ADR Bulletin
ADR Bulletin

Volume 5 | Number 8 Article 2

12-1-2002

Aged Care Complaints Resolution Scheme

Rob Knowles

Recommended Citation
Knowles, Rob (2002) "Aged Care Complaints Resolution Scheme," *ADR Bulletin*: Vol. 5: No. 8, Article 2.
Available at: http://epublications.bond.edu.au/adr/vol5/iss8/2

This Article is brought to you by ePublications@bond. It has been accepted for inclusion in ADR Bulletin by an authorized administrator of ePublications@bond. For more information, please contact Bond University's Repository Coordinator.

ADR Bulletin

ADR in a Federation

Aged Care Complaints Resolution Scheme

Rob Knowles

Background and nature of the Scheme

The Aged Care Complaints Resolution Scheme is an ADR service run by the Commonwealth Department of Health and Ageing. The focus of the Scheme is on resolving complaints about Commonwealth funded aged care services.

The Scheme was established in October of 1997, following the introduction of the *Aged Care Act 1997* (Cth) and the Aged Care Principles made under that Act. To date the Scheme has handled in excess of 6000 complaints and has successfully resolved a significant proportion of those complaints to the satisfaction of both the complainant and the service provider.

The Scheme is a free service which seeks to resolve complaints about the health, safety and/or welfare of people receiving aged care. It is able to refer issues that may be more appropriately dealt with by others (for example, police, nurses and medical registration boards). The Scheme is overseen by an independent Commissioner for Complaints.

Who can use the Scheme?

The Scheme is available to anyone who wishes to make a complaint about a Commonwealth funded aged care service, including residents of an aged care home, people receiving community aged care packages or flexible care, or relatives, guardians or representatives of those receiving care.

All aged care services are required to have an internal complaints system and in many cases this may be an effective means of dealing with concerns.

If, however, the complainant is uncomfortable discussing a problem directly with the service provider, or they are dissatisfied with the outcome of the internal complaints mechanism, they can contact the Scheme.

If required, the Scheme can provide access to an interpreter service, a TTY (deaflink) phone service or a free confidential advocacy service.

Representatives of advocacy services may inform people of their rights and entitlements; tell them about the help they can provide; and assist them to voice their concerns by representing them to the aged care service or the Scheme.

What does the Scheme cover?

A complaint may be about any aspect of a Commonwealth funded aged care service that should be provided or made available to people receiving care, and is within the Approved Provider's responsibilities under the Act. This may include care, catering, financial matters, hygiene, security, activities, choice, comfort and safety.

There are, however, some matters with which the Scheme cannot deal. For example, it cannot say who should make financial, legal or health decisions on behalf of a care recipient. The Scheme also cannot comment on industrial matters such as wage or employment conditions or provide legal advice on any problems.

How does the Scheme work?

When contact with the Scheme is made staff will listen to and clarify the caller's concerns and expectations to decide if they can deal with the issue/s as a complaint under the Scheme; explain how the Scheme works; and inform the caller of their right to have the assistance of an advocacy service if they wish.

Preliminary assessment

On receipt of a complaint the complainant will receive a letter of acknowledgment from the Scheme. The legislation allows officers of the Scheme seven days in which to make a preliminary assessment of the complaint. The purpose of this assessment is to decide whether the complaint should be accepted and/or whether it should be referred to another agency. The complainant may be asked for more information about the complaint to enable a delegate of the Secretary to make the preliminary assessment. Should this occur the Scheme must make the assessment within seven days after receiving the additional information.

Not all complaints are accepted

A complaint may not be accepted by the Scheme if it is considered frivolous, vexatious, not made in good faith, or the complaint is not one that the complainant is entitled to make under the legislation. The Scheme will not accept a complaint if the subject matter of the complaint is, or has been, the subject of legal proceedings, or there is an alternative way of dealing with the issues and the complainant agrees to have the complaint dealt with in that way.

Ongoing process

The processes outlined in the legislation that supports the Scheme are based on resolution through negotiation, mediation or determination.

- Negotiation: on receipt of a complaint, a Complaints Resolution Officer (CRO) will ask the complainant what course of action is sought and then negotiate with the service provider.
- Mediation: in cases where a successful outcome cannot be achieved through negotiation a qualified and independent mediator may be arranged by the Scheme, free of charge, to facilitate a resolution. Prior to mediation, the appointed mediator will conduct a mediation assessment. Based on this assessment the mediator is required to advise the Scheme whether mediation is likely to successfully resolve the matter.
- Determination: if the mediator advises the matter is not amenable to mediation, or mediation is ultimately unsuccessful, then the matter is referred

Published by ePublications@bond, 2002

to a Complaints Resolution Committee for Determination. Hearings are conducted by Complaints Resolution Committees, which are comprised of independent members with expertise and experience in aged care and complaints resolution. Committees are appointed to hear matters by the Commissioner for Complaints. Determinations set out a course of action and are legally binding on the service provider.

- Review: a Determination may be appealed by either the complainant or the service provider. This appeal is considered by a Review Panel, which is generally chaired by the Commissioner. The appeal or review process is the final stage available to parties under the Scheme and is conducted 'on the papers'.

Office of the Commissioner for Complaints

The Office was established in September 2000 through a change to the Aged Care Principles 1997. As a result of those changes, I have been assigned a number of functions including:

- oversighting the operation and effectiveness of the Scheme;
- co-ordinating and reviewing complaints received by the Secretary and complaints about the operation of the Scheme;
- supervising the Chairpersons and other members of Complaints Resolution Committees;
- managing the determination and determination review processes;
- promoting an understanding of the Scheme;
- regularly reporting to the Secretary of the Department of Health and Ageing and the Minister for Ageing; and
- annually reviewing and reporting to the Minister about the operation of the Scheme.

The mission of the Office is 'Promoting effectiveness in complaints resolution and fostering excellence in public administration'.

Additionally, I am required to nominate Chairpersons and Committee Members to hear particular matters, to co-ordinate all committee reports for the financial year and to give reports to the Minister for presentation to the Parliament.

I am also required to provide advice to the Secretary in instances where an application to reconsider non-acceptance of a complaint has been received.

In promoting an understanding of the Scheme, I undertake a number of speaking engagements and regularly meet with a wide range of key stakeholders. I aim to build on the progress made to date to develop a nationally recognised and accessible Scheme that is accepted by the Australian community as an effective means of resolving consumer concerns and enhancing quality in aged care services.

In order to provide easy access to up to date information about the Scheme and the role of my Office, we have developed a website at <www.cfc.health.gov.au>.

Establishing a national approach

As alluded to, part of my role is to achieve a level of consistency in the approach of the Scheme across the country. This would appear to be a relatively straightforward goal to achieve but the realities are quite different.

Since I have direct supervision of the Committees, a level of consistency has been achieved through the development of standardised determination report formats and training to each of the Committees around the country about the legislation, how to conduct and what to bear in mind during hearings and how Committees might go about weighing the information they receive.

Recently, I undertook a recruitment exercise to appoint Committees for each of the States and Territories. Of the approximately 1400 information kits posted out, around 450 applications were received, 98 candidates interviewed and 43 appointed to sit either as a Chairperson or as a Committee Member. Since approximately half of the appointees are new to the role, further training has recently been completed in relation to the determination process. Time will be the judge on how successful that training is in achieving consistency, but as part of an ongoing quality process staff of my Office will analyse the determination reports once outside the appeal period and make recommendations to Committees about how to improve the quality of the determination reports published.

Since the determination stage of the Aged Care Complaints Resolution Scheme is the only point, apart from the preliminary assessment phase, where an operative decision is made in relation to the complaint and there are a variety of large, national service providers operating across different jurisdictions, consistency is vital to the credibility of the determination process and, indeed, to the Scheme as a whole.

This is also true of the way the Scheme operates during the preceding phases of the complaints process. While I have a legislative responsibility to oversight the operation and effectiveness of the Scheme, I do not have day to day management responsibilities for it. That role is undertaken by the State offices of the Department of Health and Ageing. So, in order to achieve consistency across the country for the Scheme, my Office consults and negotiates with each of the State and Territory programs with a view to achieving consensus positions on ways that the Scheme operates.

To date, this approach has worked well. Some significant objectives have been achieved with the Scheme, particularly around how to structure reasons for not accepting complaints, the meeting of performance indicator targets for statutory timeframes and the development of protocols for handling contacts with the Scheme who threaten harm to themselves, others or to property.

As with any multi-layered, complex system, the ways in which the Scheme as a whole operates will be a process of evolution in terms of achieving the most beneficial means of bringing resolution to complaints in a manner that fosters ongoing relationships between the parties. ●

The Hon Rob Knowles is the inaugural Commissioner for Complaints. The Office of the Commissioner for Complaints is a national office based in Melbourne and can be contacted on 1800 500 294 or cfc_feedback@health.gov.au.