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including
Older Persons' Legal Service

Questions on Notice

NSW LEGISLATIVE COUNCIL INQUIRY

Into

**“Services provided for or funded by
the Department of Ageing, Disability and Home Care”**

The Aged-care Rights Service (TARS)
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This response is authorised by T Cowen, Acting CEO, TARS

DATED: 13 October 2010

Questions on Notice Advocacy services

Question 1: Can you comment on whether you believe the NSW Government has made adequate provisions to ensure older citizens are able to access appropriate and affordable services? Do you believe we are on track?

As quoted in our submission TARS is familiar with the following documents:

- Towards 2030: planning for our changing population
- NSW HACC Triennial Plan This document states:

"New South Wales is committed to progressing the outcomes of the Community Care Review and the development of common arrangements to improve and strengthen the community care system." NSW HACC Triennial Plan 2008-11 Page 1

From "Section 8 Consultation" we would also note:

"The planning processes undertaken by NSW for the Triennial Plan included comprehensive analysis of population, planning and service data and outcomes of consultations. NSW engages with all its community stakeholders and with other government agencies in planning services for the HACC Program in NSW. The objective is to ensure that the HACC Program benefits from input from the target group and the wider community. The consultation process identified the requirements for services, service development, trends and emerging issues." NSW HACC Triennial Plan 2008-11 Page 28

We believe from our understanding of these current documents that the NSW Government is working towards assisting older citizens to access services but we would also like to emphasise that:

1. Older people do not always understand the difference between ADHC and Commonwealth funded aged care services and how to access them
2. Due to the current funding arrangements TARS was not considered a community stakeholder during the Triennial Plan consultations and therefore we were unable to contribute to the deliberations and considerations identified and subsequently acted on.

TARS provides advocacy for residents of Commonwealth funded aged care homes and CACP & EACH & EACH D package recipients.

TARS is not funded to provide advocacy, information and advice for, or to record statistics on, frail aged and older people accessing, or wishing to access, ADHC services who contact our service. However, as an example: from 1st January 2009 to 11th October 2010 TARS received 766 calls from "Other service types" which would have included ADHC and/or HACC enquiries.

TARS is not required to maintain records of people who contact our service to request advocacy, advice and or assistance in accessing ADHC services. We

refer these people to their local ACAT, the Commonwealth Carelink Centre, local government agencies and/or the NSW Ombudsman.

Our Educators meet a wide range of people in their activities in the community, providing Information sessions, and promoting our service at various community events throughout NSW. Anecdotally, comments are often forthcoming on the lack of services to assist carers in their caring role and to assist people with little or no family support to stay at home with the limited and sometimes expensive services that are available.

The key word in the question is "adequate" and from comments made to TARS by our clients there appears to be room for improvement in the adequacy of the service provision. The TARS submission made the point that there is no funded independent advocacy service to assist frail aged people who have a grievance about the ADHC service that they are supposed to be receiving. There may be many reasons not directly related to the adequacy of the provision of services that generate grievances. Nevertheless many complaints relate to the incapacity of older people to access the services, in a timely and on-going fashion. This is particularly so in remote and rural areas but can be found in the cities too. This suggests that the provision of service is not adequate and that this is at least part of the cause of the problem.

Question 2: From the Transcript: Ms McDonnell:Four states – South Australia, Queensland, Western Australia and Tasmania – have NACAP organisations that are also funded to provide advocacy services for Home and Community Care clients and clients with disabilities. We are one of the few out of that group of organisations that are not. The Hon Ms Helen Westwood: Where is that funding from? Ms McDonnell: Some is Commonwealth funding and some is State funding. I can get you the details. The Hon Greg Donnelly: That would be appreciated.

- South Australia: The Aged Rights Advocacy Service (ARAS) is funded by NACAP through the Commonwealth Department of Health & Ageing (DoHA), the Home & Community Care Program (HACC) and the Department for Families and Communities. The State Government provides 38% of HACC program funding with the remainder provided by the Commonwealth Government. The program is administered by the Office for the Ageing.
- Queensland: Queensland Aged Disability Advocacy Inc (QADA) is funded by NACAP through the Commonwealth Department of Health & Ageing (DoHA) and the Home & Community Care Program (HACC). The Commonwealth Government provides approximately 60 per cent of funding for the program and maintains a broad strategic policy role. The Queensland Government provides the remaining percentage of HACC funding for Queensland.
- Western Australia: Advocare Inc is funded by NACAP through the Commonwealth Department of Health & Ageing and the Home and Community Care program. In 2008-09 61% of HACC

funding was contributed by the Commonwealth Government and 39% by the Western Australian Government.

- Tasmania: Advocacy Tasmania Inc (ATI) is funded by NACAP through the Commonwealth Department of Health & Ageing and the Home and Community Care program through the Tasmanian Department of Health & Human Services. Details of the actual funding has been difficult to source.

Additional Questions on Notice Advocacy services

Question 3: The Committee has heard complaints that certain advocacy organisations do not provide appropriate training for their staff. Can you tell us about the training you provide for your staff?

Advocacy Staff

Internal Training

- Specific Selection Criteria at Interview stage
- New Staff Orientation Program
- Comprehensive on the job training by senior advocates and the Advocacy Coordinator
- All electronic advocacy advices are checked by the CEO and the Advocacy Coordinator checks samples of advocacy case work weekly
- Weekly advocacy team meetings
- Monthly Training Session after monthly Staff Meetings from agencies including the NSW Ombudsman, the Complaints Investigation Scheme and Alzheimer's Australia and other community groups

External Training

- Aged Care Standards and Accreditation Agency Assessor Course – all new advocates attend this course
- Dealing with clients with challenging behaviours
- CCWT Short Courses
- PIAC Advocacy Training
- Aboriginal awareness training
- Attendance at relevant Conferences and Seminars including Better Practice Conferences and National Conference of the Australian Association of Gerontology
- Other training opportunities from relevant appropriate organizations such as Alzheimer's Australia as they arise

OPLS Staff - solicitors

Internal Training

- Specific Selection Criteria at Interview stage
- Orientation Training
- Monthly training sessions after monthly Staff Meetings from other Community Legal centres including Older Persons' Tenants Service and the Welfare Rights Centre and other community groups
- Weekly Legal Service team meetings
- Review of all advices provided by the solicitors by the Principal Solicitor and discussion between all solicitors as different issues arise

External Training

- Dealing with clients with challenging behaviours
- Quarterly Training offered by the Community Legal Centres NSW
- Periodic Training offered by Legal Aid NSW – Civil Law Section

- MCLE/CPD - Ongoing training requirements associated with the solicitors' Practising Certificates – 10 points required each year, usually one hours training equals one point. These training sessions are run by a wide list of organizations including Young Lawyers and The Law Society
- Practitioners must include at least one point every year in the following:
 - Ethics and Professional Responsibility
 - Practice Management and Business skills
 - Professional skills
- Attendance at relevant Conferences and Seminars including the National Conference of the Australian Association of Gerontology
- Other training opportunities from relevant appropriate organizations such as Alzheimer's Australia as they arise.

Question 4: On Page 13 of your submission you state that you would like to formalise the role of your services in mandating the rights of aged care consumers of ADHC services. Can you please elaborate on this statement and explain why you think such a move is necessary?

Elaborate on this statement

Firstly we believe that an appropriate and independent advocacy service should be available to recipients of these services to assist them in making their grievances known and in resolving them. Secondly, as stated in our submission, if, as an outcome of the Inquiry, ADHC were to consider providing ADHC funded advocacy services for frail aged clients then TARS is well placed to provide this service. Our organisation has the advocacy staff, the expertise, the knowledge of the client group and the added services of the Older Persons' Legal service as well as specialised legal advice and case work for Retirement Village residents in NSW.

As briefly referred to in our submission TARS has previously worked with ADHC clients, carers, family, and staff during the **Pilot HACC Aged Advocacy Project** which was conducted from December 2002 to March 2004. This project was initiated to support older people who receive, or who are eligible to receive HACC services in the Illawarra region and the Inner West. More information on this project can be provided at the Committee's request.

TARS believes that the opportunity to utilise TARS' services in upholding the rights of aged care consumers of ADHC services would help to improve the overall support and services to clients as well as contributing to the management of ADHC aged care service providers. Importantly the utilisation of an advocacy service will **supplement the role of the NSW Ombudsman**. We would also like to reiterate from our original submission the following statement from:

2008 – 2009 NSW Ombudsman's Report

*"*We sometimes receive written complaints about public sector agencies that are within our jurisdiction but the conduct complained about, on assessment,*

is found to be outside our jurisdiction. We initially classify these as 'formal' complaints received about public sector agencies. Written complaints received about agencies outside our jurisdiction, and oral complaints about both agencies and issues outside our jurisdiction, are dealt with informally by referring the complainant elsewhere. They are classified as 'outside our jurisdiction' from the outset.

** This includes complaints about DoCS, DADHC and non-government agencies that are funded by one of those departments."

How would the aged care advocates work?

As in all our advocacy cases the aged care advocates would:

- support and assist people to speak out on their own behalf
- represent a person to service providers, ADHC and/or other agencies
- refer a person to the services of the OPLS solicitors and/or the RV solicitors as necessary
- OPLS solicitors and/or the RV solicitors refer a person to the advocacy service as necessary
- refer a person to other organisations as necessary

Advocacy assistance and support would be provided in several ways:

- Telephone advice leading to self-advocacy
- Telephone advocacy directly to care management or senior staff on behalf of a client
- Letter writing to care management on behalf of a client
- Attending face to face meetings with care management with or on behalf of a client.

Explain why you think such a move is necessary.

1. ADHC funds and supports thirty eight advocacy and information organisations to provide free services to people with a disability, their families and carers. But there is no funded advocacy service in New South Wales to assist frail aged clients of ADHC services.

In other States and Territories of Australia:

Funded aged care advocacy services are available for all clients receiving HACC funded in-home aged care services in the following States:

- South Australia: Aged Rights Advocacy Service Inc – ARAS
- Queensland: Queensland Aged & Disability Advocacy Inc – QADA
- Western Australia: Advocare
- Tasmania: Advocacy Tasmania Inc.

2. The rights of older and frail aged people to receive aged care services include to:

- be in charge of their life, their money and their possessions
- privacy
- be treated with dignity and respect - taking into consideration cultural appropriateness
- good quality care that meets their needs
- be informed about their rights, their care needs and the fees payable for the service

- complain and take steps to sort out any problems
- advocacy support and legal advice if required.

3. Through our advocacy and legal work with clients and ongoing contacts with Older Australians, many groups with special needs and their carers are not catered for. In our original submission we listed a range of special needs groups whose needs will grow through the next decade and beyond. Please refer to Pages 5 & 6 of our Submission.

4. Currently, if a frail aged client and/or their carer has asked ADHC to review how a complaint about a service provider has been dealt with, and if s/he is still unhappy with the outcome of a complaint, then there are external agencies for advice or assistance at any point during the complaint handling process:

- NSW Ombudsman
- Independent Commission Against Crime
- Administrative Decisions Tribunal
- Anti Discrimination Board.

However this presumes that the person and/or their carer:

- Knows and is aware of the service provider's complaints process
- Has the capacity and confidence to make an initial complaint, then follow it up with ADHC and then approach one of the above organisations.

From our experience and contact with older and frail aged clients it is unlikely that many of them would undertake this process.

On page 12 of our Submission we outlined the significant barriers for older people to making complaints and would like to highlight these again in this response.

5. As an additional service our organisation would be able to provide to potential and current ADHC clients and service providers' staff education and information sessions. The TARS Education & Information Service currently provides education and information sessions to a range of groups in the community on:

- Advocacy services offered by TARS
- Legal services offered by OPLS
- Differences between aged care services and retirement villages
- Gaining an understanding of individual rights.

6. Finally, TARS is also aware of and interested in the recommendations of the new document "The NSW Dementia Services Framework 2010 – 2015" released in September 2010 by the NSW Dementia Policy Team of the NSW Department of Health.

Terms used in this document

ADHC	Ageing Disability and Home Care
ATSI	Aboriginal & Torres Strait Islanders
CACP	Community Aged Care Package
CCWT	Centre for Community Welfare Training
CEO	Chief Executive Officer
CIS	Aged Care Complaints Investigation Scheme
EACH	Extended Aged Care at Home Package
EACH D	Extended Aged Care at Home Dementia Package
HACC	Home and Community Care
MCLE/CPD	Mandatory Continuing Legal Education/Continuing Professional Development
NACAP	National Aged Care Advocacy Program
OPLS	Older Persons' Legal Service
PIAC	Public Interest Advocacy Centre
RV	Retirement Village
TARS	The Aged-care Rights Service Inc