



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: BL/ELCS: DH1b1439733

12 February 2018

Mr Jonathan Smithers  
Chief Executive Officer  
Law Council of Australia  
DX 5719 Canberra

By email: [Natasha.molt@lawcouncil.asn.au](mailto:Natasha.molt@lawcouncil.asn.au)

Dear Mr Smithers,

**Inquiry into the Quality of Care in Residential Aged Care Facilities in Australia**

Thank you for your memorandum dated 24 January 2018 requesting input into the Law Council of Australia's submission to the House of Representatives Standing Committee on Health, Aged Care and Sport, *Inquiry into the Quality of Care in Residential Aged Care Facilities in Australia*. The Law Society's Business Law and Elder Law, Capacity and Succession Committees contributed to this submission.

The Law Society's comments address the following paragraphs in the terms of reference:

1. *The incidence of all mistreatment of residents in residential aged care facilities and associated reporting and response mechanisms, including the treatment of whistle blowers.*

The Law Society submits that there should be independent, appropriately staffed and notionally available residential aged care facility inspectors who have statutory ability to:

- Visit each facility on at least a quarterly basis;
- Make unscheduled visits to facilities on an 'as-required' basis;
- Inspect facilities and conduct in person or phone conversations with residents and their next of kin; and
- Issue fines and take other appropriate actions in circumstances where a facility is not in compliance.

The Law Society also submits that whistle blower protection be incorporated into the scheme to ensure that facility staff can appropriately report issues such as poor care practices, financial abuse of residents by a facility, and suspected 'elder abuse' of residents by family or other visitors.

3. *The adequacy of consumer protection arrangements for aged care residents who do not have family, friends or other representatives to help them exercise choice and their rights in care.*

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CONSTITUENT BODY

The Law Society submits that the current consumer protections available to residents and their carers and families (the consumers) under the existing aged care legislative framework, not just residential aged care, are confusing and inadequate. There are multiple points of contact for consumers to seek recourse in the event of a dispute with the aged care provider.

The Law Society submits that a harmonisation of the regulation of aged care across jurisdictions and modes of care, that is, the Commonwealth (Home Care and Residential Aged Care) and State (Retirement Villages) would be desirable. This harmonisation should lead to a rationalisation of the handling of consumer protection issues in aged care.

A revised and harmonised framework should have clear and efficient pathways to address all matters which cause consumers of aged care services concern – from quality of care, fees and charges, and disputes with the operator of the aged care services. The framework should distinguish between those consumer complaints that are a consequence of a medical condition, such as dementia, and those which are genuine complaints about the aged care services they are receiving.

The current framework requires consumers to apply to different regulators for particular issues, for example, quality or fees. Further, those regulators hear the complaints on a single issue (such as quality or fees) when the ability to hear a full complaint would give a more accurate picture of the consumer's complaint and the aged care operator's practices. In addition, those regulators can only give orders for limited remedies. The Inquiry should consider whether there are opportunities for complaints raising multiple issues to be dealt with as part of the same proceedings.

In the Law Society's opinion, the current framework is not appropriate for consumers who are a particularly vulnerable cohort of the population, that is, the elderly and their carers and families.

Please do not hesitate to contact Liza Booth, Principal Policy Lawyer on 02 99260202 or [liza.booth@lawsociety.com.au](mailto:liza.booth@lawsociety.com.au) if you would like to discuss this in more detail.

Yours sincerely,

A handwritten signature in blue ink that reads "Doug Humphreys". The signature is written in a cursive, flowing style.

Doug Humphreys OAM  
**President**