



Comments on the
Productivity Commission's
Annual Review of the Regulatory Burdens on Business:
Social and Economic Infrastructure Services
Chapter 2 Aged Care

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Attachment 1 - Draft "Vision for Aged Care" statement

Attachment 2 - COTA Submission on Review of Accreditation

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1. Introduction

COTA National ⁽¹⁾ is the national peak policy organisation of the state and territory Councils on the Ageing (COTAs). COTAs have been operating for over 50 years. Though their more than 1500 member organisations of seniors, and their own direct membership of seniors, COTAs represent the interests of over 500,000 older Australians.

COTAs have always had a strong interest and involvement in aged care, and have been and are represented on a range of departmental and ministerial advisory bodies dealing with aged care matters. As peak consumer bodies COTAs have a particular interest in resident and consumer rights and engagement.

COTA National plays a leading role (sponsor organisation) in the National Aged Care Alliance (NACA) and is co-leading a NACA initiative to develop a new vision for aged care based on the centrality of community care and support and client-directed care.

COTAs have bi-lateral links with aged care provider peaks and major provider organisations at both state/territory and national levels. COTA is in particular in a collaborative relationship with ACSA.

COTA National only became aware of this Review when approached by the Productivity Commission late July.

COTA National has not consulted with state and territory COTAs and their Policy Councils on this response because we only became aware of the report late July.

However the attached Submission on the Review of the Accreditation Process for Residential Aged Care Homes was the subject of consultation with state and territory COTAs and other consumer bodies, and is a basis for several of our comments.

The second attachment – the draft “Vision for Support and Care of Older Australians” is a further revision of a paper approved by the national Policy Council in May 2009.

The comments in this submission are consistent with and informed by COTA National policy principles and current policy. However the submission has not been through the formal COTA policy approval processes and some of its views are therefore provisional.

There are a number of specific recommendations on which we make no comment as we have not had time to investigate and discuss them with any of our stakeholders.

COTA National has similarly not consulted within NACA or with provider peaks in the development of these comments due to the short time available to us.

(1) *COTA National is the new trading name of COTA Over 50s Ltd. It is intended to formally change the name of COTA Over 50s Ltd in the near future. This may be to COTA National or to another appropriate related name.*

2. General Comments on the Aged Care System

In its Key Points introduction (p19) to this chapter the Commission observes that:

“The aged care industry is characterised by centralised planning processes which result in a heavy regulatory burden on aged care providers in order to maintain the quality of care. Without tackling the underlying policy framework that stifles competition it is unlikely that the regulatory burden can be substantially reduced”

We agree in principle with this finding. However we are concerned that, being developed through the specific lens of this Review, it does not present the full basis for reform of the aged care industry and related government policy.

While full appreciating the Commission’s brief in this particular Review COTA strongly suggests that the policy driver for aged care reform should be to optimise the aged care system’s capacity and ability to produce good outcomes for older Australians, rather than lifting the regulatory burden.

In short, let’s design the system that will most benefit older people and which they want, and then work out how to apply the optimum regulatory framework to achieve this.

In other words consumer outcomes should drive aged care reform, not the degree of regulation. Within that, unnecessary regulation is likely to be counter-productive and dysfunctional.

We therefore agree that what needs to be reviewed is “the underlying policy framework” that not only “stifles competition” but produces poorer quality outcomes for older Australians.

We attach a working Draft of our “**Vision for Support and Care of Older Australians**” statement which seeks to describe in outline the kind of aged care system that older people want and how we achieve it.

Later (pp26-27) the Commission says:

“Aged care providers are seeking a regulatory framework that allows greater flexibility to respond to consumers and at the same time reduce the reliance on regulation to ensure quality standards are maintained. One possibility, previously suggested by the Productivity Commission, would be to dispense with having ‘dual’ regulatory controls over the number of aged care places - the aged care planning and allocation system and ACATs. This would involve:

- *retaining accreditation of residential aged care homes*
- *relying on the ACATs as gatekeepers to control entitlements (or demand) for aged care services, while reforming the current ACAT assessment process to remove its pre-disposition to categorise a person based on currently available services rather than actual need*
- *eliminating needs-based planning arrangements and introducing safety net provisions to ensure sufficient places for those requiring supported or concessional access¹ (PC 2008c, p. 86).*

The interim report of the NHHRC (2008) expressed similar deregulation oriented views:

We suggest that the number of aged care places should no longer be restricted. This is not complete deregulation: providers of aged care would still need to meet existing criteria in order for the care they provide to be eligible for government support, including being an approved provider under the Aged Care Act and their facilities being accredited. However, if they meet these criteria, approved providers could offer as many places as they wished. (p. 172)

COTA agrees with these observations and has previously indicated its strong support for the thrust and many of the 'proposals' of the Productivity Commission's September 2008 Research Paper "Trends in Aged care Services: some implications".

Our Draft "Vision" statement makes clear that community aged care should be provided on an entitlement basis with a much strengthened assessment process as the gatekeeper.

COTA recognises that deregulating the provision of supply of both community and residential aged care would create major challenges for the industry and requires careful planning and transition arrangements. However the future lies in that direction, not in maintaining tight regulation.

While COTA National is supportive of a number of the NHHRC Final Report recommendations on aged care we also agree with the following observation from this Review (pp 28-29) and in particular the points highlighted by us in **bold**.

"Rather than strengthen the current ACAT assessment process, the NHHRC (2008) have proposed that the number of people at any time receiving subsidised aged care should be limited to the target ratio for provision:

"This would be done by Aged Care Assessment Teams having a maximum number of approvals for care that could be in effect at any one time for people living within an aged care planning region.

The maximum number of approvals would be calculated on the basis of a target ratio per 1000 older people in the same way as the current planning ratio for aged care places. Where the number of people assessed exceeds the approvals available, the assessment could provide a basis for assigning priority for the next available approval according to assessed need." (p. 172)

*Although still a voucher approach, this proposal appears to be little different from the current arrangements. While it may achieve the Australian Government's objective of reducing budgetary risk by containing government spending on aged care **it appears to just shift the regulatory burden** from a supply cap (the number of aged care places) to a demand cap (the number of ACAT approvals) which also **implies unmet need will arise**.*

*It is not clear how such an approach would improve competition between providers or the incentives for innovation in design and service delivery within an aged care planning region. It is also doubtful that this proposal would reduce the current distortions in investment decision making for aged care services. **There seems little point in removing the restrictions of the number of aged care places if restrictions on the number of ACAT approvals remain in place** - since aged care*

*operators' business decisions will still be constrained by the planning decisions of government. **Also fundamentally, it may not reflect the real 'needs' for aged care.***"

In these observations the Commission is getting closer to COTA's primary drivers for reform. We need an aged care system that meets the real level of assessed need in ways that optimise the continuing involvements and contributions of older Australians.

This includes and requires that support and care be provided very promptly, in timely and appropriate form, out of a framework that regards older people as being as aspirational as anyone in the population.

We would be happy to expand on any aspect of our attached "Vision" document (noting it is still in draft and incomplete form).

3. Comments on specific recommendations

The following are COTA National's comments on a number of the Review's specific recommendations. We do not comment on most of the specific recommendations, not because we disagree with them but because we have not had time to consider and consult on them.

We would note that a number of the recommendations on which we do not comment are consistent with our view expressed in our Submission on the Review of the Accreditation Process (see Attachment 2) that:

"COTAs are sympathetic to the point that the accreditation process should not require substantially more paperwork than is required for normal business, clinical and care management needs. We have some sympathy with the view that quality accreditation processes in the health and aged care sectors have placed too much emphasis on excessive paper trails rather than on actual outcomes being achieved.

Therefore a simplification of paperwork is supported." (P 7)

Turning now to the recommendations on which we do wish to comment:

- 2.1 *To enable the Australian Government to reduce the burden associated with regulation and price controls, and to improve the quality and diversity of aged care services, it should explore:*
- *options for introducing more competition in the provision of aged care services*
 - *removing the regulatory restriction on bonds as a source of funding for high care facilities.*

We support greater competition in the provision of aged care but note that this is not just a matter of less administrative regulation. For example our argument is that most consumers have a strong preference for care at home and in community, but this is in short supply. Therefore many end up in residential care who do not want to be there and do not need to be there.

For this reason the supply of aged care needs to be unrestricted except for the users having to meet assessment criteria, and the provision and funding of care must be separated from the provision and funding of accommodation.

In that context there should develop a variety of options as to how users can pay for both user contributions to care, and for accommodation. These would include bonds, conventional loans, periodic payments (rents), and deferred charges. Similar levels of consumer protection should apply to all these forms, and there should be requirements as to transparency and comparability of user charges. However there should be no restriction against use of any the use of any of these options. Each may suit particular consumer's situations and preferences.

- 2.4 *The Aged Care Standards and Accreditation Agency should redesign the unannounced visit program using a risk management approach that focuses on under-performing aged care homes. The current performance target of at least one unannounced visit per home per year should be abolished and the overall number of visits (including announced and unannounced visits) should be reduced*

In the attached submission to the Accreditation Review we have supported a combination of a targeted risk-management approach and some random checks (see pp 7-8 of Attachment 2).

However we have prior to that (p 7) the issue of whether the accreditation and compliance functions should be separated. We refer you to that discussion.

- 2.8 *The Australian Government should introduce amendments to the Age Care Act 1997, and Aged Care Principles as necessary, to provide a clearer delineation of responsibilities between the Department of Health and Ageing and the Aged Care Standards and Accreditation Agency regarding monitoring of provider compliance with the accreditation standards.*

Essentially we support a clarification of roles, responsibilities and functions in this area. As noted immediately above we have raised discussion of whether it is appropriate for the Agency to be undertaking both the Accreditation and "policing" roles. COTA has also a policy of supporting an independent complaints function.

This area needs a round-table of stakeholders to discuss options and seek and consensus view on the optimum way forward.

- 2.10 *The Department of Health and Ageing, in consultation with relevant state and territory government departments, should use current reviews of the accreditation process and standards to identify and remove, as far as possible, onerous duplicate and inconsistent regulations.*

COTA agrees with this recommendation within the framework already spelt out in these Comments and set out in more detail in the Submission on the Accreditation Review. However there should be formal involvement of consumer representatives in the consultation process.

- 2.13 *The Australian Government should allow residential aged care providers choice of accreditation agencies to introduce competition and to streamline processes for providers who are engaged in multiple aged care activities.*

On pages 4-5 of the Submission on the Accreditation Review we say:

“We return to a matter not addressed in the Department’s Discussion Paper. We are aware of long stated suggestions that accreditation should occur through recognition of a number of independent competitive accreditation bodies (as occurs in the hospital sector) rather than being undertaken by a body such as the Aged Care Standards and Accreditation Agency – government owned and public sector in culture.

There is a strong professional argument that the processes of accreditation and indeed industry education should be separate from monitoring, complaints investigation and compliance processes, which might be characterised as “policing”. If accreditation was independent and competitive as in the rest of the health sector, then a new agency, independent of but funded largely by federal government, could undertake monitoring, complaints handling and other quality compliance activities. COTA has long argued that these functions should be separate from the Department.

COTA is not, at present, saying we should definitely move in this direction. However it is a discussion worth having openly because it directly addresses the complexities and contradictions of trying to combine quality improvement with policing.”

4. Conclusion

As we have indicated earlier, and the Commission has also suggested, the regulatory regime in aged care is a sub-set of the basic assumptions, goals and infrastructure of that system. COTA hopes that the government will soon agree to initiate a major review of the Australian aged care system, of which the regulatory framework is but one, albeit important, part.

It is past time that the Australian aged care system be the subject of fundamental review. The core elements and indeed basic outcomes of that review are understood and largely agreed by leading providers, consumer representatives and the public service already. The task before us is to design a system that is sustainable to 2050 and genuinely meets the needs of older Australians and their carers.

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