

Independent Complaints Commissioner and Absolute Visitation Rights

Background

The only protection recipients of in-home and residential age care have against ill treatment by providers unwilling to resolve issues through open engagement in relational regulation is a timely effective independent complaints system that ensures there are no reprisals.

Even if the aged find a good residential home, or a good in-home care provider, they are always vulnerable. The residential home or in-home care beds may be sold. Management may change. Safety, good care and a positive environment in the future can never be assumed.

Weighing up whether to go to the Complaints Commissioner

In a time of unnecessary suffering and ill-treatment from a provider the greatest obstacle to a family member lodging a complaint to help their loved one may be fear of denial of visitation rights.

Fear of what your forced absence will mean to your loved one. The loss of:

- just being there with them in the room that is now their world,
- turning on the tv and watching a favourite program together,
- dialling the phone to allow conversations with other family members,
- the help eating meals,
- the helping to bed at night or to the toilet,
- the clean toilet riser cleaned out of sight,
- the cleaning of the hands,
- the securing of medical and allied health support.

All the care provided to loved ones every day by so many to fill the gaps left by caring overstretched support workers due to under staffing.

Weighing up how far management will go with reprisals given:

- escalating bullying;
- cutting of contact with nurses after nurses' findings support the fact care does not comply with written documentation and medical requests;
- worsening medical issues due to requirements that all requests for medical assistance are to go through a care manager who may be unavailable and not reply to calls and emails for weeks;
- never ending meetings (with management, with advocates, with head office),
- management's repeated plans to take action to resolve unnecessary pain, suffering and function loss never being followed through.

Visitation

Older persons or their substitute decision-makers wondering whether to lodge complaints may be aware of cases where visitation was reduced/denied such as:

<https://www.abc.net.au/news/2020-04-21/aged-home-edenfield-nerrilda-fails-repeated-audits-no-sanctions/12166356><https://www.abc.net.au/news/2022-02-08/call-for-federal-help-at-port-augusta-aged-care-facility/100812970>

<https://www.abc.net.au/news/2020-04-21/aged-home-edenfield-nerrilda-fails-repeated-audits-no-sanctions>

Edenfield Family Care -Nerilda Performance Report Commission ID 6974, ACQSC audit report

Independence of the Complaints Commissioner

They may wonder whether complaints and preventing reprisals will be the first and only priority. Or may other requirements lead to compromise if the proposed Complaints Commissioner reports to the ACQS Commissioner as proposed in the Exposure Draft. The ACQS Commissioner will have responsibility for the functions of safeguarding, engagement and education, and registration of providers as well as complaints.

Suggestions of difficulties reconciling current functions have been reported:

- Conflicts of interest within the Commission workforce

<https://www.theguardian.com/australia-news/2024/feb/01/one-third-of-outsourced-australian-aged-care-home-inspections-rejected-as-substandard#:~:text=The%20Aged%20Care%20Quality%20and,were%20not%20up%20to%20standard>

- Compromises between relational regulation and other functions, such as between compliance failures and star ratings¹

If complaints are not lodged because the Complaints Commissioner is not seen as fully independent unnecessary suffering, harm and injury may not be resolved. Ongoing positive relational regulation may not be fostered.

The provision of an independent complaints function with protection from reprisals and absolute protection of visitation rights are essential to ensuring the safety of the aged receiving care.

¹ The Failure of the Aged Care Star Rating System- A Discussion Paper, Adjunct Professor Rodney Jilek, DipAppSc, BHltSc, MPH, PhD, DrPH, Aged Care Consulting & Advisory Services Australasia, January 2023

Recommendations:

An Independent Complaints Commissioner be established with their own Office and Staff, distinct and separate from the ACQSC.

Unlimited and unfettered visitation rights be established in the Act.

The sole reason for stopping unlimited visits be something akin to a conviction for assault of a staff member or resident by the visitor concerned.

Strong penalties be established to ensure providers unwilling to provide a positive relational regulation environment comply with legislation, quality standards, and audit findings.

The complaints system responds to urgent complaints of unnecessary suffering with a site visit within 48 hours.