

## Chapter 8

### Governance

8.1 From 1 January 2014 there will be two Commissioners undertaking functions under the Aged Care Act 1997 – the existing Aged Care Commissioner (ACC) and the new Aged Care Pricing Commissioner (ACPC).<sup>1</sup>

8.2 From 1 January 2014 accreditation of aged care services will be undertaken by the new Australian Aged Care Quality Agency (Quality Agency) which will replace the existing Aged Care Standards and Accreditation Agency.<sup>2</sup>

8.3 The Aged Care Financing Authority (ACFA) was established in August 2012.<sup>3</sup>

#### **Aged Care Commissioner**

8.4 The Aged Care Commissioner (ACC) currently has the power to examine complaints about the conduct of the Quality Agency relating to its responsibilities under the Accreditation Grant Principles 2011, or the conduct of a person carrying out an audit or undertaking an assessment contact under those Principles.<sup>4</sup> The ACC can also review certain decisions and processes made under the Aged Care Complaints Scheme and make recommendations to the Secretary of the Department.

8.5 As part of the establishment of the new Quality Agency, the ACC will not review complaints about the conduct of Quality Agency employees in relation to its responsibilities under the Accreditation Grant Principles.<sup>5</sup> However, under the proposed provisions the ACC will be able to:

- examine complaints about the Quality Agency's processes relating to accrediting residential care services and conducting quality reviews of home care services (as described in the Australian Aged Care Quality Agency Act 2013); and
- examine, on the Aged Care Commissioner's own initiative, the Quality Agency's processes relating to accrediting residential care services and conducting quality reviews of home care services.<sup>6</sup>

Following any such examination of processes the ACC may make recommendations to the CEO of the Quality Agency.<sup>7</sup>

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1 Aged Care (Living Longer Living Better) Bill 2013 – Explanatory Memorandum, p. 30.

2 Aged Care (Living Longer Living Better) Bill 2013 – Explanatory Memorandum, p. 26.

3 DoHA, *Submission 92*, pp 9,10.

4 Aged Care (Living Longer Living Better) Bill 2013 – Explanatory Memorandum, p. 29.

5 Aged Care (Living Longer Living Better) Bill 2013 – Explanatory Memorandum, pp 29–30.

6 Aged Care (Living Longer Living Better) Bill 2013 – Explanatory Memorandum, p. 26.

8.6 As is the case now the Commissioner may not consider a complaint about the merits of a particular decision because there will be separate processes for reconsideration of accreditation and review decisions along with opportunities for providers to seek review by the Administrative Appeals Tribunal.<sup>8</sup>

8.7 The Aged Care Commissioner was supportive of the change.

8.8 From 1 July 2013 the ACC power under the Complaints Principles will be increased to give the Commissioner greater power and independence in relation to examining decisions made by the Aged Care Complaints Scheme's officers.

Specifically the Commissioner will be able to direct the Scheme to:

- undertake a new complaints resolution process taking into account the Commissioner's views following an examination of a Scheme decision;
- require the Scheme to provide the Commissioner with information requested in respect of a matter under examination; and
- provide a report directly to the relevant Minister if the Commissioner is not satisfied with the response of the Scheme in undertaking a new complaints resolution process.<sup>9</sup>

The Commissioner's current powers to examine complaints about the Scheme's processes for handling matters will remain unchanged.<sup>10</sup>

8.9 The Aged Care Commissioner was very supportive of the changes:

In my view, enhancing the powers of the Aged Care Commissioner, who is independent from the Department-based scheme will give the public greater confidence that it is worthwhile exercising their appeal rights.<sup>11</sup>

### ***Committee View***

8.10 The Committee supports the draft amendments to the *Complaints Principles 2011* to strengthen the powers of the Aged Care Commissioner.

### **Aged Care Pricing Commissioner**

8.11 From 1 July 2014 the Aged Care Pricing Commissioner (ACPC) will be established to make decisions on certain pricing issues within the legislative framework and broad policy framework set by the Minister.<sup>12</sup> These include:

- approval of extra service fees

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7 Aged Care (Living Longer Living Better) Bill 2013 – Explanatory Memorandum, p. 29.

8 DoHA, *Submission 92*, p. 20; Aged Care (Living Longer Living Better) Bill 2013 – Explanatory Memorandum, p. 29.

9 DoHA, *Submission 92*, p. 18.

10 DoHA, *Submission 92*, p. 18.

11 Office of the Aged Care Commissioner, *Submission 5*, p. 2.

12 Aged Care (Living Longer Living Better) Bill 2013 – Explanatory Memorandum, p. 2.

- approval of accommodation payments higher than the maximum amount determined by the Minister
- other functions as determined by the Minister or contained in the Act or any the law of the Commonwealth.<sup>13</sup>

8.12 The ACPC is an independent statutory officer and all decisions will be made under the ACPC's authority. The bill allows the ACPC to delegate in writing all or any of his or her functions to an Australian Public Service employee in the Department of Health and Ageing (the department).<sup>14</sup>

8.13 Concerns were raised about the delegation capacity of the ACPC in respect of possible conflicts of interest:

The role of the Pricing Commissioner is approving extra service fees and accommodation payments is for fees that are higher than in the maximum amount determined by the Minister which may in fact result in a conflict of interest between the functions of DoHA in its recommendations and advice to the Minister and the role of the Pricing Commissioner....DoHA has stated that the Commissioner reports directly to the Minister however remains an employee of DoHA, governed by the Public Service Act. This requires clarification about the independence of the Commissioner and how this will be guaranteed.<sup>15</sup>

8.14 The department indicated in response to these concerns that:

While section 95B-11 of the Bill allows the ACPC to delegate all or any of his/her functions to an APS employee in the Department, it is expected that the ACPC will make all decisions...Departmental officers assigned to work for the ACPC will not have other Departmental functions. These arrangements are the same as those which apply to the Aged Care Commissioner and which have worked appropriately.<sup>16</sup>

8.15 It was also indicated that all ACPC decisions will be reviewable:

...the legislation includes mechanisms for the ACPC to reconsider his or her own decisions, and for the Administrative Appeals Tribunal to review the ACPC's decisions.<sup>17</sup>

8.16 The majority of submitters gave broad support to the establishment of 'an independent body to assess pricing and costs in aged care services'.<sup>18</sup> Some submitters considered that a wider scope of powers for the ACPC may be desirable:

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13 Aged Care (Living Longer Living Better) Bill 2013 – Explanatory Memorandum, p. 31.

14 Aged Care (Living Longer Living Better) Bill 2013 – Explanatory Memorandum, pp 33–34.

15 Aged and Community Services Australia, *Submission 67*, p. 14.

16 DoHA, answer to written question on notice, (received 14 May 2013), p. 7.

17 DoHA, answer to written question on notice, (received 14 May 2013), p. 7.

18 Council of Social Service of New South Wales, *Submission 96*, p. 3.

- Approval of fees and charges under the policy framework approved by the Minister. This could include approving the Schedules of Fees and Charges for Home Care and residential care established under the Principles and Determinations, the pricing and services offered as 'additional amenities'.<sup>19</sup>
- Monitoring of the interactions between assessment under the Aged Care Funding Instrument and subsequent fees and charges.<sup>20</sup>
- Notification to and review of complaints made to the Aged Care Complaints Scheme in relation to financial matters, including fees and charges.<sup>21</sup>
- The ability to receive feedback directly from consumers regarding aged care pricing.<sup>22</sup>
- Monitoring of input cost increases and other pricing matters as proposed by the Productivity Commission.<sup>23</sup>

8.17 Grant Thornton Australia and Thomas Holt in contrast thought that the ACPC was unnecessary and would add another layer of regulation.<sup>24</sup>

### ***Committee view***

8.18 The committee supports the establishment of a statutory pricing commissioner. The committee does not wish to see the sector overburdened with oversight and believes that the current responsibilities for the ACPC are sufficient. These issues can however be considered further at the time of the statutory review.

### **The Aged Care Financing Authority**

8.19 The Aged Care Financing Authority (ACFA) was established in August 2012 to provide transparent, independent advice to the Government on pricing and financing issues in aged care, informed by consultation with consumers, and the aged care and finance sectors.<sup>25</sup>

8.20 Since the ACFA was established it has undertaken 'several rounds of consultation to enable them to provide advice to Minister Butler on several key financing issues.'<sup>26</sup>

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19 National Seniors Australia, *Submission 68*, p. 3; Council of Social Service of New South Wales, *Submission 96*, p. 5; Aged and Community Services Australia, *Submission 67*, p. 14.

20 National Seniors Australia, *Submission 68*, p. 3.

21 Council of Social Service of New South Wales, *Submission 96*, pp 5, 11.

22 Council of Social Service of New South Wales, *Submission 96*, p. 11.

23 Aged and Community Services Australia, *Submission 67*, p. 14.

24 Grant Thornton Australia, *Submission 6*, p.6; Thomas Holt, *Submission 74*, p. 3.

25 DoHA, *Submission 92*, pp 9,10; DoHA, Living Longer, Living Better, Aged Care Financing Authority, <http://www.health.gov.au/internet/main/publishing.nsf/Content/ageing-aged-care-acfa> (accessed 30 May 2013).

26 DoHA, *Submission 92*, p. 9.

8.21 Although there was support for the establishment and operation of the ACFA there were concerns about the true independence of the authority and its relationship with the new Aged Care Pricing Commissioner:

UnitingCare Australia believes that the Aged Care Financing Authority (ACFA) and the Pricing Commissioner should be truly independent from Government to ensure a fair and equitable aged care system. In the current reforms there is no requirement for the Minister to take the advice of ACFA, and the Pricing Commissioner's role is very limited. There is also the potential for overlap between these two roles.<sup>27</sup>

8.22 Both LASA and COTA were also supportive of the ACFA, however both were concerned about its non-statutory nature in light of the importance of its role:

COTA strongly supports the role and functions of the ACFA, which has already undertaken substantial work to advance the reforms...COTA therefore proposes that the ACFA be established by the addition of a clause to that effect in the Bill, and that provision be made for a Principle that prescribes the Operating Framework of the ACFA...<sup>28</sup>

The Aged Care Financing Authority should be established under the Aged Care Act, as a Committee, with responsibility to ensure, amongst other things, the continued sustainability of the aged care sector.<sup>29</sup>

8.23 Under section 96-3 of the *Aged Care Act 1997*, the Minister can establish committees on a statutory basis. The committee understands there are no committees under the Act at present.

### ***Committee View***

8.24 The committee has noted the very valuable work performed by the Pricing Authority, including during the course of this inquiry. It agrees that the Authority should be put on a statutory footing, and that section 96-3 provides a suitable vehicle for this purpose.

### **Recommendation 13**

**8.25 It is recommended that ACFA be established by the Minister for Mental Health and Ageing as a committee under section 96-3 of the *Aged Care Act 1997*.**

**Senator Claire Moore**  
**Chair**

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27 UnitingCare Australia, *Submission 59*, p. 10.

28 COTA, *Submission 87*, p. 13.

29 Leading Aged Services Australia, *Submission 58*, p. 15.

