to the progress of the complaint.

It is of ongoing concern to the organisation that complaints can continue to be lodged and when disproven on so many occasions the complainant has no responsibility. Claims can be purely hearsay or personal interpretation and not based on any clinical knowledge. Where will it all end?

“Where are our (Approved Provider) rights in this process? How can we protect ourselves against gossip, malicious intent or the ongoing canvassing for complaints from out in the community? These complainants can happily spread outrageous claims in the community but we cannot reply due to the confines of confidentiality. How can you address a complaint when the complainant does not need to identify what outcome it is that they require resolving the issue?”