

AGED CARE INFORMATION

1. Introduction

1.1 Ageing population and the importance of caring for the elderly

It is recognised that the Australian population is an ageing one, and thus issues related to care of the elderly are of growing importance. The Australian Bureau of Statistics estimate that based by the year 2052-51 females will on live on average to age 95.0 and males to 92.2 years old¹. The elderly are in a greater state of vulnerability than many other members of society and are experiencing a great many changes, socially, physically and emotionally. For these reasons it is important that our aged care system works efficiently and effectively.

1.2 Brief overview of the services offered to care for the elderly

There are various aged care services that can assist the elderly. Such services include hostel care², nursing home care³ and care packages⁴. Although only a small proportion of the population over 60 lives permanently in aged care facilities, this number increases rapidly in the population aged over 85⁵.

Following is a discussion of matters relating to nursing homes and guardianship issues.

2. Nursing Homes

2.1 Commonwealth funded nursing homes

The Aged Care Standards and Accreditation Agency is the body appointed under the *Aged Care Act 1997 (Cth)* to accredit and supervise Commonwealth funded Nursing Homes. Commonwealth funded nursing homes are accredited to determine that they are fully able to provide quality aged care.

New nursing homes are required to be accredited before any residents are to be admitted and once accredited a body must comply with the regulations in an ongoing manner. Nursing homes are accredited for three years at a time and must apply to be re-accredited before that period of time expires. Accreditation is done by an assessor who assesses the nursing home in

¹ Statistics gathered from the Australian Bureau of Statistics

² Australian Law Reform Commission *"The coming of age – new aged care legislation for the commonwealth: review of legislation administered by the Department of Human Services and Health"* ALRC 72 1995: Hostel care includes accommodation and associated personal and support services

³ *ibid*: Nursing home care provides more hands on and ongoing support services and accommodation

⁴ *ibid*: Where an elderly person has been granted a care package an organisation is essentially funded to provide the elderly person with care and support at their own residence

⁵ *ibid*

relation to its compliance with the Accreditation Standards and expected outcomes.

There are four main accreditation standards nursing homes must comply with to be accredited and each principle consists of a main principle and a number of expected outcomes⁶. The four main standards are as follows:

- Management systems, staffing and organisational developments
- Health and personal care
- Resident lifestyle
- Physical environment and safe systems

2.2 Complaints

2.2.1 Complaints regarding the Aged Care Standards and Accreditation Body

Complaints regarding the procedures, staff and other related matters of the Aged Care Standards and Accreditation Body can be made directly to the body:

- Telephone 1800 288 025
- Fax (02) 9633 2422
- Email national@accreditation.org.au
- Through this website. Click on Make a comment complaint or query online in the left hand margin.
- Or you can provide feedback in person - see Contact us in the left hand margin for office locations

The Accreditation Body will seek to resolve the matters within 28 days of the complaint.

2.2.1 Complaints regarding a Commonwealth funded nursing home

Nursing home complaints procedure

Each aged care facility should have their own established system for dealing with complaints regarding the care and services received at that particular care facility. It may be advisable to initially discuss the matter with the Director of Nursing or manager of the particular nursing home before following other avenues of complaint.

Aged Care Complaints Resolution Scheme

Complaints regarding a Commonwealth funded nursing home can be made to the Aged Care Complaints Resolution Scheme by either a resident of a nursing home or a family member or representative of that resident.

⁶ The full Accreditation Standards can be accessed at the following link:
<http://www.accreditation.org.au/AccreditationStandards>

Complaints can be made where a particular service that the nursing home is required to provide and is funded to provide, is not being provided. They can be made on 1800 550 552 or in writing to:

Aged Care Complaints Resolution Scheme
C/- Department of Health and Ageing
GPO Box 9848
In your Capital City

To help resolve the complaint and/or dispute the Complaints Resolution Scheme will provide the relevant parties with access to mediation and advocacy services. Where this fails, the matter will be referred to the Complaints Resolution Committee who are able to conduct a hearing and provide a written determination on the matter.

Should a party be unhappy with the Determination of the Complaints Resolution Committee, the relevant party can apply to the Commissioner of Complaints for review of that decision. An application for review *must be made within 14 days of having received the determination*. You can access further information on this review process at www.commissionerforcomplaints.net.au.

Health Care Complaints Commission

The Health Care Complaints Commission was established under the Health Care Complaints Act 1993 (NSW) and receives and investigates complaints related to health care matters within NSW. The Commission recommends that parties complain to the relevant body or health care provider before taking the matter to the Commission.

If, however, the matter is not dealt with expediently or resolved in a satisfactory manner, complaints can be made to the Health Care Commission in writing at:

Locked Mail Bag 18
STRAWBERRY HILLS
NSW 2012

The Commission may be able to provide you with assistance in writing the complaint. You can contact a telephone inquiry officer on 1800 043 159 for further information.

Complaints can be made by many interested parties, including those receiving health care, friends or family of those receiving health care and health care professionals. "The Health Care Complaints Commission (the Commission) receives and assesses complaints about health care practitioners and health care services (generally referred to as health service providers)... may be made about the professional conduct of a health service provider that affects the clinical management or care of an individual"⁷.

⁷ www.hccc.nsw.gov.au

There are many different ways in which the Commission can attempt to resolve your dispute, including referring the matter for conciliation and referring the matter to a Complaints Resolution Officer.

For further information you can access The Health Care Complaints Commission's Complaints Guide on their website at www.hccc.nsw.gov.au

3. Decision Making and Guardianship

As people age, it sometimes happens that a person becomes unable to make their own decisions related to their personal and medical affairs. There are mechanisms in place to assist the elderly if such problems do arise in their later years.

3.1 Aged Care Directives

Individuals can prepare what is termed an Aged Care Directive, a document that not only notes their medical afflictions and history, but also lists their preferences for medical treatment in the future should a person no longer be capable of making such decisions on their own.

Such decisions can in some circumstances be made by family on a person's behalf, however such a plan assists families in making such difficult decisions. Such plans can provide a person with more control over their affairs in preparation for a time where this may not be possible and involve concerned parties in decision-making processes.

Further information on Aged Care Directives can be found on the NSW Health Department's website at www.health.nsw.gov.au.

3.2 Guardianship

In situations where an elderly person is no longer capable of making decisions regarding their lives and medical care and treatment, a family member or friend usually takes on this responsibility. This often ensures that the best interests of the elderly person are met by individuals that have been closest to them in their lifetimes.

3.2.1 Guardianship Tribunal

At times there may be some circumstances where there is no one appropriate to act on behalf of the elderly person or problems are encountered relating to their care, such as disagreement between family and friends. In such circumstances The Guardianship Tribunal, established under the *Guardianship Act 1987*, may be able to appoint a Guardian to take control of the person's affairs and make decisions on their behalf.

Applications can be made to the Tribunal by any party with a genuine interest in the elderly person. A hearing will be held, which, where possible, will involve the person of whom guardianship is sought and a decision to appoint a guardian will be made. Where possible the Tribunal will attempt to appoint a family member or friend as guardian.

Where, however, the Tribunal feels that there is no one available to take on guardianship or no one suitable to do so, they may as a last resort appoint a Public Guardian. It may be that there is no one suitable to take on guardianship where there is dispute within the family as to the best way to proceed with the care of or decisions regarding the elderly person.

A Public Guardian will make decisions with regard to matters that are set out in the particular Guardianship Order.

The process for Guardianship applications is as follows:

1. Before the hearing
 - Enquiry
 - Application
 - Investigation
 - Hearing
 - Dismissal / Order
2. After the hearing
 - Private guardian appointed
 - Public guardian appointed
 - Financial manager appointed
 - Protective Commissioner Appointed
3. Written orders and reasons for decisions
 - Written decisions and orders are made
 - Parties to a hearing should receive these within 12 days of the decision

For more detailed information regarding the process please visit the Guardianship Tribunal's website on www.gt.nsw.gov.au.

3.2.2 Review, complaints and appeals

If the order is not working, certain circumstances have changed since the order was made, there is no longer a need for a guardian, or new information has come to light, a party can apply to have the order reviewed by the Tribunal.

The Tribunal should be contacted to make such an application.

Complaints can be made against members and staff of the Guardianship Tribunal. Complaints should be put in writing and addressed to:

The Registrar
Guardianship Tribunal
Locked Bag 9
Balmain NSW 2041

If the matter is not dealt with to your satisfaction and it is related to staff or administrative matters, you can also address your complaint to the NSW Minister for Disability Services, being the Minister responsible for the Guardianship Tribunal.

There is a right of appeal from decision made by the Guardianship Tribunal under certain circumstances. You must be a party to the original proceedings and you should seek independent legal advice with regard to the matter prior to making a decision to appeal.

You can appeal a decision of the Guardianship Tribunal to either the Supreme Court of NSW or the Administrative Decisions Tribunal of NSW. Appeals can only be made on either a point of law or any other question if the Supreme Court or Administrative Decisions Tribunal gives permission. Appeals must be made within 28 days of receiving the Guardianship Tribunal's written decision and orders.

For further information see www.gt.nsw.gov.au or contact 1800 463 928.

4. Contacts and Services

Aged and Community Care Hotline	1800 500 853
Aged Care Complaints Resolution Scheme	1800 550 552 www.health.gov.au
Aged Care Rights Services	1800 424 079
Aged Care Standards and Accreditation Agency	1800 288 025 www.accreditation.org.au
Commissioner for Complaints	www.commissionerforcomplaints.net.au
Guardianship Tribunal	1800 463 928 www.gt.nsw.gov.au
Health Care Complaints Commission	1800 043 159 www.hccc.nsw.gov.au
NSW Health Department	www.health.nsw.gov.au
Office of the Public Guardian	1800 451 510 http://www.lawlink.nsw.gov.au/opg