10 August 2009

Ms Angela MacRae
Commissioner
Productivity Commission
PO Box 1428
CANBERRA CITY ACT 2601

PO Box 330
DEAKIN WEST ACT 2600

Level 1
Rowland House
10 Thesiger Court
DEAKIN ACT 2600

Telephone
02 6260 5980

Facsimile
02 6260 5486

Email
secretariat@cha.org.au

Web
www.cha.org.au

The Catholic health, aged and community care sector

Catholic Health
Australia Incorporated

ABN 30 351 500 103

Dear Ms MacRae

Review of Regulatory Burdens: Social and Economic Infrastructure Services

Thank you for the opportunity to participate in the Roundtable Discussions (Aged Care), conducted on 21 July 2009 as part of the Review of Regulatory Burdens on Business: Economic Infrastructure Services.

Further to our initial submission to the Review of 2 March 2009 and our comments at the Roundtable Discussions, please find attached a consolidation of our views in response to the Productivity Commission's draft Report.

Overall we are supportive of the Commission's recommendations. We congratulate the Commission for its valuable contribution to raising awareness of the need, and options for, reform of the aged care system so that it can become more responsive to the needs of future generations of older Australians while being affordable for the Australian community.

It needs to be stated that the risks of ignoring reform are very real. The Commission has correctly identified that "some existing regulations show little concern for side effects such as encroaching on the rights of clients and their quality of life." The Commission has also noted "price controls impede competition" and that a "complex and fragmented regulatory framework is resulting in unnecessary costs."

These findings are damning, yet even still they politely mask a much uglier reality. This reality is that some residential aged care providers are seeking to withdraw from service provision, and others are deferring planned expansion of services as a direct result of regulatory burden. The consequences of this regulatory burden may not be fully felt for some years, but when it is the pain will be experienced by older Australians who find themselves unable to access services when they need them.

Our comments below relate to specific sections and recommendations of the draft Report. Catholic Health Australia encourages the Commission to make the case for regulatory change.

Key Points

Catholic Health Care (CHA) strongly endorses the key points presented in the summary to the Aged Care chapter.

With regard to the key point which focuses on the complex and fragmented nature of the current aged care arrangements, we would observe that in addition to this matter being addressed in the context of the current reviews of the accreditation processes, a more substantive measure which would lay the platform for a substantial reduction in the complexity and fragmented nature of the current system would be for the Commonwealth to assume full policy and funding responsibility for aged care (as recommended by the National Health and Hospitals Commission).

Despite best intentions, the objective of streamlining current arrangements and achieving policy integration and consistency has been made more difficult by the rump of aged care policy (mainly aged care assessment and the Home and community Care program) which remain shared responsibilities of the different levels of Government and numerous agencies.

Allocating age care places to approved providers

The Commission correctly points out in Box 2.1 that the Commonwealth expects residential aged care providers in each planning region to meet regional targets for supported and concessional residents based on socio-economic indicators. As an aside, these indicators have not been revised since the current *Aged Care Act 1997* was legislated and do not seem to apply for community care.

It should be noted that in addition to these targets, the Government seeks to ensure access by people with fewer means by reducing the level of care subsidies for those providers whose resident profile contains fewer than 40% supported or concessional residents, regardless of the assessed care needs of a home's residents and the socio economic status of the local area served.

The overlay of these two mechanisms is a source of some administrative confusion and duplication. The ongoing need for both mechanisms is questionable.

CHA agrees that a preferred policy response to managing the Commonwealth's fiscal risk would be to rely on ACATs as gatekeepers to control entitlements for aged care services, rather than the current dual approach of ACATs and supply caps. An approach based on the former would not only increase competition and improve responsiveness, but also move away from any form of rationing of services and thereby ensure care and support for all older people assessed as being in need of care.

CHA acknowledges that the National Health and Hospitals Reform Commission's proposals fall short of this ideal. However, implementation of their proposal would still represent a significant improvement on the current arrangements. As well as increasing the supply of subsidised aged care services by moving the supply formula to the number of people aged 85 and over, there would be competition generated

between providers for a share of the expected increase in demand for aged care services, and competition between residential and community aged care providers.

Accommodation bonds as a source of capital funding for residential high care places

CHA endorsed the Commission's analysis of the problems attributed to the partial application of accommodation bonds in the residential aged care sector, including its implications for new or rebuilt high care services.

We would note further that the current balance of care provision ratios (44 places for each of low care and high care per 1,000 people aged 70 and over) help ensure a supply of bonds by generating a roughly equal split of low and high care residents at admission into residential care. The high percentage of current residents who are high care relative to the balance of care ratios is accounted for mainly by the current ageing in place policies.

Despite the balance of care ratios, the Commission is correct to point out that providers are having to use the capital made available through low care and extra service bonds to cross-subsidise the capital requirements of non extra service high care services.

However, the current balance of care ratios and accommodation bond policy together raise a more substantive issue, and that is the extent to which they pose as a structural barrier to giving care recipients and their families greater choice to elect to receive care and support services in their own homes.

If care recipients were to be given greater choice, it is likely that a significant number of them, especially at the low care level, would opt to have their care needs met in their own home for as long as possible, thereby threatening the current supply of low care bonds and the viability of future high care developments. Under the current balance of care ratios, this choice is restricted (with only 22% of aged care places available for community care, and there is no certainty that a person can continue to receive care in their own home as their care needs change).

Hence the current partial application of bonds in residential aged care also presents a structural impediment to reform which would respond to the well documented and widely acknowledge preference for care recipients to have greater choice to receive their care in their own homes.

> *Draft recommendation 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.*

CHA strongly endorses this recommendation as a means of reducing the need for regulatory activity generated by the current policy of rationing services, and increasing competition and responsiveness in the supply of quality aged care services.

CHA notes however that the transition from the current highly regulated supply arrangements to a more open system would pose significant risks of disruption to the provision of high quality aged care services if implemented without appropriate staged and transparent transition arrangements. The business and financial risks would arise because:

a) There is a likelihood that the current legislated balance of care ratios do not align with consumer preferences; and
b) There will be a need for a significant number of aged care services to write down the (scarcity) value of bed licences in their financial accounts. This will have implications for the strength of balance sheets and providers' ability to borrow to enable renewal and growth of built infrastructure in the short to medium term.

Accordingly, CHA considers that implementation of reform in this direction will need to be accompanied by transparent transition arrangements developed in consultation with aged care providers, including clear sequencing of reforms, timelines and milestones.

This matter is canvassed in more detail by a group of provider and consumer peak organizations in their submission in response to the National Health and Hospitals Reform Commission's Interim Report (Submission No 273).

Regulation of 'extra service' places

> *Draft recommendation 2.2*
>
> *Contingent upon the introduction of more competition in the provision of aged care services outlined above in Draft Recommendation 2.1, the Australian Government should abolish the 'extra service' residential care category. In the interim, where there appears to be unmet demand for such 'extra service' places in a particular region, the Department should consider freeing up the regional cap subject to the requirement that there is not an unreasonable reduction of access for supported, concessional or assisted care recipients.*

CHA supports this recommendation, but would prefer to have this recommendation implemented in conjunction with a wider range of measures designed to increase choice of services for care recipients and their families, as outlined in the submission to the National Health and Hospitals Reform Commission referred to above.

Police checks

Draft recommendation 2.3

The Department of Health and Ageing should conduct a publicly available evaluation of the current police check requirements to explore whether the benefits of the existing regime could be achieved in a less costly manner.

Catholic Health Australia supports this recommendation.

Unannounced visits

Recommendation 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.

CHA supports this recommendation, but considers that its implementation should be in conjunction with the a redesign of accreditation processes outlined in CHA's submission to the Department of Health and Ageing's review of accreditation processes.

Under the proposals advanced by CHA, auditing would be conducted on a rolling basis whereby homes would be assessed annually employing modules which audit a cross section of the standards/outcomes on each visit (instead of an audit every three years.) The current Support Contacts (renamed and reconfigured) could become the basis for the rolling audits.

This approach would be in keeping with the growing understanding and maturity of accreditation in the sector, and would relieve homes of the significant investment in staff and, in some cases, consultant time needed to complete the re-accreditation application self assessment process every three years. It would also remove the three yearly peak in audit activity by the Aged Care Standards and Acreditation Agency.

Reporting of prudential arrangements

Draft recommendation 2.5

The Accommodation Bond Guarantee Scheme ensures the refund of accommodation bonds to aged care residents in the event that a provider becomes insolvent. Given this government guarantee to residents, the Australian Government should amend the prudential standards to remove the requirement

on aged care providers to disclose to care recipients or prospective care recipients:

> *• 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 most recent statement of the aged care service's audited accounts.*

CHA considers that it should not be necessary for the provider to provide to each resident and the Department of Health and Ageing a statement and an audit opinion about whether the provider complied with the prudential standards in the financial year. The provision of this documentation to the Department should be sufficient to monitor compliance and provide adequate prudential safeguards.

Providers, however, should be required to provide residents with access to audited financial statements and statements of compliance with prudential standards if requested by the resident.

Conditional Adjustment Payment reporting

Recommendation 2.6

The Australian Government should amend the Residential Care Subsidy Principles 1997 to remove requirements on aged care providers to lodge separate written notices with the Secretary of the Department of Health and Ageing demonstrating compliance with Conditional Adjustment Payment reporting where such information is accessible from documentation already provided to the Department.

CHA supports this recommendation.

Proposed community care standards and reporting processes

Draft recommendation 2.7

The Commonwealth, state and territory governments should resolve any outstanding issues with the proposed community standards and reporting processes and implement the National Quality Reporting Framework as soon as possible, consistent with the methodology and principles supporting Standard Business Reporting.

CHA supports the intent of this recommendation but notes that the assumption of full policy and funding responsibility for aged care by the Commonwealth, as recommended by the National Health and hospitals Reform Commission, would provide a better platform for the early resolution of these issues.

Overlapping of responsibilities between the Agency and the Department

Draft recommendation 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.

CHA supports this recommendation. One means of reducing overlapping responsibilities between the Agency and the Department which CHA would support would be to give responsibility for the administration of the Complaints Investigation Scheme to the Agency.

Reporting of missing persons

Draft recommendation 2.9

When a provider has notified police concerning a missing resident it must also contact the Department of Health and Ageing. Reporting to the Department is primarily concerned with addressing longer term systemic problems that may be contributing to residents going missing. The Australian Government should amend the missing resident reporting requirements in the Accountability Principles 1998 to allow providers to report to the Department on missing persons once every twelve months (including any action taken). It should also be stipulated that those homes where more than a threshold number of residents have been reported missing need to inform the Department at the time this threshold is exceeded. This recommendation would not impact on the reporting of missing residents to state police services by providers.

CHA supports this recommendation subject to the requirement to report only applying to homes where there has been a case of a missing person in the relevant twelve month period.

Infectious disease outbreaks, occupational health and safety and food safety

Draft recommendation 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.

CHA agrees with the recommendation that the Department of Health and Ageing should collaborate with State and Territory agencies to remove, as far as possible, regulations in these areas which overlap in order to establish clear lines of responsibility and accountability.

Fire safety declaration

> *Draft recommendation 2.11*
>
> *The Australian Government should abolish the annual fire safety declaration for those aged care homes that have met state, territory and local government fire safety standards.*

CHA supports this recommendation.

Building certification

> *Draft recommendation 2.12*
>
> *The Department of Health and Ageing should submit a Proposal for Change to the Australian Building Codes Board requesting the privacy and space requirements contained in the current building certification standards be incorporated into the Building Code of Australia. Newly constructed aged care facilities would then only be required to meet the requirements of the Building Code of Australia. Once all existing residential aged care facilities have met the current building certification standards those standards should be abolished.*

CHA supports this recommendation.

Providing choice in accreditation

> *Draft recommendation 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.*

CHA agrees in principle with the need to streamline accreditation processes for providers who are engaged in multiple aged care activities. It has reservations, however, about allowing aged care providers choice of accreditation agencies in the current policy environment where there are strong links between the compliance and sanction regime and accreditation processes. Use of multiple accreditation agencies has the potential to increase the scope for inconsistency in the conduct of accreditation site audits, review audits and support contact visits, and add to administrative

uncertainties for providers. Choice of accreditation agencies would be more appropriate if, as in other sectors of the economy, accreditation was not linked to a compliance and sanction regime.

Compulsory reporting of assaults

CHA maintains the position it presented in its initial submission to the Review that the requirement to report all allegations or suspicions of resident-on-resident physical abuse to both the police and the Department (except where the resident concerned is assessed as having cognitive or mental health impairment) does not perform any useful function as responsibility for investigation rests with the police.

As is the case for assaults involving residents with assessed cognitive or mental health impairment, it would be more efficient to rely on the Accreditation Agency's processes to ensure that each home has systems in place and has taken appropriate corrective action.

Please do not hesitate to contact us if you wish to discuss any aspect of our comments further. Our contact on this matter is Nick Mersiades (0417 689 626).

Yours sincerely

Martin Laverty
Chief Executive Officer

Appendix: Taken from the *Canberra Times,* 28 June 2009

Red tape hindering delivery of aged care services

The Productivity Commission's case for reform is compelling, **MARTIN LAVERTY** writes

If you or a loved one are frail and elderly and need the support of an aged care home, you should be able to draw comfort from the fact that there are rules and regulations designed to protect the interests of older people.

What happens, however, if the rules are past their use-by date? Even worse, what happens if the rules actually start to cause harm?

"While intended to protect vulnerable and aged consumers, some existing regulations show little concern for side effects such as encroaching on the rights of clients and their quality of life." This was just one of the ways a recently released Productivity Commission report described the Federal Government's rules that govern how older Australians are cared for in residential services.

A "complex and fragmented regulatory framework resulting in unnecessary costs", "price controls that impede competition", and a need for "clearer delineation of responsibilities" were some of the other ways the Commission described aged care rules.

Complex and fragmented is how consumers or families might describe their experience of seeking entry to an aged care service. Unfortunately, it is government rules that contribute most to this complex and fragmented service environment.

If you consider how individuals or families make decisions about choosing aged care, it's unfortunately the case that few of us plan ahead. Many older Australians will not ever need formal care. Many will remain in their own home, with or without in-home help. Yet a small number, currently around 200,000 a year, will need the assistance of moving into a residential care home. Ten years from now, this number will be closer to 300,000.

The Productivity Commission has just finished its assessment of the effectiveness of the rules that govern these homes. It says that the quality of care will suffer if reform is not pursued.

The Productivity Commission report is lengthy, and uses technocratic language. But it also makes the case for reform, which will ultimately lead to giving consumers the power of choice.

The Commission's case for reform focuses on the failings of what is known as the central planning process. Under this procedure, the Government each year announces how many care places will be allocated to an area, and then aged care providers bid for them.

The most recent example of process at work came on the last day of the 2008-09 financial year. Scrutiny of that announcement reveals 5748 new residential care places were approved, which is 1915 short of the amount originally put out for tender. In other words, applying the Government's own formula, there will be 1915 too few places to meet consumer demand at some stage in the not-too-distant future.

The Commission said the real problem of the central planning process and its price control system is that it "impedes competition between providers, undermining their capacity to respond to the needs of residents".

The ability of the national aged care system to meet the needs of residents should be the ultimate test of whether the system is able to do its job. With the Commission saying consumer needs are not being met, we've got a problem.

The Commission had a lot to say about competition and choice. It said the Government should explore options for introducing more competition in the provision of aged care services, and should remove the regulatory restriction on bonds as a source of funding for high care facilities. The Commission's criticism of aged care regulation is not a criticism of the Rudd Government. The central planning process has evolved over time since its first use in 1985. The prohibition on bonds was determined by the Howard Government in 1997 when the existing Aged Care Act was enacted.

Catholic Health Australia, a network of not-for-profit services which care for 19,000 residents in aged care homes and 7000 people in independent living units, and provide in-home care to some 15,000 older Australians, backed the decision to limit bonds back in 1997. Times have changed, and so has our opposition to bonds.

In fact, nearly all of the implied criticisms of aged care regulation contained in the Commission's report relate to regulatory decisions taken by earlier governments. There is hardly anything in the Commission's report which can be blamed on the Rudd Government. The Government has now received this report. It has also received the report of another commission – that of the health and hospital reformers. Some appear erroneously to think the health and hospital reform recommendations are focused solely on who should run hospitals.

What we know about the health and hospital reform thinking is that they, too, say regulation on aged care should be lifted, and consumers given more choice.

With two of the Government's own expert bodies and many within the community urging more choice for consumers in aged care, it is time for the Rudd Government to change the rules it inherited from John Howard, and give consumers choice.

■ **Martin Laverty is the CEO of Catholic Health Australia.**

p.9 Canberra Times 23/7/09