



Australian Government
Department of Health and Ageing

Thank you for your correspondence dated 23 January 2009 in relation to Milstern Health Care Ltd, and one of its key personnel Mrs Millie Phillips.

The Department of Health and Ageing, through the Aged Care Complaints Investigation Scheme, can deal with complaints in relation to an approved provider's responsibilities under the *Aged Care Act 1997* (the 'Act') and the Principles made under the Act (the 'Principles'). The Act and the Principles regulate Commonwealth funded aged care services, including residential aged care services such as Yagoona Nursing Home and The Ritz.

Specifically, section 16A.5(1) of the *Investigation Principles 2007* states that a person may give to the Secretary of the Department of Health and Ageing (by way of a complaint or otherwise) information about a matter involving an approved provider's responsibilities under the Act or Principles.

The concerns you have raised relate to two retirement villages, Lindfield Manor Retirement Village (New South Wales) and Urimbirra Retirement Village (Queensland). The Commonwealth does not regulate retirement villages. These are regulated under the relevant State and Territory legislation.

Therefore the Aged Care Complaints Investigation Scheme is not empowered to investigate your complaints about these two retirement villages. On this basis, your complaints should be directed to the following bodies which regulate retirement villages:

- New South Wales Office of Fair Trading, ph: 13 32 20; and
- Queensland Office of Fair Trading, ph: 13 13 04

Both the Ritz and Yagoona Nursing Homes are regulated by the Commonwealth under the Act. The Department can confirm that both of these homes were compliant with 44 out of 44 accreditation outcomes as at the date of the last audits by the Aged Care Standards and Accreditation Agency (the 'Agency').

The Ritz Nursing Home passed a full accreditation audit in March 2006, and is accredited until 15 June 2009. Yagoona Nursing Home has also passed a full

accreditation audit in February 2008, and is accredited until 11 May 2011. The Department is aware of the death of a resident of Yagoona Nursing Home. As this matter is currently before the Coroner's Court, it is inappropriate for me to comment. However, the Department will review the findings of the Coroner to determine if any action is required.

The Australian Government is committed to quality care for frail older people. The aged care accreditation framework is supplemented by a rigorous regulatory compliance and monitoring framework, which includes:

- complaints investigation procedures;
- compulsory reporting of abuse;
- legislative protections for whistleblowers;
- compulsory background checks for aged care staff and volunteers; and
- increased random unannounced inspections of aged care homes.

The Agency makes unannounced visits to each residential aged care facility to ensure care standards are being met. These spot checks focus on care standards and may result in a formal review audit and the provider subsequently addressing any non-compliance with standards which is found. In the current financial year, up to 16 March 2009, the Agency has made 2780 unannounced visits to facilities across Australia.

The Department of Health and Ageing is responsible for monitoring and recording approved service providers' compliance with their obligations under the Act and the Aged Care Principles; and for taking appropriate action should an approved provider fail to meet these obligations, including the capacity to revoke approved provider status.

Potential approved providers must apply for approval through the provisions set out in the Act. The legislation requires applicants for approval to provide aged care to meet numerous criteria, including giving evidence of how they intend to use their skills and experience to provide aged care, and demonstrating their commitment to the rights of the recipients of aged care. Entry into the industry is carefully regulated, and once a provider is approved, the Department continues to take an active role in monitoring the ongoing suitability of the approved provider and its key personnel.

The legislative framework for regulating approved providers and their key personnel has been strengthened through recent amendments to the Act in the *Aged Care Amendment (2008 Measures No. 2) Act 2008* (the Amendment Act).

The Amendment Act better aligns the legislation with contemporary business practice so that it applies equally to all approved providers regardless of their corporate structure. For example, by enabling the Department to consider the record of related entities when considering applications for approved provider status, this ensures that relevant information is able to be assessed regardless of the corporate structure

adopted by the applicant. More comprehensive assessment of applicants for approvals also provides better protection for residents and promotes public confidence in the system.

In addition, the Amendment Act clarifies the range of people considered to be 'key personnel' of an approved provider. This ensures that the relevant provisions apply consistently to approved providers with a wide range of business structures.

The Act provides that an applicant's/approved provider's key personnel includes any person who is concerned in, or takes part in, the management of the organisation. This has been supplemented with an explicit requirement that key personnel includes any person having authority or responsibility for (or significant influence over) planning, directing or controlling the activities of the applicant.

The new provision also makes it clear that all directors (in the case of bodies corporate) and members of the governing body (in the case of entities that are not bodies corporate) are key personnel. Approved providers are required to identify their key personnel as part of establishing suitability to provide aged care, and must notify the Department about changes in key personnel.

The Australian Government is also taking further steps to promote the quality of care delivered to frail and aged Australians. On 18 February 2009, the Minister for Ageing announced that there will be an expanded dedicated web-page, containing information relating to aged care homes' compliance with government safety and standard levels. This will appear on the existing website – agedcareaustralia.gov.au.

Finally, the information you have provided in your correspondence will be incorporated into the Department's aged care regulatory monitoring.

I trust that this information is of assistance.

Yours sincerely



Steven Lee
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Prudential and Approved Provider Regulation Branch
Office of Aged Care Quality and Compliance

7 April 2009