

21 August 2012

The Hon. Mark Butler MP
Minister for Mental Health and Ageing,
Parliament House,
Canberra, ACT, 2600
Email: Mark.Butler.MP@aph.gov.au

Dear Minister,

We write to you following the publicity, on ABC TV 7.30 Report 16 August 2012, alleging fraud and the misdirection of public money to the pockets of aged-care providers rather than to employing badly needed staff to care for frail residents.

The consequences were graphically described on ABC Lateline the same evening. Thousands of dementia patients dying because of powerful and dangerous sedatives they did not need, given simply to enable fewer and less skilled staff to be employed to look after them.

These allegations are so serious that anything short of total transparency is now unthinkable.

We are particularly disturbed by the claims that departmental staff have been pressuring assessors requiring them to tolerate fraud and other practices that would embarrass the government - so keeping system failures hidden.

Aged Care Crisis provides a forum for those who have serious concerns about the current system of aged care. Family members, nurses and carers who have spoken to us have been alluding to these and similar issues relating to the conduct of providers and the department. We are aware of what has been happening.

We are worried that overzealous but dedicated staff in previous ministers' offices, anxious to avoid embarrassing publicity for their minister, may have applied pressure on the Department to gloss over financial and quality of care issues. We know that dedicated staff can sometimes mistake their mission and, under the pressures of the political moment, abrogate their responsibility to serve the community.

That there might be pressure on the Department is doubly concerning because the Department can ignore and override rulings by both the Aged Care Commissioner and the Ombudsman. In fact as a recent letter to you (Ian Waters 18/8/2012¹) illustrates, they have even denied 90-year-old residents natural justice when doing so.

No one can blame Mr Waters if, when he finds out that government legislation permits the Department to override those appointed to review its decisions, he concludes that the current legislation was designed to keep a lid on what the Government knew was happening in aged care - and that the new recommendations from the Productivity Commission would make it easy to do the same.

In light of these allegations and disturbing possibilities, and on behalf of all Australians we demand²:

1. a total and radical overhaul of the aged care system.
2. that the seriously-flawed recommendations of the Productivity Commission be radically restructured and in particular that the arrangement whereby all of the pieces of the aged care system be under the umbrella of a single organisation be scrapped. This lends itself to ongoing cover-ups.
3. costs of care and accommodation to be up front and clear - and not negotiated with vulnerable residents.

¹ <http://www.agedcarecrisis.com/yoursay/4584-response-to-abc-730-report-on-aged-care-rorts>

² For supporting notes, please see **Appendix A** and **Appendix B**

4. disclosure of taxpayers' funds spent on care staff, food, equipment, services, accommodation and maintenance.
5. minimum staff/resident ratios, ensuring adequate staffing hours
6. registered nurses on duty at all times wherever high care classified residents are present
7. full transparency of actual staffing numbers to intending residents and their families of actual care delivery
8. relegation of the flawed Accreditation Agency to its proper role in supporting and training providers. Providers should bear the costs.
9. oversight of aged-care homes to be separated from accreditation, to be based on outcomes, and to be mediated and directly accountable to community organisations in the regions served.
10. a system of locally based and regular oversight so that the community knows what is happening (see *Appendix B*).
11. total transparency in regard to outcomes as well as services available.
12. bed licenses not to be transferred without probity being required of both the provider and owner.
13. the same or similar reforms be applied to residential aged care where similar fraud and exploitation is possible.
14. information to be publicly available about license applicants and intending transferees of residential aged-care facilities in order to give the public an opportunity to make inquiries and submissions to the department.
15. to ensure that residents in nursing homes receive the same medical care available to them while they lived in the community. They now fall between the cracks. We support the AMA's call for a greater role for doctors in our nursing homes.

The recent \$3.7 billion funding for residential care is welcomed but under the current structure it does nothing to discourage the same fraud and redirection of funds that nursing homes are accused of.

If situations such as those described in the ABC TV programs are to be prevented, and residents are to receive the care for which they and the taxpayer have paid, then it is our view that representatives from the regional community, in which the aged care homes are situated, must be represented at every level of the aged-care process. **They should not be appointed by government or provider** but be selected by a range of local community groups, independent of government or providers.

Aged care is a vital humanitarian service provided to and by the community, which is the real customer. Without an informed, involved and empowered community as customer, this market will not work for the benefit of the frail aged. Direct involvement in all facets of the aged care system by representatives from the community is essential for full transparency and oversight.

The demands we are making on behalf of Australians and the proposed role of the community are in keeping with the submissions made by Aged Care Crisis and by us individually³. They were intended to address many of the matters now alleged, ones we were concerned about.

Yours sincerely,



Lynda Saltarelli
Aged Care Crisis Inc.

Signed copies to follow by post.

*Attached: **Appendix A and Appendix B***

³ **Submissions to the Productivity Commission's Inquiry "Caring for Older Australians":**

ACC submission 1: <http://bit.ly/N2kdBX>; Draft response 2: <http://bit.ly/iElItC6> ; Draft response 3: <http://bit.ly/O1JhZG>
Dr J.M. Wynne's submission: <http://bit.ly/O1LeFp>; Draft response: <http://bit.ly/l0D6ZZ>

Appendix A

Explanatory notes on implementation of changes

This appendix amplifies the list of demands and suggests ways in which the changes can be implemented.

Item 1. In overhauling the aged care system we should root out inefficient practices that divert funding away from care, and address inequities, injustice and care shortfalls. We should create a system that is so transparent that it is not possible to hide failures in care and financial rorting from the community. The success of any market depends on an informed and effective customer. Their absence is why this market has failed so badly.

Item 2. The Productivity Commission has proposed giving control of the entire Aged Care System to a single organisation, The Australian Aged Care Commission (AACC).

It is not clear how or by whom its officers will be appointed. Retaining all of these functions under the control of a single organisation will facilitate exactly the sort of cover-up and aged care establishment abetment of practices that waste funding and compromise care; practices that have now been alleged.

The allegations make it essential that the functions of oversight, data collection, quality evaluation, complaints investigation, and information release be separated from the financial and accreditation functions - and be totally transparent.

Item 3. Care and accommodation must be transparently costed and disclosed. It is totally unacceptable for providers to take advantage of vulnerable seniors and their anxious families in order to make lucrative deals based on wealth rather than need, when negotiating for payments or for bonds.

Item 4. Commercial in confidence provisions are not acceptable as this is not a market like any other. The disparity in power invites abuse and complete transparency is essential.

Full disclosure should include on site verification of the way funding is expended on nursing services, equipment, food, resident's life styles, maintenance and expansion, as well as the profits taken.

This may have been onerous in 1997 when such requirements were abolished. With modern computer technology every properly managed facility will already be tracking finances and clinical outcomes. Access should be provided to these databases.

Item 5 to 7. In other sectors where high standards of care must be provided to vulnerable members of the public (for example hospitals or kindergartens) there are mandatory staff/recipient ratios. Adequate numbers of skilled nursing staff are critical for aged care and also the single major cost. That funds are being diverted from nurses to profits goes to the heart of our humanity and our total disgust at what has been claimed on the TV program.

It is essential that staffing levels be documented, be verifiable and should include day and night rosters, and an assessment of nursing time per resident. Good care cannot be provided without sufficient numbers of good dedicated staff.

Items 8 to 11. Accreditation is a provider friendly system designed to help providers of care set up processes and systems that if implemented will improve care. Certification indicates that they are in place but not that they are working effectively. Accreditation is not directed to monitoring outcomes to see whether these processes are working. It also has a conflict of interest here.

Accreditation has not worked effectively as a monitor of standards or as a regulator in the USA or in Australia. In its submission to the Productivity Commission it [disclaimed its regulatory role](#)⁴ so its heart is not in this.

Responsibility for oversight of care, documentation of outcomes and evaluation of services in aged-care homes should be separated from accreditation. It should be based on outcomes, and would be best assessed regularly by trained community based staff, directly accountable to community organisations in the regions served.

They should have access to financial and clinical databases. Community visitors should work with and support these staff.

Items 12 to 14. Probity, which is best defined as *whether an ordinary educated citizen in possession of all the facts, would be prepared to trust the license applicant to provide that service*, was removed from the aged care regulations in 1997. Probity regulations play a very important role in protecting vulnerable citizens from unscrupulous predators when there is a disparity in power.

The importance of owners, and the control they have cannot be underestimated. They can and usually do determine financial policy, exert strong pressures for profitability, and appoint managers and staff who will do what is required of them. Much of what has been disclosed attests to the priority of profit and the consequent lack of probity of those who have been entrusted with the care of our elderly.

Corporate appointed managers in aged care have the same primary fiduciary duty to maximize profit for their shareholders as the giant cigarette companies who so recently challenged antismoking legislation in our high court. This duty remains even when thousands of dementia sufferers and millions of smokers suffer horrendously and die as a consequence.

Researching large corporations can be difficult and time consuming, opening up an unwanted can of worms for regulators. Too often approval of providers and owners has been a rubber stamp and even simple internet searches are not done. It is essential therefore that those who are likely to be more motivated be given the opportunity to make their own enquiries.

Local communities and residents' families should be advised of a license application and be given an opportunity to make submissions and supply information. The community should be represented on bodies approving licenses.

Residents and their families may go to great lengths to carefully select a nursing home, only to have the home and their care sold off to the highest bidder, often one intent on squeezing as much profit as possible from the care provided. This is socially immoral.

Residents and the local communities should have some control over this. Prospective purchasers of a nursing home must be required to seek the approval of families and the local community. A process should be created for this.

⁴ http://www.pc.gov.au/data/assets/pdf_file/0006/108555/subdr763.pdf (page 7)

Appendix B

The Community in Aged Care

The allegations aired on ABC TV 7.30 Report program illustrate the conflict of interest that occurs when those who are charged with the care of vulnerable people are also responsible for checks on the system and for investigating complaints. The exposures on Lateline reveal what happens behind the closed doors of dementia facilities when no one is watching.

We believe that the only way to ensure transparency and prevent similar recurrences is to make the community a critical part of the process.

To this end we believe that volunteer community groups should be formed as an independent party to the provision of aged care within their regions. Suggestions as to how this could be accomplished are described in sections of the links below.

Related links:

Productivity Commission's Inquiry "Caring for Older Australians":

<http://www.pc.gov.au/projects/inquiry/aged-care>

- Dr. J.M. Wynne's submission: 9.5 Practical Suggestions (page 45)
http://www.pc.gov.au/_data/assets/pdf_file/0016/101914/sub368.pdf
- Aged Care Crisis submission (response to the draft report): Pages 3 and 4
http://www.pc.gov.au/_data/assets/pdf_file/0009/110070/subdr0902.pdf