12 April 2011

Caring for Older Australians
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

By Email to: agedcare@pc.gov.au

Dear Commissioner

Re: Draft Report – Caring for Older Australians

The Law Institute of Victoria (LIV) welcomes the opportunity to make a submission to the Productivity Commission on the Productivity Commission *Draft Report - Caring for Older Australians*. Thank you for accepting our submission after the closing date.

Our submission is attached.

Yours sincerely,

Caroline Counsel
President
Law Institute of Victoria

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Draft Report – Caring for Older Australians

To: Productivity Commission

12 April 2011

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Introduction

1. The Law Institute of Victoria (LIV) welcomes the opportunity to make this submission to the Productivity Commission (the Commission) in response to the Draft Report on *Caring for Older Australians* (the Draft Report).

2. The LIV is Victoria's peak body for lawyers and those who work with them in the legal sector, representing over 14,500 members. The LIV's Elder Law Section is made up of private practitioners, lawyers with community legal services and government agencies with extensive experience in elder law and aged care issues.

3. This submission does not provide a comprehensive response to the Draft Report but provides comment on a number of recommendations relating to paying for aged care (chapter 6);care and support (chapter 8); catering for diversity – caring for special needs groups (chapter 9); age-friendly housing and retirement villages (chapter 10); and regulation – the future direction (chapter 12).

General comments

4. The LIV supports the Draft Report policy focus on enhancing the wellbeing of older Australians, in line with the term of reference (TOR) to develop regulatory and funding options for residential and community aged care that support independence, social participation and social inclusion (TOR 2). We are also pleased that the government has requested that the Commission develop models that minimise complexity for clients, their families and providers and provide appropriate financial protections and quality assurance for consumers.

5. The LIV agrees with the Commission's view that "[o]lder Australians generally want to remain independent and in control of how and where they live their lives, continue to be connected and relevant to their families and communities, and be able to exercise some measure of choice if they require care" (p xxi). We are therefore pleased that the Commission acknowledges that the Australian Government funded aged care system needs fundamental reform, "to overcome the delays, discontinuities, constraints and shortages that currently exist" (p xxi). The Commission highlights that weaknesses in the system, and the need for fundamental reform, have been identified in numerous reports since at least 2004.[1]

6. We agree with findings of the Commission that the current residential aged care system offers consumers minimal choice, both in relation to the aged care facilities in which they live and in relation to the quality of their lives in residential care.

7. The LIV supports a system that is person-centred and responsive to consumer needs and we consider that consumer protections currently available are insufficient and inadequately resourced to meet this objective. A robust quality assurance system and an effective complaints handling process should recognise breaches of residents' rights and require providers to comply with those rights. As a corollary, the system must not be

[1] E.g. Hogan Review (2004), National Health and Hospitals Reform Commission Report (2009),Henry Tax Review (2010).

burdensome on aged care providers and compliance should not be overly time-consuming or adversely affect the quality of care.

Paying for aged care (chapter 6)

Accommodation costs – applying the principles

Draft Recommendation 6.3 – The Australian Government should remove regulatory restrictions on the number and community care packages and residential bed licences over a five-year period. It should also remove the distinction between residential high care and low care places.

8. The LIV supports the removal of the distinction between low and high care.

9. The removal of restrictions on the number of bed licences might, however, devalue existing aged care businesses, which might lead to a reduction in the funds available to those businesses to provide care and ultimately to care recipients receiving a poorer quality of care. For this reason, the LIV considers that the removal of restrictions on the number of bed licences should be managed to ensure that it does not impact on the market value of existing aged care businesses.

10. At present, the Australian government issues bed licences (referred to in the *Aged Care Act* 1997 (Cth) (the Act) as "places") to approved providers of aged care. The places are designated as high or low care (with or without extra service) and are confined to a specific location within a region (although some places can be moved within that region with the approval of the Department of Health & Ageing (DoHA)). New places are usually issued provisionally until a suitable facility is built. Provisional allocations of a limited number of new places are made annually. Places (but not provisional allocations) can be traded subject to the approval of DoHA. The places or bed licences therefore operate in the commercial sense like taxi licences in that there are a limited number of them available for sale and the total number of bed licences (and therefore the total number of government-funded aged care beds) is limited by government issue.

11. We note that currently, accommodation bonds may be charged on all low care places and on high care places with extra service. If the distinction between high and low care places is removed, operators will be able to charge accommodation bonds to all residents (other than those in *supported* places which are government funded).

12. We understand that Draft Recommendation 6.3, if accepted, would mean that an Approved Provider could build a new facility or extend an existing one where that Approved Provider believed a demand existed and could operate as soon as the facility satisfied the accreditation standards. We note that initially, this might have a negative impact on the market value of aged care facility businesses for sale (because instead of buying existing bed licences or receiving a provisional allocation, a new operator could establish a new facility and simply seek accreditation).

13. The Draft Report suggests (at pp166-7) the removal of restrictions on the number of bed licences over a five-year period and removal of the distinction between high and low care, on the basis that, together these changes will improve competition in the aged care

industry and facilitate a greater range of choice for the elderly. The Draft Report later recommends that at the end of five years accredited providers would be free to supply the number of care services and residential places that they saw fit. The Draft Report argues that this would not result in an explosion of aged care facilities because demand would be limited by the number of older people who had entitlements to approved care.

Draft Recommendation 6.4 – The Australian Government should remove regulatory restrictions on accommodation payments, including the cap on accommodation charges in high care. It should also abolish the charging of retention amounts on accommodation bonds. The Government should require that those entering residential care have the option of paying for their accommodation costs either as:

- ***A periodic payment for the duration of their stay***
- ***A lump sum (an accommodation bond held for the duration of their stay, or***
- ***Some combination of the above***

To ensure that accommodation payments reflect the cost of supply, and are equally attractive to care recipients and providers, the Australian government should require that providers offer an accommodation bond that is equivalent to, but no more than, the relevant periodic charge. Accommodation charges and their bond equivalents should be published by the residential care facility.

14. The Draft Report comments that at present some older Australians are prepared to pay large bonds because the family home and accommodation bonds paid are not subject to means testing for the aged pension (at p168). The Draft Report notes that if prospective resident sells the family home to pay an accommodation bond, he or she has an incentive to reduce any surplus because application of the age pension means test may then disqualify them from receipt of the pension. Accordingly, some are willing to pay most of the proceeds of sale as a bond knowing that most of the bond will be repaid to them or their estate when they leave.

15. In addition, we note that at present, an operator is not required to publish the rate of accommodation bond usually charged for a particular level of accommodation within an aged care facility (noting that under clause 23.28(2)(a) of the *User Rights Principles* 1997, an approved provider must advise a care recipient of the bond amount). Our members report that accommodation bonds tend to be fixed at what the operator believes the resident can afford to pay, so that the size of an accommodation bond is limited only by an individual's capacity to pay and not by the cost of supply (see Draft Report, p159-160). This and the impact of the age pension rules means that accommodation bonds do not reflect the cost of supply.

16. The LIV therefore supports Draft Recommendation 6.4, which will improve transparency and ensure fairness between residents by ensuring that payments made by residents reflect the cost of care while maintaining payment choice for care recipients. We note that Draft Recommendation 6.6 further seeks to reduce any incentive to pay an accommodation bond arising from the aged pension means test by suggesting that the government establish an Australian Pensioners Bond scheme. Draft Recommendation

7.1 also recommends a government-backed Aged Care Equity Release scheme to allow individuals to draw down on equity in their home to contribute to the costs of aged care and support, without having to sell the family home. An Aged Care Equity Release scheme would provide flexibility to care recipients who wish to retain the family home and make periodic payments.

Draft Recommendation 6.5 –To ensure sufficient provision of the approved basic standard of residential aged care accommodation for those with limited means, providers should continue to be obliged to make available a proportion of their accommodation to supported residents. The Australian Government should set the level of obligation on a regional basis. This would not apply to existing providers who are currently not obliged to make accommodation available to supported residents.

Over the first five years, the obligation would be tradable between providers in the same region. After five years, the Australian Government should consider the introduction of a competitive tendering arrangement to cover the ongoing provision of accommodation to supported residents.

17. The Draft Report acknowledges that the removal of bed licences, proposed above, may result in less access to aged care places for people who are unable to pay for their own accommodation costs.

18. The LIV is concerned that while Draft Recommendation 6.5 might address broader access to aged care places for supported residents, it is unlikely to ensure that aged care facilities are built in less affluent areas. We consider that Draft Recommendation 6.5 might have the effect that older people from less affluent areas are moved away from their home base making it difficult for family and friends to visit them.

19. Further, we note that the tendering arrangement proposed might lead in time to aged care facilities designed to operate exclusively as supported services. The LIV is concerned that this could result in far lower standards of accommodation for residents in such facilities than in user-pays facilities. Under the Commission's proposals, accommodation standards will depend largely on the "approved basic standard" of accommodation (at p175).

Draft Recommendation 6.7 – The Australian Government's contribution for the approved basic standard of residential care accommodation for supported residents should reflect the average cost of providing such accommodation and should be set:

- ***On the basis of a two-bed room with shared bathroom***
- ***On a regional basis where there are significant cost variations***

20. The LIV agrees with Grant Thornton's comment that the standard proposed in recommendation 6.7 is too low.[2] Grant Thornton notes that the vast majority of facilities built over the last decade have been built with predominantly single en-suited rooms. In

[2] Grant Thornton, Productivity Report: Caring for Older Australians – Issues for Consideration ,p7 available at http://www.grantthornton.com.au/files/grant_thornton_interim_review_of_draft_pc_report_110131.pdf

addition, older Australians in residential aged care are presenting increasingly complex clinical needs and higher levels of functional dependence generally prefer the privacy afforded by a single room.

Care and support (chapter 8)

Draft Recommendation 8.1 -The Australian Government should establish an Australian Seniors Gateway Agency to provide information, assessment, care coordination and carer referral services. The Gateway would deliver services via regional structure.

21. The LIV supports the introduction of an independent Australian Seniors Gateway Agency. We agree with the Commission that there is a clear need for a single agency to provide information about available aged care services to deliver assessment and care coordination services. A "one stop shop" approach, with suitably trained staff and resources, would enable consumers and their families to gather all relevant information from one source to assist them to make informed choices.

Draft Recommendation 8.2 -To support these revised arrangements, Australian governments should fund an expanded system of aged care consumer advocacy services.

22. The availability of independent advocacy at all stages of the journey through the aged care system - from the information gathering stage right through to the end of life - is vital for consumers and their families, particularly in relation to vulnerable consumers. The LIV supports an expansion of the government funded National Aged Care Advocacy Program (NACAP) to provide these services, which has operated successfully in Victoria for over twenty years.

23. Advocacy forms an important part of the aged care experience. Advocates provide consumers and their family members with information and advice about their rights. With the consent of their clients, advocates play an active role in negotiating positive outcomes for residents that are consistent with their rights under the Act and Principles. These cases may involve serious deficiencies in care or even abuse. They also support residents and family members who lodge complaints with the CIS, often helping to explain the outcomes of CIS investigations and their appeal rights. They assist in drafting appeals, particularly those involving complex issues. Advocates also educate consumers, their families, the aged care industry and allied health professionals about consumers' rights and providers' responsibilities.

24. Members report a widespread fear of reprisals among consumers in aged care. Having an advocate helps to share the burden of dealing with problems. Once an advocate is involved, the provider knows that the resident or family member is prepared to seek external assistance and this might lead to the provider remedying the problem without further steps being taken.

25. We are therefore pleased that the Commission supports all governments continuing to fund independent personal advocacy services (p406).

The issue of quality

26. The LIV notes that the issue of "quality of care" is often subjective. However, we agree that the current aged care system is problematic because there is considerable variation in the quality of care delivered (p267).

27. The Draft Report notes a number of contributing factors to quality of care. The regulation of quality in aged care relies predominantly on processes for accreditation and complaint-handling. Quality of care will also be affected by funding, and whether this is adequate, and the extent to which regulation is prescriptive and burdensome, so that compliance takes time away from provision of care.

28. We consider that the current system is too "task-focussed" and inflexible, which adversely impacts the quality of care for residents. We understand that staff are often under pressure to achieve a number of tasks during their shift which might be unrelated to the care needs of residents, leaving less time for a person-centred approach to implementing care plans. For example, members have reported incidences where staff do not have enough time to walk with a resident who suffers from impaired mobility, even though assisted walking is part of the resident's care plan. Failing to do this can lead to reduced functioning and premature disability. We are concerned about other reports that sedating medication might be used when staff do not have the time to stay with an agitated resident.

29. It is essential that facilities are adequately resourced to attract qualified staff who have a passion about the care and wellbeing of the elderly. Staff must also be given adequate time to meet residents' physical, emotional, cultural and spiritual care needs and to interact in a meaningful way that helps both residents and staff to feel valued.

30. We therefore support proposed reforms to accreditation processes, compliance and complaints-handling to improve the quality of care, including:

    - greater consumer choice and a more liberated market of service providers which should encourage high levels of quality care to be seen as a competitive advantage;
    - improved funding and consequential improved workforce conditions;
    - improved regulation and regulatory oversight, together with upgraded complaint handling processes;
    - greater recognition by providers, staff and trainers of the needs of culturally diverse groups and those with special needs; and
    - increased access to consumer advocates.[3]

31. In our view, regulation and funding should promote a person-centred approach to care, recognising that assessment of "quality" of care will always include a subjective element. The regulatory framework should aim to ensure that residents receive quality care that is appropriate to their physical, emotional, cultural and spiritual needs, and that their rights are respected.

[3] Draft Report, p268.

Catering for diversity – caring for special needs groups (chapter 9)

Draft Recommendation 9.1 – The proposed Australian Seniors Gateway Agency should cater for diversity by:

- ***ensuring all older people have access to information and assessment services***
- ***providing interpreter services to convey information to people and their carers, to enable them to make informed choices***

Draft Recommendation 9.2 –The proposed Australian Aged Care Regulation Commission, in transparently recommending the scheduled set of prices for aged care services, should take into account costs associated with catering for diversity, including:

- ***providing ongoing and comprehensive interpreter services (either within facilities or through telephone translators) for clients from non-English speaking backgrounds***

32. The Commission notes that some older Australians from non-English speaking backgrounds may revert back to their first language as a result of the ageing process (at p274). The experience of LIV members is that people with dementia and/or Alzheimer's are more likely to lose English as a second language (in particular, the ability to communicate orally). The LIV is therefore particularly supportive of Draft Recommendations 9.1 and 9.2, which recognise that communication for this group of older Australians requires additional resources.

33. Further, the LIV supports the submission of the Queensland Law Society to the Commission regarding interpreters and funding for Community Aged Care Packages (CACPs), to ensure that interpreting services are not limited to consumers in aged care facilities.[4] We therefore suggest that the scope of Draft Recommendations 9.1 and 9.2 be broadened to recommend that the government provide funding for interpreting services that address the communication needs of older people receiving care in the community.

Age-friendly housing and retirement villages (chapter 10)

Regulation of retirement living options

Draft Recommendation 10.4 –The regulation of retirement villages and other retirement specific living options should remain the responsibility of state and territory governments, and should not be aligned with the regulation of aged care.

34. The LIV agrees that regulation of retirement villages and other retirement specific living options should remain the responsibility of state and territory governments and should

[4] Submission Number 204, p3.

not be aligned with aged care. We support, however, a nationally consistent approach to regulation (see below).

35. Governments should consider, however, the impact of state and federal regulation on those organisations that seek to provide a full service facility including retirement village accommodation, low care, high care and/or hospice facilities. The interface between federal and state regulation is currently complex and inflexible.

Draft Recommendation 10.5 – State and territory governments should pursue nationally consistent retirement village legislation under the aegis of the Council of Australian Governments. Changes to state and territory government legislation under this process should:

- ***Be informed by research jointly commissioned by the industry and government***
- ***Have regard to the industry's accreditation process***

36. The LIV supports a nationally consistent approach to regulation of retirement village legislation, noting that at present there is considerable variation in terms and definitions. We understand that many of the large providers operate nationally and are therefore faced with increased compliance costs due to variations in regulation. In addition, increased movement of people across state and territory borders often means that families are required to negotiate complex contractual relationships in different jurisdictions, making it difficult for them to know and understand the relevant regulatory regime.

37. The LIV notes that at present, there are fundamental philosophical differences between states and territories regarding the level and style of regulation appropriate for retirement villages. For example, Victoria and South Australia currently have a lower level of regulation. Comprehensive analysis would need to be undertaken to assess the benefit, if any, to retirement village residents of an increase in regulatory burdens in these states.

38. The LIV is a member of the Property Law Reform Alliance (PLRA), which is 'a coalition of legal and industry associations committed to bringing about uniformity and the reform of property law and procedures in Australia'.[5] The PLRA has identified 'Simpler Retirement Living Titling' as a project and has proposed that the project analyse approaches in each jurisdiction to retirement living title, prepare a comparative matrix of retirement living title laws and processes, identify preferred processes for retirement living title laws and processes and develop an options paper on retirement living title laws and processes by May 2013.

39. The LIV proposes that the PLRA 'Simpler Retirement Living Titling" project should inform any COAG initiative.

[5]Further information about the PLRA is available at: http://www.plra.com.au/ .

Regulation – the future direction (chapter 12)

Improving Australian Government governance arrangements for aged care

Draft Recommendation 12.1 - The Australian Government should establish a new regulatory agency – the Australian Aged Care Regulation Commission (AACRC) – under the* Financial Management and Accountability Act *1997. This would involve:

- ***the Department of Health and Ageing ceasing its regulatory activities (except for regulation policy development – including quality standards – and advice);***
- ***establishing the Aged Care Standards and Accreditation Agency as a statutory office within the AACRC;***
- ***establishing a statutory office for complaints handling and reviews within the AACRC.***

40. The LIV supports the creation of the AACRC and the proposal to separate the aged care regulatory and policy functions that are currently both the responsibility of the Department of Health and Ageing (DoHA). We agree with the comments made by Aged Care Crisis (at pp 386-7) that conflict of interest is inherent within the current aged care system. For the reasons given in Chapter 12 of the Draft Report, it is essential to separate the roles of funder and regulator.

41. There appear to be overlapping responsibilities and conflicts of interest between DoHA, the Aged Care Standards and Accreditation Agency (ACSAA) and CIS. We note that on page 390, the Commission states:

> *Under the Act, both DoHA and the ACSAA have responsibilities for monitoring compliance of residential aged care facilities. While ACSAA is focused on assessing providers' compliance with Accreditation Standards under the Act's Accreditation Principles, DoHA's role is wider, covering providers' responsibilities in matters such as certification, fees and charges, and specified care and services.*

We agree that this can be confusing for providers.

42. We also support the Commission's view that "regulatory behaviour would be enhanced by locating quality assessment within the same organisation that receives consumer complaints and makes the enforcement decisions" (at p 392). However, there must be separation between complaints-handling and accreditation processes to avoid conflict of interest and ensure procedural fairness.

43. We agree that the proposed AACRC should be responsible for prudential regulation. A strong system of prudential regulation is required and should include a comprehensive reporting system that ensures openness, accountability and transparency in the management of accommodation bonds.

Draft Recommendation 12.2 - The AACRC's Commissioner for Complaints and Review should determine complaints by consumers and providers in the first instance. Complaints handling and reviews should be structured into the three areas: assessment, early resolution and conciliation; investigations and referral; and communication, stakeholder management and outreach. The Australian Government should abolish the Office of the Aged Care Commissioner (OACC).

All appeals in respect of decisions of the AACRC and the Australian Seniors Gateway Agency should be heard by the Administrative Appeals Tribunal (AAT). Consideration should be given to the establishment of an Aged Care Division within the AAT.

44. The Draft Report discusses the key findings of the 2009 Walton Review of the Aged Care Complaints Investigation Scheme (CIS) (at p397).

45. The LIV agrees with the Victorian Health Services Commissioner's concerns about the inherent conflict of interest arising from an organisation being the funder, the regulator and investigator in aged care and we share concerns about the provision of natural justice under the CIS (extracted at p399). Further, we agree that the structure of CIS is problematic because CIS can only respond to a complaint with an investigation about whether there has been a breach of the aged care standards. CIS is unable to consider the need for redress for past events or the mediation or conciliation of issues between complainants and providers.[6]

46. We consider that the complaint-handling process should be less adversarial, recognising that most residents will continue a relationship with the provider against whom the complaint has been made. We support the submission of the Queensland Law Society to the Commission to allow CIS to facilitate alternative dispute resolution.[7] Further, we consider that the complaint system should provide a range of options for complaint-handling according to the nature and severity of the complaint, for example, dealing with a complaint about eligibility for service and requiring providers to deal with complaints about matters such as quality of food, subject to external review.

47. A robust complaints scheme should provide oversight and accountability of aged care and address the imbalance of power between often vulnerable consumers and providers. Regulation and complaints-handling should recognise that many high care residents are wholly dependent on providers and their staff for all aspects of their daily lives and most aged care residents require some level of assistance, so that many residents are vulnerable. The LIV therefore advocates for a quality framework for aged care that includes a timely and effective complaints-handling process which identifies breaches of residents' rights and ensures that those breaches are rectified and that an independent, well-resourced advocacy service exists to assist consumers and their representatives navigate that process.

48. The Draft Report notes that complaints to CIS can come from several sources, including complaints from consumers about a particular service provider or by providers against an administrative decision. We consider that there is a distinction between complaints about quality of care, or whether a provider is meeting applicable standards, and

[6] See e.g. Blake Dawson submission 465, p42.
[7] Queensland Law Society submission 204, p2.

"complaints" about administrative decisions, such as relating to consumer access to funded services or by providers about compliance action, which should be characterised as appeals.

49. We support the proposal that the AACRC should determine complaints in the first instance. Further, we agree that AACRC should have an internal review mechanism available for administrative decisions prior to access to an independent appeals body.

50. We do not support, however, the proposal that all appeals of decisions of the AACRC and the Gateway Agency, including those by consumers and their families, should be heard by the Administrative Appeals Tribunal (AAT). In our view, the AAT is not a suitable forum for consumers and their families because it is expensive, time consuming, legalistic, formal and too onerous for consumers to use. We understand that currently, it is primarily providers that use the AAT, for example, when they are seeking a review of a reviewable decision that has been confirmed, varied or set aside by DoHA.

51. We suggest that a more user-friendly organisation, such as the Commonwealth Ombudsman, should hear appeals in the first instance. However, it is essential that the Ombudsman have the power to conduct a full merits appeal of a decision and not just a review of the administrative process used to reach that decision to ensure appropriate oversight and accountability.

52. It is also important that appeals can be lodged orally or in writing and that the decision-maker meets with the appellant to ensure that all relevant issues and evidence have been identified. One of the problems with the current Office of the Aged Care Commissioner (OACC) process is that despite the detailed reports that are written, the process is not transparent and there is a lack of procedural fairness. The appellant does not know what evidence the other party has submitted and therefore does not know when further information may be useful to counter a claim made by the other party. It is also important that parties have the opportunity to call witnesses to incidents of deficient care. We are concerned by reports that often only managers and directors of nursing – who may have no firsthand knowledge of an incident – are interviewed.

53. Alternatively, an intermediate appeal body between the AACRC and the AAT would be the next best option. Any appeal option must be costs free, so that consumers will not be prevented from an appeal due to the threat of an adverse costs order.

Taking steps towards encouraging and enforcing compliance

54. The LIV recognises that the current regulatory burden on providers is excessive and leads to a focus on process rather than outcomes (p120). While documentation, policy manuals and record keeping are important to ensure quality care, assessment of quality should not be limited to assessment of paperwork. Accreditation processes should assess whether systems are operating in practice and not just in place on paper. We note that at present, accreditation promotes minimum standards, so that providers have no incentive to promote "best practice". We would support changes to regulation to reward best practice to improve quality of care for consumers.

55. The Commission notes concern that investigations of non-compliance tend to focus on paperwork rather than examination of actual care practices and outcomes (at p410).

56. We are also concerned about the different regulatory approaches in aged care and acute care. In our view, the emphasis should be on continuous quality improvement and not merely compliance with minimum standards. Attention should also be paid to the inclusion of home based and community care in setting standards of care in this sector.

57. We note that at present, not all reports prepared by ACSAA in relation to aged care facilities are available to consumers and their families on ACSAA's web site. Generally, only full accreditation audit reports are available, and not reports of support contact visits. The publicly accessible accreditation audit report for a facility may indicate that it was compliant with all 44 expected outcomes at the time of the audit. However, a subsequent support contact visit report may indicate serious non-compliance with one or more of these outcomes and yet this information is not made publicly available. The LIV suggests that broader publication requirements would encourage compliance by providers in an effort to avoid negative publicity.

Draft Recommendation 12.4 -The Australian Government should provide a broad range of enforcement tools to the AACRC to ensure that penalties are proportional to the severity of non-compliance.

58. The LIV agrees that proportionality is a key principle for enforcement, from both a provider and resident perspective.

59. Under the current system, members report that residents and family members often feel aggrieved when the CIS determines that a provider has breached its responsibilities but the compliance action required of the provider is perceived to be disproportionate to the gravity of the breach and the harm suffered by the resident. We note the OACC submission, based on evidence to the Walton Review, that consumers often consider that Notices of Required Action are merely a slap on the wrist and not in proportion to the issue complained about or the breach found (at p415). The LIV would therefore like to see a broader range of enforcement tools to ensure that penalties are proportional to the severity of non-compliance. In addition, we support strengthened follow up mechanisms following enforcement action to allay consumer concerns that breaches are not taken seriously or that sanctions are ineffective.

Reducing the extent of regulation

Draft Recommendation 12.7 - The Australian Government should amend the residential aged care prudential standards to allow residential aged care providers to disclose (to care recipients or prospective care recipients) on request, rather than automatically:

- ***a statement about whether the provider complied with the prudential standards in the financial year;***

- ***an audit opinion on whether the provider has complied with the prudential standards in the relevant financial year;***
- ***the provider's most recent audited accounts.***

60. The LIV understands that the various disclosure requirements under the Act and Principles are not consistently met by providers. There appears to be little monitoring by DoHA or ACSAA of whether the required information is in fact being disclosed to consumers or their family members.

61. We recommend that residential aged care providers be required to publish information about assessments of the quality care provided. This would assist consumers with decision-making if they are provided with relevant information and on what basis the assessments were made.

Additional matters for consideration

Informal Caring

62. The LIV has had the opportunity to consider the submission of Carne Reidy Herd Lawyers to the Commission in relation to informal caring.[8] We suggest that the Commission should further consider options to provide incentives for informal caring by family members, recognising the significant contribution that informal carers make to aged care in the Australian community.

63. In addition, we urge the government to provide greater funding for respite and community care where elderly people are receiving informal care in the home. These programs are important to alleviate pressure on the currently limited number of aged care places available.

[8] Submission DR533.