



**Submission to the
Aged Care Complaints Investigation Scheme
Review**

August 2009

About NSA

National Seniors Australia (NSA) is the largest organisation representing Australians aged 50 and over with some 280,000 individual members.

Our members are from metropolitan, regional and rural areas across all states and territories, and are broadly representative of the three key ageing cohorts: those aged 50-65; those aged 65-75; and those aged 75 +.

NSA works to provide a voice and address the needs of this diverse membership:

We represent – to governments, business and the community on the issues of concern to the over 50s;

We inform – by providing news and information through our website, forums and meetings, our bi-monthly award winning magazine, a weekly E-newsletter and our Australia-wide branch network;

We provide opportunity – to those who want to use their expertise, skills and life experience to make a difference in indigenous communities and on our environmental legacy;

We support those in need – our Charitable Foundation raises funds to provide comfort and support for our most vulnerable older citizens;

We provide savings – through quality insurance, affordable travel and tours, and discounts on goods and services.

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1. Introduction

High performance service providers seek to place their stakeholders at the heart of what they do. A robust and transparent complaints investigation system is one of the key means by which high performance organisations continually improve themselves, in both the private and public sectors.

Achieving a rigorous complaints investigation scheme and a clear and transparent appeals process are essential mechanisms for lifting standards of care and improving business practices in the aged care industry. National Seniors Australia (NSA) considers the current Complaints Investigation System (CIS) is failing in this capacity and should be improved in various ways, as outlined in this submission.

This submission highlights areas of concern with the CIS and outlines how improved consumer engagement with the CIS, through greater transparency, consultation and feedback, will assist in restoring confidence amongst aged care consumers. NSA believes that a more effective and engaging CIS will also lead to higher standards of care and improved business practices in the aged care industry.

This submission has been developed in consultation with our members, and aims to reflect their direct experiences with the CIS. Anecdotes based on representations made to NSA have been included where possible.

Key Points

- 1. Complaints informing quality improvement** - NSA believes this can be achieved through more comprehensive feedback from the CIS to the Aged Care Standards and Accreditation Agency (ACSAA) as well as a stronger role for the Aged Care Commissioner (ACC) in evaluating and making binding recommendations to the Department in regard to the CIS processes.
- 2. Engagement with complainants** - NSA believes a greater level of consultation and feedback would lead to an improved sense of involvement in the process, and fewer disagreements for consumers and their families with CIS decisions¹ Representations made to NSA suggest that complainants are not being adequately consulted by the CIS in the investigation process, or provided with adequate feedback once a decision is made.
- 3. Re-balance of evidence** - NSA believes the investigation process needs to be re-balanced in favour of greater consultation with complainants. This will lead to improved decision-making and a greater level of trust in the investigation process. Representations made to NSA indicate that the current process focuses too heavily on documentary evidence from providers, and does not ensure sufficient right of reply for complainants.
- 4. Accountability** – NSA believes that when the ACC makes a recommendation to the Department to vary or set aside a decision that recommendation should be binding. The statutory powers of the ACC should also be expanded to include public reporting of investigation findings beyond the current limited annual reporting requirements.

¹ In this submission, “complainant” encompasses a range of stakeholders who come into contact with residential aged care services. Complainants include residents and representatives of residents. Representatives are often family members of the resident who engage with aged care services where the resident is unable to voice their own concerns. Representatives may also include GPs, other residents or aged care staff where a complaint is made on behalf of, or for the benefit of, a resident.

2. Complaints informing quality improvement

The role of the CIS in improving the quality of the aged care system should be strengthened. There is considerable scope for the CIS to act as a monitoring system, thereby alleviating some of the pressure on the accreditation system. However, this can only be achieved where proper communication systems between the Aged Care Standards and Accreditation Agency (ACSAA), Department, Aged Care Commissioner and CIS are in place.

As a first step, all complaints received by the CIS should be reported and provided as feedback to ACSAA, not only when a systemic problem is detected. The Agency should not be directed to investigate complaints, but should be informed of all CIS findings.

Areas for action

- Ensure the CIS informs the Agency of all complaints it receives, and not just when not only when a systemic problem is detected.

3. Complaints Investigation Process

3.1 Engagement with complainants

NSA is firmly of the view that an effective complaints investigation scheme should bestow complainants with a sense of involvement in the process of reaching an 'umpired' decision. Representations made to NSA suggest this is not the case with the current CIS, resulting in disenchantment with the process. In particular, there are frequent reports from people who have made complaints who feel they have not had their concerns properly dealt with.

Representation made to NSA:

A complaint was made to the CIS and investigated. Subsequent to the investigation the complainant received notice from the CIS that the provider had not breached its obligations and no action would be taken. No reasons were given to the complainant for this decision, and the complainant was left wondering how the CIS had come to its conclusion. The complainant felt that the CIS did not believe there was a complaint.

Complainants report that they feel the CIS does not take their complaint seriously enough. Of the 7,500 complaints received by the CIS in 2007/2008, only 30 per cent prompted CIS investigators to visit premises on which care was provided. In 26 per cent of cases, the CIS referred the complaint on to ACSAA or another agency, and less than 3 per cent prompted the issuing of a Notice of Required Action.² This apparent high rate of inaction is having a significant negative impact on aged care consumers and their families.

Furthermore, there have been some reports that complainants are not being advised of the reasons for a decision, once made. This feedback is contrary to the indication given in the Consultation Paper that the CIS will provide the complainant with 'reasons behind the decision'.

² Department of Health and Ageing. Report on the Operation of the Aged Care Act 1997 (1 July 2007 – 30 June 2008)
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NSA believes that, if the CIS engaged with complainants throughout the investigation process, and informed them fully of the reasons for their decision, this would lead to an improved sense of involvement, and fewer disagreements for consumers and their families with CIS decisions, even if the decision was ultimately not to take any action.

3.2. Balance of evidence

NSA hears of many situations where the CIS appears to rely on documentary evidence provided by the provider during the investigation process. Naturally enough, many respondents feel this advantages the provider who has easy access to documents, particularly when the complainant does not have documentary evidence

Representation made to NSA

A complaint to the CIS involved significant delays in a resident being given medication. The CIS investigated the complaint and approached the provider, who produced a care plan to the CIS showing that the resident had a medication schedule in place. The complainant was not approached, and was later informed by the CIS that no further action would be taken on the basis of a care plan being in place. The complainant reported to NSA that, despite the documentary “evidence” produced by the provider, the medication schedule was not adhered to on a number of occasions, leaving the resident in considerable pain while awaiting medication.

It is essential that the CIS bases its decisions on the collection of factual information from all parties, including the interviewing of witnesses, and does not rely on documentary evidence provided by the provider alone. NSA believes that the CIS process would be strengthened and more balanced if a range of sources of evidence are used, including for example: random spot checks, interviews with complainants and staff, and monitoring of care over a period of time.

3.3 Visits to facilities

While the CIS is authorised to use a number of investigative methods, in practice these are restricted to a degree by the fact that investigators require the consent of service providers to access premises. As a consequence, most visits to facilities are announced. In 2007/2008, only one third of the 3,100 visits to premises were unannounced

Representation made to NSA

“For a few days around an official visit life is perfect in the nursing home. There is extra staff, meals are perfect, everyone is toileted at the right time. The place shines, gardens are tidied, and then it is back to normal. After the visit, many of the positive things do not last.”

This practice, according to a number of respondents, enables providers to ensure that for the duration of the investigation at least, service plans are implemented punctually. In the previous example, unannounced visits could have yielded valuable information about how service plans are implemented on an ongoing basis.

3.4 Mediation

NSA believes that some complainants may be better served through a more informal approach by the CIS. While providers are required to have a complaint resolution scheme in place, NSA is told that many complainants are uncomfortable approaching the provider directly for fear that the care of the resident in question may be compromised.

In this regard, NSA believes there is scope for the CIS's role as a mediator to be enhanced by allowing complainants the option to try mediation in the first instance. This may achieve the desired outcome for the complainant without the time and expense of an investigation process.

Representation made to NSA

One member wrote about her experiences with aged care facilities stating that "I soon learnt that to complain is the worst thing you can do. I felt very uneasy. I was not listened to when I needed assistance. I am aware that visitors are the best source of information for governing bodies. However, complaining is hard and can be a traumatic experience. The reaction of staff and owners is extremely negative and family and friends have a real fear for their loved one. Some staff were aware of many issues but were reluctant to complain. They had to protect their jobs."

NSA is aware however that the preceding Complaints Resolution Scheme (CRS) was criticised for relying too heavily on mediation. To ensure there is no repeat of this, complainants should not be compelled to accept mediation and should retain the right to an investigation, whether or not mediation has been attempted.

Areas for action

- The CIS investigation process should seek to ensure a more even balance between documentary evidence from the provider and direct consultation with complainants.
- Seek to increase the proportion of unannounced visits (currently 1/3 of all visits by the CIS).
- Complainants should be provided with clear reasons for decision reached by the CIS and ACC.
- Complainants should be provided the option to try mediation in the first instance, while retaining the right to request an investigation.

4. Reviewing Decisions

The role of the Aged Care Commissioner's office was created in 2007 to assist in the improvement of quality of aged care. However, anecdotal evidence suggests the ACC lacks the authority needed to effectively perform this role. NSA believes the role of the ACC is important and should be strengthened.

The ACC only has the power to investigate the process of the CIS investigation and is unable to revisit the complaint itself. If due process has been followed by the CIS, the ACC must dismiss the complainants appeal, irrespective of the appropriateness of that process. Complainants report a further level of disenchantment with the system when a complaint is dismissed a second time.

NSA receives reports of complainant fatigue. Frequently complainants do not appeal a decision of the CIS because they have no confidence in the system. This highlights the need for the ACC to take a stronger role in evaluating and making binding recommendations to the Department in regard to the CIS processes.

NSA believes the effectiveness of the ACC could be strengthened if it were modelled on the role of an Ombudsman, with similar powers and reporting functions. This would allow the ACC to make binding recommendations while remaining an independent investigatory body. During 2007-2008 the ACC completed 88 reviews of an examinable decision, and of these 42 either rejected or sought to vary the CIS decision. The Department chose not to adopt 10 of these decisions (almost a quarter).³

As well as being independent from the Department, the ACC should also be able to publicly report on its findings beyond the current very limited annual reporting requirements. The public reporting functions of an Ombudsman or other statutory authority is important in generating transparency in the process. Further, an expanded reporting function would enable complainants to gather information about complaints and the CIS process which would better inform their role in the process.

Areas for action

- Where the ACC makes a recommendation to the Department to vary or set aside a decision, that recommendation should be binding.
- Strengthen the ACC's role in evaluating and making binding recommendations in regard to CIS processes.
- The statutory powers of the ACC should also be expanded to include public reporting of investigation findings beyond the current limited annual reporting requirements.

³ Ibid.