



Oceana Consulting PL

Final Report

A REVIEW OF THE LICENSING OF PRIVATE SECTOR AGED CARE FACILITIES IN WESTERN AUSTRALIA

Health Department of Western Australia

[Submitted 31 March 1999]

“In the interests of providing some policy certainty as to the future direction of licensing as it affects the aged care industry in Western Australia, this final report has been prepared covering that industry alone. It assesses the original recommendations contained in the discussion paper in the light of the submissions and feedback received from participants in the industry, and, where appropriate, reconsiders those recommendations in that context. A similar process will be followed in the following weeks with respect to those parts of the original report which deals with the hospital sector, the psychiatric hostel sector, nursing posts and day surgeries.” (Paragraph 9)

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31 March 1999

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INTRODUCTION

1. On 7 November 1998, Oceana Consulting PL submitted to the Commissioner of Health a report arising from its Review of the Licensing of Private Sector Health and Other Facilities in Western Australia.
2. That report, written as the basis for community consultation and discussion, was made public on 22 January 1999. The report was published on the Health Department of Western Australia's Internet site, while at the same time 1,054 printed copies of the report were distributed to the widest possible range of service providers, consumer groups, Government agencies, professional associations and industrial bodies throughout Western Australia.
3. The recipients of the report, representing the aged care, hospital, psychiatric hostel, nursing post, and day surgery sectors, were invited to offer comment, suggestions and criticisms to the Department to enable the preparation by the Department of formal advice to the Minister for Health on the future of private sector licensing in the health and aged care sectors of Western Australia. A similar invitation accompanied the Internet publication of the report, while an advertisement was placed in the West Australian Newspaper on 30 January 1999 inviting members of the public to contact the Department to obtain copies of the report to enable them to have input into the policy development process.
4. Because of a perceived need to avoid undue delay in formulating policy proposals for Government consideration, respondents were asked to submit responses by 28 February 1999, a deadline which was treated with maximum flexibility; extensions of time to respond were granted to all potential respondents who so requested.
5. By 31 March 1999, a total of 74 responses had been received by the Department, being submitted either through the electronic feedback mechanism established on the Internet or in hard copy submissions made to the Department. We express our appreciation for the many positive and helpful contributions made during this feedback process.
6. At the same time, the Department and its consultant conducted face to face interviews with a range of respondents, interviews that were designed to follow up and to explore in more detail the substance of written contributions submitted. During this face to face interview process, discussions on issues affecting the aged care sector were held with:
 - Belcher, Wayne (Church of Christ Homes and Community Services Inc)
 - Bird, Penny (Cerebral Palsy Association)
 - Blyth, Geoff (Chamber of Commerce & Industry WA)
 - Brown, David (Cerebral Palsy Association)

- Collins, Geoff (Amaroo Retirement Village)
 - Davies, Trevor (Public Health Division, HDWA)
 - Drake, Maxine (Health Consumers' Council of WA)
 - Glass, Nigel (Civilian Maimed & Limbless Association of WA)
 - Harding, Vaughan (Uniting Church Homes)
 - Kosky, Michelle (Health Consumers' Council of WA)
 - LeCoultre, John (Belswan)
 - Lorraine, Peter (Silver Chain)
 - Moran, Dianne (Office of Seniors Interests)
 - Murray, Wendy (Office of Seniors Interests)
 - Richardson, Pamela (Aged Care WA)
 - Ridge, Ken (Baptist Care/WA Baptist Hospital & Homes Trust Inc)
 - Tuxworth, Ian, (Belswan)
 - Walsh, Gerry (Rocky Bay Inc)
 - Watters, Joy (Rocky Bay Inc)
7. Early in the consultation process, it became clear that, within parts of the aged care sector, some misunderstanding had arisen about the applicability of some of the recommendations in the report to that sector. In order to clarify the situation and to assist the process of public consultation, the Department on 19 February 1999 issued to all participants in the aged care sector a clarifying memorandum. This memorandum advised people that:

“The Report recommends (in Recommendations 3 and 5) that State licensing of nursing homes and aged care hostels *be contingent solely upon the granting of certification* (and, after 2001, accreditation) *by the Commonwealth to the operators of such nursing homes and hostels, and that HDWA play no role in the setting or monitoring of standards for such institutions.* In other words, the proposal is that licenses for aged care institutions will be granted by the Commissioner of Health solely on the basis of Commonwealth certification and accreditation. The Report proposes that, in all other respects, the State vacate the aged care licensing field to the Commonwealth. There are proposed to be no State standards, inspections or monitoring.”

ORIGINAL RECOMMENDATIONS NOW TO BE RECONSIDERED

8. Of the 38 recommendations in the original discussion paper, only six have direct relevance to the aged care sector, and have now been reconsidered in the light of the community consultation process. The following recommendations from the original report have application to the aged care industry:

1: Licensing Framework to apply to aged care hostels and to nursing homes

That, from 1 January 2000, the licensing framework and procedures applicable to nursing homes in Western Australia be extended to encompass aged care hostels.

2: Role of Commissioner to be retained

That the statutory authority for and obligation upon the Commissioner of Health with respect to the licensing of aged care facilities in Western Australia be retained.

3: Commonwealth certification from 1 March 1999

That, from 1 March 1999, the granting by the Commissioner of Health of a licence for the establishment and continuing operation of new or existing nursing homes (and from 1 January 2000 of aged care hostels) be contingent solely upon the granting of certification by the Commonwealth to the operators of such nursing homes and hostels, and that HDWA play no role in the setting or monitoring of standards for such institutions.

4: Automatic annual renewal of licence

That, pending any necessary amendments to State legislation to give effect to our recommendations with respect to aged care facilities, the Commissioner of Health grant automatic annual renewal of each licence issued in respect of a nursing home or aged care hostel throughout the currency of the instrument of certification.

5: Commonwealth accreditation from 1 January 2001

That, from 1 January 2001, the granting by the Commissioner of Health of a licence for the establishment and continuing operation of new or existing nursing homes and aged care hostels be contingent solely upon the granting of accreditation by the Commonwealth to the operators of such nursing homes and hostels.

6: State/Commonwealth consultation arrangements

That there be instituted a more regular and more formal mechanism for ensuring proper consultation between the State and the Commonwealth with respect to the standards of care and facilities in aged care hostels and nursing homes.

9. In the interests of providing some policy certainty as to the future direction of licensing as it affects the aged care industry in Western Australia, this final report has been prepared covering that industry alone. It assesses the original recommendations contained in the discussion paper in the light of the submissions and feedback received from participants in the industry, and, where appropriate, reconsiders those recommendations in that context. A similar process will be followed in the following weeks with respect to those parts of the original report which deals with the hospital sector, the psychiatric hostel sector, nursing posts and day surgeries.

MATTERS RAISED IN SUBMISSIONS

10. Many respondents expressed support for and approval of the recommendations contained in the discussion paper. Some extracts from submissions follow.
11. The **Health Consumers' Council** expressed strong support for the approach adopted in the report, arguing that "Council strongly supports the proposed action to be taken in regard to licensing of facilities. This will mean the consumers will only have to deal with one Organisation as far as standards are concerned". The Council went on to propose that the "establishment of a formal mechanism between Western Australia and the Commonwealth should also include consumer input".
12. The **Alzheimer's Association of Western Australia** supported the recommendations, and commented that "the implementation of changes that will enable an arms length approach to the regulation of public and private residential-type facilities within a clear set of parameters is to be commended." However, in a second, later submission the Association also drew attention to "the importance of removing yet another unnecessary layer of 'red tape' ... of no benefit to those being cared for in these institutions".
13. The **Warmun Community (Turkey Creek) Incorporated Council** raised no objections to the recommendations in the report, but commented that "additional Government funding will be needed to upgrade and maintain our ... Facility to meet the obvious increase in standards".
14. The **Belswan Group** offered a very detailed response to the discussion paper, expressing general satisfaction with the recommendations applicable to the aged care sector. In that response, the group commented that: "the general direction outlined by the consultants is appropriate and whilst there needs to be some clarification of some matters there is a considerable basis for progress. ... Recommendations 1 - 6 ... acknowledge the new direction of the industry and the need for the licensing to be brought into the 21st Century and to accommodate the new objectives of the Commonwealth".
15. The **Disability Services Commission** stated that it had "no objections to any part of the Review conducted into health and other facilities in Western Australia".
16. **Brightwater** expressed its support for the recommendations in the following terms: "With regard more specifically to aged care facilities, I agree with all the

recommendations. The extension of licensing requirements to hostels as well as nursing homes is a necessity. The distinction between the two is rapidly disappearing from a user, clinical, and provider point of view. The Commonwealth government has removed any policy, regulation or philosophical barriers, since the Aged care Act 1997”.

17. The **Moran Healthcare Group**, commenting upon recommendations 1 to 6 as they relate to aged care facilities, expressed support for those recommendations. The Group went on to comment that: “as there are now, and increasingly there will be, low care beds under the one roof with high level care beds, (we) accept that the licensing framework and procedures applicable to nursing homes cannot be separated from low care beds.”

“Whilst aged care funding, certification and accreditation are the responsibility of the Commonwealth, the state government should play no role forthwith in setting or monitoring standards for aged care facilities. However (we) accept the statutory licensee role of the Commissioner of Health, on the basis of recommendation 5”.

18. In its response, the **Small Business Development Corporation of Western Australia** stated that it “generally supports the licensing recommendations in the Report”. The Corporation, in addressing Recommendation 1, similarly supported “the move to combine the licensing requirements of aged care hostels and nursing homes. Implementation of the recommendation should lead to reduced compliance costs for operators of aged care hostels and nursing homes and reduced administrative costs for the Health Department”. It went on to argue that “while the granting of a licence for an aged care hostel and nursing home may become solely contingent upon Commonwealth certification or accreditation, the SBDC agrees that it is important to retain the role of the State Commissioner for Health in licensing these facilities in Western Australia”.

19. In its response, the **Australian Physiotherapy Association** offered the view that “following considerable consultation between key sectors of the profession it would appear that the recommendations sound reasonable, equitable and mindful of the financial reality underpinning the HDWA”. While recognising that implementation of the recommendations of the report might occasion additional costs to entities requiring licensing, the Association went on to recognise that “standards will be developed that will apply to both the public and private facilities. We also understand that there will be an avoidance of duplication of functions between the State and Commonwealth governments”.

20. While noting that “the streamlining of administration and monitoring which will be brought about by the recommendations listed in the report are likely to contribute to reduced duplication and increased efficiency in your Department”, the **Office of Seniors Interests** identified one issue of general concern with respect to the report's recommendations, namely “the need to maintain a State Health Department Licensing role and the level of accountability this licensing process implies, when the criteria for licensing will be meeting the Commonwealth licensing standards”. The Office of Seniors Interests went on to comment “that if the granting of a license for a residential care facility by the Commissioner for Health is to be solely contingent upon the granting of

certification by the Commonwealth,” it will be important that “Western Australia maintains an appropriate ratio of residential places per population. In addition, any future changes to the standards or functioning of residential facilities in this State should be the result of State and Commonwealth negotiation, together with community input”.

21. The **Australian Nurses Federation (Western Australian Branch)** provided a detailed submission in response to the report. With respect to the aged care industry, the ANF submission supported recommendations 1 and 2; the Federation offered no comment with respect to recommendations 4 and 6. Unique among respondents, the Federation expressed clear opposition to any reliance upon Commonwealth standards and processes for the licensing of Western Australian facilities. The Federation argued that “members of ANF are far from satisfied with the current and projected operations of the Commonwealth system of certification or accreditation.”

“Our members working in the aged care industry are dismayed by the results of so-called ‘reforms’ which removed the need for accountability of proprietors for care-related funding. This provides high incentives to reduce staffing numbers and skills mix.”

“The accreditation system appears to us to rely far too heavily on process (continuous quality improvement) in the facilities and insufficiently on outcome for the residents.”

“Regardless of Commonwealth processes, the citizens of WA will hold the state government responsible for standards of care in nursing homes and hostels. The state must satisfy itself that its regulatory system can bear the scrutiny of its citizens at election time”. The Federation concluded its submission by stating that “members of ANF work intimately with consumers of aged care, health care and psychiatric services and are well-placed to make judgements about the systems and processes which regulate them.”

“Nurses have relied on state regulations to assist them in providing satisfactory services when, in their experience, the federal processes have failed them and their clients.”

“While they support much in this report, they are most anxious about transferring to the Commonwealth the very matters which cause them and their clients the most distress”.

22. Strong opposition to the conclusions and recommendations in the report were presented by a number of respondents.
23. In addressing the principal recommendations relating to the aged care industry, (namely recommendations 1 to 6), **Aged Care Western Australia** disagreed “with the content and rationale of the recommendations” and maintained that: “the State Health Department should not continue its licensing role in this area; the Commissioner should have no further role with respect to the licensing of Commonwealth approved aged care facilities (ie nursing homes and hostels);

... [and that] the Hospital and Health Services Act 1927 should be amended to remove nursing homes from the definition of a hospital”.

Aged Care Western Australia supported its position on a series of grounds, including that “Commonwealth residential aged care facilities are already heavily protected by rigorous Commonwealth regulations and the Federal Aged Care Act 1997”; that “State legislation in this area duplicates State/Commonwealth legislation”; that retention of the current legislative arrangement “is an additional burden of unnecessary Government red tape” which “serves no purpose other than continuing an unnecessary licensing role for the Health Department of WA’s Licensing Unit”; that “there is no valid argument to support the proposal of extending the Unit’s licensing role to cover Commonwealth approved aged care hostels” and that “the proposed licensing arrangements serve no purpose and add no benefits, rights or protections to anyone, least of all the residents”; that “to continue an unnecessary role in licensing of aged care facilities flies in the face of State Government’s policy to remove unnecessary and duplicitous legislation, and government overlays”.

Aged Care Western Australia concluded its submission by stating that “Aged Care Western Australia and its members do not in any way agree with the recommendations to continue any role in licensing of Commonwealth approved nursing homes or hostels”.

24. The position expressed by Aged Care Western Australia was reflected verbatim in submissions made by the **Churches of Christ Federal Aborigines Board Incorporated**, by the **Seventh Day Adventist Retirement Village**, by the **Shire of Wanneroo Aged Persons Homes Trust Incorporated**, and by **Meath Care Incorporated**.
25. In its submission, **Silver Chain** argued that the State should vacate the area of aged care licensing to the Commonwealth. It expressed its position in this way: “Silver Chain shares a common goal with the government in wanting to ensure that high quality residential services are available to those who need these services. To achieve this, we do not believe it is necessary for the State to maintain a role in the Licensing and Regulation of aged care residential services. The Commonwealth is maintaining and strengthening its statutory responsibilities for the residential aged care sector, and the accreditation processes will ensure consistent standards across the industry”.

However, Silver Chain also acknowledged “that the Government may wish to maintain a *safety net* approach in order to satisfy legitimate concerns the Minister or Department may hold in regard to the provision of residential aged care”. Silver Chain recognised “that there is currently a high level of political interest in ... aged care services”. In acknowledging this continuing legitimate State Government interest in the aged care field, Silver Chain proposed the adoption of the following principles to guide the formulation of policy:

- “Remove potential for duplication in process and outcome.
- Minimise costs to providers and Department in order to meet the desired outcomes.

- Support the shift to Accreditation for both Nursing Homes and Hostels.
 - Recognise that the overall high quality of residential services in Western Australia is the product of a collaborative partnership approach between industry and government rather than a product of regulation.
 - Maintain focus on homelike environment rather than ‘hospital’ standards.
 - Adopt ‘general competence’ approach rather than detailed prescription.
 - Recognise existing minimum building standards and requirements required by the three tiers of government”.
26. In its submission, the **Healthcare Association of Western Australia Incorporated** reflected the Silver Chain position verbatim.
27. The **Undercliffe Hospital Complex** expressed similar opposition to the continuing involvement of the Department in aged care licensing. In its submission, the complex argued that “there should (not) be any input to Nursing Homes by the Department of Health. The Commonwealth is the funding and accreditation agent and if there is to be licensing it should be conducted by them. The State simply has no role unless it wishes to duplicate. The statement that licensing *be contingent solely upon the granting of certification* and subsequent accreditation means that the State Department becomes merely a rubber stamping exercise with no value, no merit, and no benefit to anyone except a cost and loss for the taxpayer”.
28. **Uniting Church Homes**, in its submission, similarly argued that the State should vacate the field. Uniting Church Homes offered the view that: “The report fails to identify any value added benefit that will be achieved by the State Government continuing to involve itself in the licensing of nursing homes let alone extending its licensing activities to that of frail aged hostels.”

“The Commonwealth has imposed such a comprehensive and pervasive set of statutory and regulatory requirements on Commonwealth funded Residential Care Facilities that there is no residual role for State Governments to play in adding to these requirements.”

“Instead, new and robust mechanisms need to be established that will ensure the appropriate distribution of residential care facilities within each State and proper integration of these facilities within the wider framework of hospital and community services that is required to achieve timely and appropriate access to services by the community.”

“The licensing legacy of the past neither recognises or assists to meet these new challenges.”

“Accordingly Uniting Church Homes urges this Government to urgently introduce legislation into State Parliament to amend that part of the Hospital and Health Services Act 1927 which refers to nursing homes so that the licensing requirement from these facilities ceases to exist.”

“In addition, Uniting Church Homes strongly opposes the introduction of any State licensing requirements to Commonwealth funded frail aged hostels”.

29. **Baptist Care**, in its submission, argued a similar position, namely that “because the Commonwealth funds the aged care programme, and has in place its certification and accreditation policies that it alone should be the licensing authority. This would ensure that service providers are required to respond to a uniform set of care, and building standards, and to one controlling and regulatory body”.

Baptist Care went on to state its preference that “Commonwealth approved nursing homes and frail aged hostels be totally removed and exempted from the HDWA licensing process” and that “approved residential aged care facilities should continue to operate under the Commonwealth's building certification, and the accreditation/standards processes as outlined in the Aged Care Act 1997 and its Associated Principles”.

30. **Geriaction (Western Australian Branch)** argued that “there is nothing in the Report to support the continued involvement of the HDWA in the licensing of aged care facilities. To do so is to perpetuate an unnecessary and costly duplication of function. “

“Rather than continue a two tiered system it would seem to be more appropriate that the HDWA identify any specific criteria that they feel is not addressed under the Accreditation Standards and liaise with the Commonwealth to rectify the situation”.

31. The **Nedlands Aged Persons Homes Trust Incorporated** offered the view that “State licensing of nursing homes ... contingent solely upon the granting of certification and, after 2001, accreditation by the Commonwealth ... is simply a continuation of the duplication of legal responsibility between the State and Federal jurisdictions ... [and] is ... totally irrelevant and superfluous”. The Trust argued “that the Health Department of Western Australia ... not act on recommendations 2, 3, 4, 5, 6 and 31 as far as nursing homes are concerned and leave all licensing and accreditation matters to the Commonwealth Department concerned”.

32. **Amaroo Retirement Village** offered the view that “there is [no] justification for the retention of the State Licensing function and certainly no justification for extending this beyond its present limitations. Similarly, there would be no justification for applying a License Fee on an industry that can ill afford any additional costs”.

33. The **Shire of Swan Aged Persons Homes Trust Incorporated (Morrison Lodge Hostel)** offered the view that “Commonwealth residential aged care facilities are already heavily protected by rigorous Commonwealth regulations and the Federal Aged Care Act 1997, and State legislation in this area duplicates State/Commonwealth legislation. The State Department's continuing role in licensing Commonwealth approved aged care facilities is illogical, and a waste of the Department's and service provider's time and money”.

34. **Goomalling and Districts Frail Aged Lodge Incorporated** argued for “amendments to WA's Hospital & Health Service Act to remove nursing homes from the legislation so that the state health department does not continue its licensing role in this area and the Commissioner will have no further role with respect to the licensing of Commonwealth approved Aged Care facilities. (ie nursing homes & hostels)”.
35. In its submission, the **Chamber of Commerce and Industry (Western Australia)** argued that “if the State genuinely intends to *vacate the field* it should refrain from entering the field of licensing altogether at this stage”. The Chamber went on to argue that “in view of ...
- the Commonwealth's established framework for certification and accreditation,
 - the intention of the State to rely on the Commonwealth's certification and accreditation infrastructure, and
 - the stated intention of the State Government to vacate the aged care licensing field and the proposal for *no state standards, inspections or monitoring*

CCI and its members in the aged care area do not support recommendations 1-6 of the report ... which propose that the licensing framework and procedures applicable to nursing homes in Western Australia be extended to encompass aged care hostels.”

“This is because aged care providers can discern nothing of value which can be added to the licensing process from having what amounts to a second licensing authority enter the field and accordingly say that there is no role for the State Government to play in the licensing area”.

The Chamber summarised its position, and that of its members, as follows: “CCI's position, and that of our members, can be summarised as follows.

1. the State Government should not require Commonwealth funded and regulated residential care facilities, which were formerly aged and disabled persons' hostels, to be licensed under the State *Hospitals and Health Services Act 1927*;
2. the State Government should act to remove the requirement, which exists now under the State Act, for Commonwealth regulated hostels to obtain a licence to conduct a private hospital once they receive residents “for the purpose of medical supervision and nursing care”. This could be done by amending the Act or, as an interim step, by the Minister exercising the power conferred on him by s. 3(3) of the Act to declare that facilities which prior to 1 July 1997 received funding under the *Aged or Disabled Persons Care Act 1954* (Cth) are not nursing homes for the purposes of the State Act;

3. the State Government should withdraw from the licensing of Commonwealth funded and regulated nursing, homes”.
36. **The Civilian Maimed and Limbless Association of Western Australia Incorporated** expressed the view that “recognition that there is significant commonality and competition between State and Commonwealth in regard to licensing and care matters should result in an outcome where the State Unit effectively leaves the field to the Commonwealth, who are the major funder and Industry partner in this important Health Sector”.

The Association expressed its concern “that the Commissioner of Health retain the Statutory Authority and obligations upon the Commissioner of Health with regard to the licensing of aged care facilities”, a position which, in its view, appeared “to be less than progressive and to have no practical benefit to the State or Industry in maintaining legislative responsibilities which will incur costs unnecessarily and where, as previously indicated, both funding and standards obligations already lie with the Commonwealth”.

However, the Association recognised that some aged care service providers fall outside the Commonwealth arrangements, making the point that “licensing ... contingent on the granting of certification by the Commonwealth will substantially disadvantage a number of Nursing Home operators, whom, notwithstanding a capacity for certification, choose not to do”. In addressing such operators, the Association recommended that “facilities so affected should be able to demonstrate separately to the State eligibility for licensing purposes when caught in this circumstance”.

37. **Churches of Christ Homes and Community Services Incorporated** expressed a concern “that the Health Department will ... retain the licensing of residential aged care facilities now approved, accredited and certified under the Aged Care Act 1997 (Commonwealth)” and “that the Health Department will additionally attempt to enrol aged care hostels into the licensing process by proposing modifications to the Hospital and Health Services Act 1927 (WA) to ensure that these facilities also meet licensing requirements of the Health Department of Western Australia”.

Churches of Christ Homes asserted that “it seems ludicrous and wasteful ... that given adequate protection of residents now afforded by a more stringent Commonwealth Aged Care Act ... there should continue to be any involvement, indeed duplication, by any Western Australian government process”. It proposed that the Government “amend the current legislation to remove the requirement of any residential aged care facility approved under the Aged Care Act, accredited and certified, to be licensed by the Private Sector Licensing Unit of the Health Department of Western Australia. This means removing the current requirement for nursing homes, and stopping any attempt for hostels to be legislatively or otherwise enrolled into the same process”.

38. In her submission, the **Hon. Minister for Seniors** stressed the “benefits of avoiding all duplication of services between the Commonwealth and the State governments”.

39. **Anglican Homes** strongly supported a “complete cessation of HDWA involvement in the licensing and inspection of nursing homes”, and also pointed out some of the difficulties encountered by aged care hostel management by the fact that “under the Retirement Villages Act WA, the Department of Fair Trading exercises quite inappropriate and unnecessary controls over hostels. With the gradual amalgamation of hostels and nursing homes under the Commonwealth Governments Age Care Act 1997, some in the Department of Fair Trading may see a need to expand their involvement into nursing homes. This Act should completely exempt aged persons hostels and nursing homes from its coverage”.
40. Some respondents concentrated on those aspects of the report which dealt with the implication of the licensing framework to aged care hostels.
41. The **City of Bayswater Aged Persons Homes Incorporated** argued that “the proposal to introduce a system of licensing of [hostels] by the Health Department of Western Australia, to mirror existing Commonwealth systems, is seen as completely unnecessary” while **Valencia Nursing Home** made the point that some aged care hostels and nursing homes “would not qualify for certification or accreditation, and in any, case, they are not facilities approved for subsidy” and that if those institutions were “required to license these hostels with HDWA, via a process requiring accreditation, the hostels will not be licensed”.
42. The **Dryandra Frail Aged Hostel** expressed the view that “the Commonwealth Accreditation system for Hostels is working well and that any input by the State Government is totally unnecessary, and an extra cost which would most certainly increase with time”.
43. A further group of respondents raised specific issues and queries.
44. **Casson Homes Incorporated** requested the Department, in the context of the policy formulation process associated with the report, to “examine and make appropriate provision for the special nature of Group Homes which by their nature, operate quite differently to hostel facilities”, while the **Cerebral Palsy Association of Western Australia** raised the case of nursing homes where “funding for the operation of the nursing home is provided by recurrent funding from the Disability Services Commission of Western Australia since the transfer of funding from the Commonwealth to the State under the first Commonwealth/State Disability Agreement” and where such homes “receive no Commonwealth funding”. The Association recommended that such “these types of accommodation facilities and ... facilities such as [the] Planned Vocational Participation Programme, alternative to employment “Studios”, for people with disabilities who are unable to obtain employment, should be exempt from [the] recommendations. This is due to them being monitored by the Disability Services Commission of WA under its quite extensive Standards Monitoring Programme”.
45. **Rocky Bay Incorporated** also identified institutions which do not “operate as an aged care facility but one solely for the needs of people with neurological or

neuromuscular conditions”, and which meet “standards applied by the HDWA [and] also standards applicable to the Disability Services Commission”.

THE RECOMMENDATIONS RECONSIDERED

46. Having analysed the feedback and responses made following the public release of the report, it is now appropriate to look again at the various recommendations made in the report and to assess whether, in the light of the feedback received, those recommendations should be varied.

Jurisdictional Duplication and Overlap

47. The consistent message flowing from the public consultation process was that to the maximum extent possible, jurisdictional duplication and overlap should be eliminated in the licensing of aged care facilities in Western Australia. The original report, released for public consultation, recognised and asserted this principle.

48. At paragraph 38, the report argued that:

“At this stage of higher State standards for nursing homes in Western Australia than for other states, and in the face of Commonwealth subsidisation linked approval/accreditation processes for all aged care facilities throughout Australia that seek funding, there would seem to be cogent reason for the Western Australian licensing process to rely solely upon the existing and developing infrastructure of Commonwealth certification and accreditation, especially at a time of State administrative resource pressure. This would apply to all Western Australian residential aged care facilities whether seeking funding or not.”

49. Again in paragraph 40, the report argued that

“It is therefore proposed that licensing of residential aged care in Western Australia under current legislation move towards phasing out HDWA assessment of proprietors, care and facilities. In its place the provision of certification and accreditation by the Commonwealth would become the administrative pre-requisite for decisions by the Western Australian Commissioner of Health”.

50. In order to give effect to this recognised principle of elimination of duplication, the report recommended that the Commissioner of Health retain a statutory obligation to undertake the licensing of aged care facilities in Western Australia; that the Commissioner's obligation be discharged where Commonwealth certification/accreditation was granted to the operators of aged care facilities; and that the Health Department of Western Australia play no further role in the setting or monitoring of standards for aged care institutions.
51. In effect, the report recommended that the Commissioner continue to license aged care facilities in Western Australia, but issue those licences automatically upon production to him of evidence of Commonwealth certification or accreditation.

52. This retention by the Commissioner of Health of responsibility for the issuing of pro forma licences was the subject of the most consistent criticism following the public release of the report. The overwhelming majority of the submissions received during the public consultation process argued not with the statement of principle contained in the original report, and not with the adoption of Commonwealth certification/accreditation as the sole basis for licensing aged care facilities within Western Australia, but with the retention by the Commissioner of Health of the obligation to issue a pro forma license on the basis of positive Commonwealth assessment.
53. The arguments put forward in the majority of the submissions received are both cogent and convincing.
54. Given the acceptance by the Commonwealth of funding responsibility for aged care facilities nationally, and given the wide public acceptance of the Commonwealth processes of certification and accreditation as satisfying the public policy objective of ensuring that the standards of facilities and care provided for aged persons as a vulnerable group within society, we accept that, where those Commonwealth processes have been followed and where Commonwealth certification or accreditation have been granted and are maintained, there is no need to maintain a continuing role for the Commissioner in the licensing or monitoring of such facilities.
55. Such a conclusion is perfectly consistent with the objective enunciated at paragraph 47 in our original report, where we stated that:

“In this way, aged care facilities in Western Australia will be geared to one clear set of standards that integrate with place allocations and subsidisation, potential duplication between two levels of government will be avoided, and administrative resource pressure on State licensing actively will be mitigated.”
56. Nevertheless, we are not attracted to proposals that aged care facilities should be excluded from the responsibility of the Commissioner of Health by way of simple statutory amendments to remove all references to nursing homes from the Hospitals and Health Services Act 1927.
57. To do so would be to ignore two important factors.
58. Firstly, it is possible (albeit unlikely) that, at some time in the future, the Commonwealth could undergo a change of policy emphasis which could result in it withdrawing to a greater or lesser extent from its current involvement in the certification/accreditation process. If this were to occur, and if aged care facilities had been removed from state legislation, it could have the affect of leaving large numbers of vulnerable Western Australians in a jurisdictional vacuum whereby neither the State nor the Commonwealth Government had any obligation to ensure the maintenance of appropriate standards of facilities and care.
59. This, we believe, would be an unacceptable outcome.

60. Secondly, it would lead effectively to the complete removal of governmental protection from residents in that small number of aged care facilities which either choose not to apply for Commonwealth certification or accreditation or which, having applied for Commonwealth certification or accreditation, are rejected but which continue to operate and to admit residents.
61. We therefore believe that the most appropriate mechanism whereby complete elimination of duplication can be achieved while at the same time maximum protection can be afforded to all persons residing in Western Australian aged care facilities is for the Commissioner of Health to be given a statutory power to exempt facilities from licensing by the incorporation into the legislation of a provision enabling the Commissioner to exempt any facility or class of facility from the licensing provisions of the Act where the Commissioner is satisfied that that facility or class of facility is subject to an alternative system of assessment and monitoring the outcome of which is equivalent to that which would be obtained if that facility or class of facility were to remain subject to the licensing provisions.
62. Regulations or orders under the Act should be enacted to provide complete exemption from the licensing provisions of the Act censuring for aged care facilities (ie. for nursing homes and aged care hostels) which have already achieved or do in the future achieve and maintain Commonwealth certification or accreditation. At the same time, appropriate arrangements will need to be made to provide a backstop where there are difficulties for a service going through accreditation. The Commonwealth has, for example, retained a capacity under S.42-5 of the Aged Care Act 1997 to give an exemption to a service that has not met its accreditation requirement. Commonwealth granting of an exemption from accreditation might need to be flagged with the State as a reason to review or amend a licensing exemption.
63. In this way, all aged care facilities which have obtained Commonwealth certification or accreditation, or which in the future obtain such Commonwealth certification or accreditation would be completely exempted from the need to apply for or to obtain a licence from the Commissioner of Health, but those aged care facilities which do not wish to obtain or which are unable to obtain Commonwealth certification or accreditation would be required to remain part of the Department's licensing framework. Similarly, pending their receipt of Commonwealth certification or accreditation, aged care facilities would be required to remain part of the Department's licensing framework.
64. A key factor in the effective implementation of the proposed licensing arrangements will be to have protocols agreed with the Aged Care Standards Agency and the Commonwealth (see Recommendation 5 (b) below) so that the Commissioner of Health is notified promptly where a certification or accreditation has been revoked or where a S.42 exemption has been applied.

Inclusion of Aged Care Hostels

65. While many of the submissions and representations made during the public consultation process took issue with the recommendation in the original report that "the licensing framework and procedures applicable to nursing homes in

Western Australia be extended to encompass aged care hostels” (Recommendation 1), the arguments advanced in those submissions and representations are not compelling.

66. By and large, the original recommendation was opposed by proprietors of aged care hostels that are already subject to the Commonwealth certification and accreditation process. If the proposals advanced in this final report with respect to the exemption of such facilities from state licensing arrangements are adopted and implemented, such institutions will not find themselves drawn into the state licensing framework.
67. That will leave only a small number of aged care hostels which, by choice or otherwise, are not encompassed within the Commonwealth arrangement. For the reasons advanced above, we do not believe that these aged care facilities should rest in a jurisdictional vacuum and remain totally unregulated. We believe further that the State Government has an obligation to residents in these facilities to ensure that, through an appropriate licensing arrangement, such institutions conform to the requirements of the current Act in terms of standards of facility and of care. We shall, later in this report, turn to the question of the application of relevant standards to such institutions.
68. The original report, at paragraph 30, argued that:

“The distinction between aged care hostels and nursing homes has blurred with “aging-in-place” in hostels and increased emphasis on resident lifestyle issues impacting on the traditional care based distinction between residential types. This has been reinforced by Commonwealth attitudes to subsidisation of all aged care facilities. The elimination of this separation, based as it is upon contemporary approaches to aged care, is one which Western Australia would do well to emulate.”
69. Since we do not on the evidence placed before us resile from that conclusion, and since we have already argued that those nursing homes which do not fall within the Commonwealth certification or accreditation arrangements should remain subject to State Government licensing, we are necessarily drawn to the conclusion that aged care hostels which similarly fall outside the Commonwealth arrangements should also be brought within the State Government licensing framework.
70. Such a conclusion was shared by many respondents to the original report, even by those who argued most strongly for the complete exemption from State Government licensing provisions of aged care facilities which are or become subject to Commonwealth certification or accreditation arrangements.
71. Among the positive outcomes which will accrue if this recommendation is adopted are that all residents of aged care facilities in Western Australia will be assured that appropriate standards of facilities and care will be maintained; that the application in a sensible way of the conditional licensing provisions recommended elsewhere in the report will ensure, over time, that many of the hostels which currently are unable to obtain Commonwealth certification or accreditation will through the process of gradual improvement of standards

become eligible for Commonwealth certification or accreditation; and that aged care institutions which, over time, are unwilling or unable to undertake the necessary improvement to standards of facilities and care in order to maintain either a state license or to achieve Commonwealth certification or accreditation will be able to be eased out of the industry.

72. This is not to say that the Department should, for the sake of those small number of aged care facilities which remain to be licensed, develop and maintain separate standards for nursing homes and aged care hostels. Rather, it would be preferable for the Department, utilising the proposed new mechanisms for the formulation, consultation on, and promulgation of new standards, to adopt to itself from time to time existing Commonwealth standards for nursing homes and for aged care hostels, to adapt those standards so that they can be used in conjunction with the conditional licensing process to effect improvement in standards of facilities and care, and to apply these adapted standards in a realistic, practical and helpful way to the few nursing homes and aged care hostels which still remain within the Department's licensing framework.

Anomalies and Ambiguities Identified

73. A number of anomalies were brought to light during the public consultation process which had not been the subject of comment or recommendation in the earlier report.
74. Firstly, there is the situation of some very few institutions which are assessed and regularly monitored by the Disability Services Commission as well as by the Health Department of Western Australia and which at present are compelled to adhere to facility and care standards set by both the Commission and the Department.
75. We believe that duplication of licensing, assessment and monitoring by two Western Australian agencies is just as unacceptable and unnecessary as is duplication by Commonwealth and State agencies. We therefore believe that, where this duplication is found to exist, the exemption provisions referred to above be applied so that, to the maximum extent practicable, such institutions cease to be the responsibility of the Department's licensing framework, and become the sole responsibility of the Disability Services Commission.
76. At the same time, we believe that there is much to commend a proposition that, on a regular and relatively frequent basis, formal consultations be held between the Department and the Disability Services Commission with a view to the two agencies collaborating on the formulation, application and content of standards applied to facilities and institutions within their respective areas of responsibility.
77. In this way, the two agencies could learn from mutual experience, the approach adopted towards similar institutions could be relatively standardised, and anomalous situations could be identified and resolved earlier than is the case at present.

78. Finally, the consultation process brought to light some concern within segments of the aged care industry in relation to definitional ambiguity.
79. Provision of residential accommodation for aged persons within the community has been achieved using a diverse range of approaches. These include group homes, cluster homes, retirement villages, aged persons communities, as well as aged care hostels and nursing homes. With the further passing of time and increasing emphasis on “aging in place”, this diversity in approach to residential accommodation for aged persons will only increase.
80. This evolution in the development of models of residential accommodation for aged persons has resulted in the application of a complex set of regulatory arrangements, especially in the case of nursing homes and aged care hostels. Nursing homes are subject at present to State Health Department licensing, Commonwealth certification/accreditation, and Local Government regulation (and may, as aging-in-place and other changes occur, become subject at least in part to the Retirement Villages Act 1992); aged care hostels are subject to Commonwealth certification/accreditation, local government regulation, and compliance with the Retirement Villages Act 1992.
81. This entire situation creates an overly-intrusive burden for the operators of nursing homes and aged care hostels, and needs urgent action to reduce the regulatory impost without sacrificing standards of care or of facilities.
82. While all approaches to the provision of residential accommodation for aged persons within the community are, and should be, subject to Local Government regulations (in the context of building standards, environmental health etc), and some approaches are, and should be, subject to the provisions of the Retirement Villages Act 1992 (in terms of management of residents’ funds etc), only institutions offering nursing home and/or hostel care to aged persons should be encompassed by the Department’s licensing framework, and even in this more restricted category the exemption provisions referred to earlier should have effect where Commonwealth regulatory arrangements apply. Retirement homes would not fall under the licensing provisions unless they provide supported accommodation. Definitions and guidelines will need to be developed to clarify the application of the licensing provisions.
83. Therefore, in order to eliminate the current ambiguity, new definitions should be prepared for insertion into the legislation to ensure that the licensing framework applies only where it is required. In revising the current definitions to ensure that they apply solely to nursing homes and aged care hostels and not to alternative approaches to residential accommodation for aged persons, the Department should undertake extensive consultation with aged care professionals, the aged care industry, and with other government and non-government agencies and organisations. At the same time, a specific power of exemption should enable the exclusion of nursing homes and aged care hostels from the operations of the Retirement Villages Act 1992 where such homes or hostels have achieved and maintained Commonwealth certification or accreditation.

84. Once these new, more appropriate definitions are included in the legislation, any remaining anomalies could be resolved either by the application of the new definitions, or by the exercise by the Commissioner of Health of the already referred to exemption provisions proposed.
85. We therefore recommend that Recommendations 1 to 6 on the original Report be replaced by the following Recommendations:

1: Role of Commissioner

That, subject to Recommendations 2 (a) and (b), the statutory authority for and obligation upon the Commissioner of Health with respect to the licensing of aged care facilities in Western Australia be retained.

2: Exemptions

- (a) **That the Commissioner of Health be given a statutory power to exempt (by regulation or by order) facilities from licensing by the incorporation into the legislation of a provision enabling the Commissioner to exempt any facility or class of facility from the licensing provisions of the Act where the Commissioner is satisfied that that facility or class of facility is subject to an alternative system of assessment and monitoring the outcome of which is equivalent to that which would be obtained if that facility or class of facility were to remain subject to the licensing provisions.**
- (b) **That regulations or orders under the amended Act be enacted to provide complete exemption from the licensing provisions of the Act for nursing homes and aged care hostels (ie for aged care facilities that provide high care, low care, or both high and low care) where the facility has already achieved or does in the future achieve and maintain Commonwealth certification or accreditation under the provisions of the Commonwealth Aged Care Act 1997.**

3: Licensing of and Standards for Aged Care Facilities

- (a) **That, subject to Recommendations 2 (a) and (b), the licensing framework and procedures applicable to nursing homes in Western Australia be extended to encompass aged care hostels.**
- (b) **That those nursing homes and aged care hostels that do not fall within the Commonwealth certification or accreditation arrangements be subject to the State Government licensing framework.**
- (c) **That the Department utilise the new mechanisms for the formulation, consultation on, and promulgation of new standards proposed in the original Report (Recommendations 23 to 25) to adopt to itself relevant Commonwealth standards for those nursing homes and aged care hostels which remain within the State licensing arrangements, and to adapt those standards so that they can be used in conjunction with the**

conditional licensing process to effect improvement in standards of facilities and care.

- (d) That, using conditional licensing arrangements, the Department apply those Commonwealth standards in a realistic, practical and helpful way to those nursing homes and aged care hostels which, following the application of exemption arrangements, remain within the Department's licensing framework.

4: Institutions Regulated by the Disability Services Commission

That for institutions which are assessed and regularly monitored by the Disability Services Commission as well as by the Department and which at present are compelled to adhere to facility and care standards set by both the Commission and the Department, the proposed exemption provisions be applied so that, to the maximum extent practicable, such institutions cease to be the responsibility of the Department's licensing framework, and become the sole responsibility of the Disability Services Commission.

5. Consultation Arrangements

- (a) That, on a regular and relatively frequent basis, formal consultations be held between the Department and the Disability Services Commission with a view to the two agencies collaborating on the formulation, application and content of standards applied to facilities and institutions within their respective areas of responsibility.
- (b) That there be instituted a more regular and more formal mechanism for ensuring proper consultation between the State and the Commonwealth with respect to the standards of care and facilities in aged care hostels and nursing homes.

6: Removal of Definitional Ambiguity

That, in order to eliminate current ambiguities:

- (a) new definitions be prepared for insertion into the legislation to ensure that the licensing framework applies only where it is required;
- (b) in revising the current definitions to ensure that they apply solely to nursing homes and aged care hostels and not to alternative approaches to residential accommodation for aged persons, the Department undertake extensive consultation with aged care professionals, the aged care industry, and with other government and non-government agencies and organisations;
- (c) once more appropriate definitions are included in the legislation, any remaining anomalies be resolved either by the application of the new definitions, or by the exercise by the Commissioner of Health of the proposed exemption provisions; and

(d) nursing homes and aged care hostels be specifically exempted from the operations of the Retirement Villages Act 1992 where the facility has already achieved or does in the future achieve and maintain Commonwealth certification or accreditation under the provisions of the Commonwealth Aged Care Act 1997.