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Practice and policy in ADR

Managing conflict and complaints in the aged care sector: some ideas from practice

Peter Condliffe

The aged-care sector is one of the more interesting fields of practice for conflict management specialists such as myself. This is for a number of reasons, including the breadth of statutory regulation, the dynamics in the cases one encounters, the growth of the field, and not least its highly politicized nature. This article examines several recent controversies in aged care in Victoria and looks at some of the projected changes which, as a consequence, will be made to the *Aged Care Act 1997 (Cth) (ACA)*. Finally I look at three particular aspects of dealing with complainants and conflicts successfully.

Recent controversies

In December 2006 the Victorian media reported that the Commonwealth Aged Care Standards and Accreditation Agency had recorded that 23 Victorian nursing homes, with 1308 residents, had failed clinical care standards since July of the previous year.¹ Fourteen of these homes had inadequate staffing levels at some time over that period. An eastern suburbs nursing home was reported as feeding residents on a budget of \$5 a day. The Federal Minister for Ageing replied that the homes' failure to meet standards did not mean that residents were at risk. The opposition aged-care spokeswoman said a shortage of qualified staff was the sector's biggest problem. These media stories tapped into a deep-seated fear among the elderly, their relatives and the wider community about the vulnerability of the aged community, especially those in aged-care facilities.²

These media stories followed upon an official report from the Office of the Commissioner for Complaints (Cth)

that Victoria had the highest number of complaints about nursing homes of any State.³ If one looks at that report it shows that the number of complaints and information calls to Commonwealth-funded facilities were greater in the quarter under consideration than in the previous quarter which was thought, according to the Commissioner, to be due to continued media interest in aged care. The heightened media interest that the Commissioner noted related to several notorious cases which were reported in February of 2006.⁴ The *Herald Sun* had reported that Victoria was the worst State when it comes to looking after its elderly citizens, making up almost half the official sanctions on nursing homes, and one-third of all complaints. This newspaper made some gloomy

There were also allegations, revealed by the ABC *Lateline* television program, that the Victoria police were investigating rape allegations against a male carer at another Melbourne facility. This program reported that the initial allegation came from a 73-year old woman, who had dementia, in March 2005. Instead of contacting the woman's family or the police, *Lateline* reported that the facility manager questioned the woman and dismissed her claim. The program also revealed allegations of sexual abuse by a male assistant nurse at a nursing home on the Queensland Sunshine Coast.

Government response

Following these revelations by the media, the Minister for Ageing announced a review of the aged-care

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predictions that the problems in Victorian nursing homes were expected to worsen because of the rapidly aging population and the doubling of the number of people aged over 65 in the next 40 years. These predictions followed reports that four dementia patients in their 90s had been raped and assaulted at a home in Mt Eliza, near Melbourne.

system and in April 2006 introduced compulsory background checks for aged-care staff and volunteers, and a significant increase in random, unannounced inspections of aged-care homes. In response to the ongoing bad publicity, the Howard Government announced a \$90.2 million package of reforms for the residential aged-care



sector on 27 July 2006. The reforms, details of which are yet to fully emerge, include the creation of a new 'Aged Care Commissioner', more rigorous complaints and investigation procedures, a regime of compulsory reporting of abuse, and legislative protection for whistleblowers. The Minister announced that:

The government has moved to significantly strengthen the complaints handling powers available under the *Aged Care Act 1997* by introducing the capacity to investigate complaints, as opposed to the former conflict resolution role that relied on mediation. Some complaints are just unamenable to mediation.⁵

Features of the new regime under the ACA

The three principal features of this new scheme are outlined in The Aged Care Amendment (Security and Protection) Bill 2007.⁶

- First, the creation of a dedicated Aged Care Commissioner position with wide-ranging powers to conduct and initiate investigations into the quality of care provided in residential facilities.
- Second, a new Office for Aged Care Quality and Compliance will replace the Aged Care Complaints Resolutions Scheme (ACCRS) and its core key staff will now be trained investigative personnel given greater powers to examine complaints.
- Finally, there will be compulsory reporting by approved providers of incidents of sexual and serious physical assault.

A set of 'Investigations Principles' will be drafted pursuant to s 96.1 of the ACA. What these Investigation Principles actually are will be of interest, particularly what will trigger an investigation. There is a possibility that all requests for information will be treated as potential complaints. Approved providers under the ACA must, by a proposed amendment to s 56, 'comply with any requirement made of the approved provider under the Investigation Principles'. Presumably if the provider is unhappy with this requirement they may be able to go to the new Commissioner, although this may need to be clarified. The power to require compliance is very wide and would indicate that those authorised to

give directions pursuant to the Principles will do so in an informed and considered manner so as to ensure procedural fairness.

The Bill repeals s 86.9 relating to informing a complainant about an outcome of a complaint. This leaves the question of how a complainant is to be informed of the outcomes of a complaint. Presumably a similar provision to this will be included in the Investigation Principles to ensure that a complainant is informed.

A proposed amendment to s 96.2 allows the Secretary to delegate any or all of his or her powers to the new Aged Care Commissioner. I would have thought the Commissioner's duties and powers are quite specific and could be limited to same. Clarification of the powers of the new Commissioner will be required.

The Bill establishes some protections for staff members of aged-care providers who report an offence provided that they do so upon the basis of reasonableness and good faith (s 96.8). Should there be a penalty for vexatious complaints or some provision for penalties for the making of a complaint that is not reasonable or not made in good faith? How would this be determined and how would the provider be made aware of this? The mere fact that a complaint is made and it is not substantiated does not mean that it was not made in good faith or reasonably. How is this to be provided for and communicated satisfactorily to the provider and others concerned?

It is clear that Commonwealth-funded providers will have to have policies and guidelines in place quickly and ensure that employees are informed and trained as required. It is not clear whether the Minister will recommend a model process/policy and guidelines or whether every provider will have to do their own thing.

The proposed amendments to the ACA appear to be made under a number of assumptions. These include assumptions about the role of the mediator and the nature and level of complaints being made. One could question the Minister's underlying premise that the existing scheme relies on mediation. Only approximately 2 per cent of complaints referred to the ACCRS are finalised via mediation and a further 3 per cent



are finalised by a determination by a Complaints Resolution Committee. Of the mediations around 90 per cent reach agreement. Of the balance of cases, around 95 per cent, are dealt with by negotiation and/or referral by Complaints Resolution Officers. Most of these are resolved through the provision of information and the negotiation of improvements and procedures by aged-care service providers. Satisfaction ratings kept by the Commissioner would indicate that there is a high level of satisfaction among users of the present processes.⁷ It is noted that mediation is retained in the proposed new system while the system of determination through the Complaints Resolution Committee has been removed.

One question worth careful consideration is the way in which information calls will be considered under the proposed new scheme.⁸ In particular the distinction between information and complaint calls will require further consideration. The present complaints system was designed to be heavily outcome oriented and resident focused. It was built around a user rights strategy, triggered by a process of complaint making and balanced with the Commonwealth's regime of compliance. The new scheme would seem to place greater emphasis upon an inquisitional model of engagement. This will affect the delicate balance between service-providers, residents and their representatives and relatives. The present framework is built around the idea of encouraging the maintenance of relationships, and this may be more difficult to achieve under the new system.

If one looks at the totality of the recorded information and complaint calls recorded by the Commission from the beginning of 2001 (when it first began to publish such records) to September 2006, there has in fact been a steady decline. Information and complaint calls are approximately 25 per cent fewer in the number of both. The proportion of complaints to information calls has remained constant at around 20 per cent. During the last quarter of 2006 the ACCRS finalised a total of 223 complaints nationwide. It dealt with a total of 1650 calls. Victoria

accounts for 42 per cent of all calls (information and complaints). Of the complaints made, the majority (95 per cent) related to aged residential services and 2 per cent related to community

heavily upon the recruitment of suitably qualified individuals who will require training, especially in interviewing, investigation and negotiation skills as well as substantive aspects of the ACA.

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aged-care packages (CACPs) and the other (3 per cent) related to flexible care services.⁹

The Commissioner for Complaints uses 13 key words to record complaint issues. Current practice is to create second issues only if necessary and only where a different key word is applied. For example, the 354 complaints recorded in the quarter ending in September 2006, related to 416 identified issues. As in most reporting quarters, health and personal care and consultation/communication were the most frequently recorded complaint issues.¹⁰ Approximately 11 per cent of complaints lodged were not accepted.

While local media reports, noted previously, indicate that Victoria has a higher proportion of calls into the ACCRS system than other States and they appear disproportionate to the percentage of services provided there, the conclusion that this would indicate greater problems in services in that State does not necessarily follow. It may indicate that residents and their relatives in Victoria are more aware of or feel more comfortable in making queries and complaints. In fact the greater incidence of queries and complaints in Victoria could indicate that the system is working better than in other jurisdictions. If this were the case it would be an ironic outcome, given that it was the Victorian cases that precipitated the changes.

Finally, the new scheme will depend

Managing aged-care complaints and conflicts

The management of aged-care disputes is, in many ways, like the management of any other type of dispute. For example, I use the same mediation agreement in these disputes and I usually send similar preliminary information to parties. However, there are some differences which stand out from my review of the cases in which I have been involved.

From my experience complainants under the present Commonwealth scheme have essentially three objectives when they lodge a complaint with the ACCRS. These are:

- first, to obtain knowledge and information about what has happened or what the obligations and responsibilities of the service-provider are;
- second, to seek validation of their grievance/s so that there is an acknowledgement by the provider that the complaint has some justification; and
- third, to see that something will be done about the problem or some undertaking made to take corrective action.

In mediation these aspects are usually quite apparent. Accordingly, my mediation approach to disputes and complaints in this field is tailored to meet the needs of the parties.



Mediation approach and process

In conflicts involving the relatives of an aged person and/or the aged person themselves, where legal proceedings have not been initiated, the best approach I have found is a 'facilitative/transformative' one. In other words a process that maximises party input in the mediation and develops their stories and understanding of what has happened. This contrasts with the shuttle negotiation/assisted negotiation/bargaining process that often occurs in commercial mediations. The facilitative/transformative process in these types of negotiations has three important elements which lend themselves to success. These are:

1. The development of the parties' narratives at the beginning of the mediation rather than just listening to a recitation of the parties' positions in relation to the issues is the first element. I am generally more active in drawing issues out in relation to not only the substantive content but the procedural and psychological aspects as well. Unlike the situation in other mediations where there are often skilled advisers informing and framing the issues, in these mediations parties are often unaware of the intricacies of the other side's position and interests and the way in which to respond to them. Also fractionating (that is, reducing the dispute to a range of interests, issues or proposals) the dispute in these ways can negate aspects of the dispute which can be useful in a more complete 'settlement' of the matter. During this phase of the mediation one can often observe non-verbal acknowledgment of the usefulness of the tactic. The parties sometimes comment afterwards that they did not understand what had been happening from the other party's point of view until they had heard it explained in the mediation. In these cases the facilitative

approach is the most effective.

2. The second element which gives some emphasis to this type of mediation is transitional questioning. This occurs throughout the mediation after the initial statements to explore elements of concern that both parties may have expressed. The questions are called 'transitional' because they are addressed in such a way as to require one party to talk to the other. In this way the parties begin to talk directly with each other and to re-establish communication which has often broken down in previous encounters and which will stand them in good stead for future engagements.

3. The other element which stands out in these mediations is enabling the parties to work on and develop options together. I find working from the whiteboard works best, usually working up a number of options in relation to each issue, and refining them in summary on the board before writing them into agreements.

Whose complaint?

Another aspect of these disputes is that one is often dealing with not only the aged person, but also with relatives and friends. This is often necessary because the aged person may be infirm or incompetent. It means that one is not necessarily dealing with the aged person's particular needs and issues, but rather with those of the relatives which can lead to challenges for the mediator or advisor. For example, in cases involving issues of accommodation the service-provider is focused on providing services to the aged person. This dynamic can set up contradictions within the mediation. Often the mediation is not principally about the aged person but instead about repairing the relationship, particularly the way in which the relatives and the aged-care provider communicate with each other.

contributions

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Sometimes, one or both of the parties are also assisted by an advocacy organisation. This is more likely to be the service-provider. Almost always I have found these persons to be helpful, particularly in explaining terms and providing information, sometimes of a technical nature. It is important, however, that their role is carefully defined within the mediation context. Parties in these mediations are usually very sensitive to the presence of 'advocates'.

Family and organisational dynamics

Older people rely significantly on family and relatives not only for care and support but for accommodation as well. In the 1996 Commonwealth Census it was revealed that of the 2.3 million people then over 65 years, 77 per cent had private accommodation. Of that population, 20 per cent lived in family households with their children, relatives or friends. These are the people whose living arrangements can give rise to risks which have been described in the legal system as the 'granny flat' cases. For these people a family agreement may be a prudent arrangement to prevent disputes occurring. The type of agreement can take the form of a deed, a co-ownership agreement for a particular property, granny flat type of agreement, a contract to make a will which may be conditional upon carer services being provided, or a care in residence agreement.

In these cases one is managing family dynamics and relationships, as well as attempting to obtain instructions or the story from the aged person. When service providers are involved, often the employees of the provider seem to be adhering to a corporate line which sometimes impedes progress. In separate sessions it is possible to get behind these dynamics and fronts to obtain a fuller picture of what is happening and then assist the parties to bring this back into joint sessions.

Managing loss

In some cases the aged person has died or is about to die. The person's relatives and staff of the service provider are experiencing a stage of mourning or pre-mourning and are attempting to attach

meaning to their loved one's death or impending death. Associated with this process are often feelings of guilt and anger. I have reviewed some of the 14 mediations cases that I had in this area over the last 12 months. In two cases the resident had died before mediation had commenced. In two others, the resident was obviously dying or did not have much more time to live. In these mediations one has to provide for a range of emotions which are not normally present in other settings.

Limitation of issues

When the dispute occurs within the context of the ACA, the parameters of negotiation are limited to the complaints made. For example, if one had a complaint about the quality of food, then one is limited to a discussion about this issue. One cannot go onto a discussion about wound management or the inadequacies of the facility laundry. My approach to this is to develop broad initial statements that enable the parties to talk about the 'background' to the complaints made. This enables the exploration and better management of underlying issues which are often concentrated around a series of incidents and/or miscommunication leading up to an 'event' that triggers and is the complaint.

the settlement for most clients the better, so long as they can get within their 'negotiation range'. Recent considered analysis by Andrew Robertson, a partner with Piper Alderman, of how lawyers 'play tough' when confronted with mediation is instructive in this regard.¹¹ He argues that lawyers use this tactic as a strategic ploy because it is perceived as improving the parties' negotiating stance. While this may or may not be so it does often lead to further delay and costs, and makes the mediator's job more difficult. Also, in true tit-for-tat style the other party is likely to adopt a similarly hard-headed approach rather than cave in as the adversary plans or demands.

Propensity to settle

It is my experience that some older people want to settle too early. The stereotype, which is sometimes correct, is that older people will 'roll over' easily. Older persons often present as fearful of change and of retribution against them. Like some clients in family law cases, they are often focused on maintaining relationships and either want to settle too early or for too little. These are valid concerns and it is entirely legitimate for a client to trade off something to maintain harmony within

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Role of advisors

The role of advisors such as accountants and legal practitioners is usually crucial. From my position as a mediator, the abilities of a lawyer to present a solid case for their client without cloaking it in aggressive foreplay can make the difference between an early and late settlement. Given the cost of litigation, the earlier

a family, or another important set of relationships. The important point here is that the person is advised and understands what they are doing. This type of circumstance should not be confused with the situation pertaining to a range of older people who, because of their infirmity, are finding it difficult to follow and understand what is happening. In this situation it



is important that the older person be properly represented.

Resources

Older people have fewer resources than the general population. About three-quarters depend upon Social Security for their main income source and so they are less able to sustain costly disputes. They often have fewer resources in terms of social networks and contacts. This makes them relatively more isolated and reliant upon their family, formal and professional relationships and fearful of loss in these areas.

Prevention

Most conflicts in this area start small and build towards large disputes. They are usually not anticipated and in many cases could have been prevented. For example, in cases involving private commitments between older people and their relatives, friends and carers designed to provide them with accommodation and care in their final years, they usually get into difficulties for two types of reasons:

- first, they don't anticipate emerging problems in family relationships; and
- second it is very difficult to quantify the contribution which a carer makes over time.

In these cases many disputes can be prevented or lessened by a thorough canvassing of all contingencies. Often parties in these disputes have not initially obtained proper legal or other advice.

Situational entrapment

In mediations involving family provision or private commitment disputes one or both parties are usually entrapped in the dispute. Lawyers could correctly presume that one of the major reasons for the entrapment is the cost factors involved in litigation or potential litigation. However, probably just as important is the social context in which these disputes are played out. Most disputants in these situations will lose considerable face in their familial and social relationships if they should lose or withdraw their claims. As the entrapment continues the explanation of why such involvement is necessary moves from clear and rational justifications to ones with a greater degree of emotional content. That is, as

the entrapment proceeds, parties may simply want to achieve the intended goal to meet psychological needs, save face or to justify their previous investment. Their motives shift from the rational to rationalising.

Certain behavioural tendencies emerge, the most important of which is self-perpetuating behaviours which cause further commitment. Parties' motivation to compromise changes to one of aggression against the adversary. More and more investment in the dispute is made, making it increasingly difficult to withdraw or compromise. In other words there is a tendency for conflict in such situations to escalate, making these disputes some of the most difficult to manage. This is because, first, there is structural change, in that the parties cannot go back to where they were before. Even if the matter is resolved, the parties usually are left with a residue of resentment. Second, participants usually suffer from 'selective perception', thinking the worst (or the best), distorting information and hearing what they want to hear. Third, these tendencies result in 'self-fulfilling prophecies', that is, one party expects the other to act in certain ways and accordingly adjust their own behaviour, thus eliciting the expected behaviour.¹² Preventing this sense of entrapment from taking hold requires advisers to help the parties set limits, help parties understand the process and its limitations, provide accurate information about costs, and avoid public or familial displays of commitment to a certain course.

Types of complainants

We have various ways of describing complainants. Sales people call them intimidators, clams, indecisives or know-it-alls. In the human services professions we are likely to call them abusive, persistent/serial and vexatious or the organised. In this article I categorise complainants into three broad categories of people. First is the normal complainant, second is the difficult complainant, and third is the persistent complainant.¹³

Normal complainants make up 90 per cent or more of those who would want to complain. They complain for a number of reasons:

- obtain attention,



- receive an explanation or apology,
- seek vindication,
- protect others,
- receive compensation and
- obtain justice or protect a 'principle'.

In some cases they also want some emotional engagement and are seeking retribution as well.

In most cases, and especially in the aged-care field where litigation is not often pursued, the normal complainant will, when having received an explanation or apology, go back to being a non-complainant. However, a proportion will proceed to become difficult complainants. Difficult complainants are likely to make up less than 10 per cent and usually closer to 5 per cent of complainants. A number of factors cause people to turn from normal into difficult complainants, chief of which is delay. However, lack of recognition, emotional engagement and in some cases cognitive engagement, can be relevant, as well as an inappropriate attitude of people they deal with.

Research by the Victorian Institute of Forensic Mental Health in six Ombudsman's Australian offices, found that about half of the complainants, both normal and difficult complainants, had not been dealt with as well as they could. In 25–30 per cent of cases there was unreasonable delay.

There was overt hostility shown by agency staff in about 5 per cent of cases and in about 20 per cent the organisation or agency denied any responsibility.¹⁴

At the top of the complaints pyramid is the persistent complainant, or as psychiatrists term them, the morbidly querulous. Lawyers call them vexatious litigants. They apparently have a pre-existing psychological condition that predisposes them to be difficult. Research indicates that these constitute between 1 per cent and 3 per cent of a typical client base. I do not want to deal with the persistent complainant at any length because their management requires some specialised thinking and policy, but typically there are a number of indicators of the persistent complainant, including:

- they have egocentric tendencies;
- they feel particularly victimised; and
- they attribute all or most issues to

external causes (that is, causes other than themselves).

In summary persistent complainants are not there to manage or resolve disputes, but to seek further avenues of complaint. They derive, for whatever reason, satisfaction from being involved in the complaint process rather than the management or resolution of it.

Responding to complaints

Response to the issues presented occurs at two levels: the first is the organisational and the second is what I call the interpersonal.

Organisational level response: establishing policy and procedures

The first thing that can be said about managing complaints is to that they are inevitable. Every organisation, whether in the public or private spheres, will need to have a process for managing complaints. In the aged-care sector the ACA requires a complaint management process.¹⁵ If not handled appropriately, complaints have the capacity to severely disrupt an organisation, increase the potential for threats and violence, consume disproportionate amounts of time and energy and severely impact on staff morale.

If not handled appropriately, complaints have the capacity to severely disrupt an organisation, increase the potential for threats and violence, consume disproportionate amounts of time and energy and severely impact on staff morale.

In my work as a consultant, investigator and mediator for a range of organisations, I constantly come across organisations which either do not have a complaints and conflict management strategy for clients and staff or, if they do it is inadequate at a number of levels. Any organisation that is receiving or is likely to receive more than 10 complaints a year needs to start thinking about policy and procedures to manage them. By policy I mean a set of guiding principles and objectives which outlines

a direction for managing complaints and conflict. Procedures describe the steps involved in achieving the policies. The policy and procedures should allow flexibility and not be too complex or cumbersome to use. They are relatively easy to draft and set up. What is interesting for me is why a large number of organisations seem to have difficulties in doing this. I think there are a number of reasons.

The first is that various individuals or parts of the organisation may benefit from the status quo. Any changes to the way things are done are resisted. Another reason is the 'routinisation of the behaviour'. This is a fear of change based upon the idea that things have been done a certain way in the past and that's how they will continue to be done. Third, and probably most importantly, the organisational culture may militate against the adoption of ideas and processes which will ease the internal or external conflict of the group the organisation is facing. There are some agencies which unfortunately assume that conflicts and complaints will not occur, or if they do, they are somebody else's problem, not theirs. Overcoming these particular issues is sometimes difficult and demands leadership from the top

echelons of the organisation concerned.

Successful organisations see complaints as a resource, that is as part of their feedback mechanism from clients or customers, and they build this into their research and analysis of services and products they are delivering. Any policy or set of procedures should align with other organisational goals. Many agencies have business plans, performance policies, risk management strategies and codes of conduct. Complaints and conflict management



policies and procedures should mesh with these other documents.

Any set of policy and procedures in this area needs to have five principle objects. These are, in broad terms, to:

- enable early resolution;
- speedily escalate the complaint if it is too difficult for the level of staff that receives it;
- ensure clarity and flexibility;
- provide for the allocation of difficult or persistent complainers to a specific staff member; and
- provide support to staff.

The Standards Australia Committee has established a standard on complaints handling (AS 4269-1995) which is compatible with an international standard (AS ISO 10002-2006). The Australian Standard recommends a consideration of 13 essential elements of an effective complaints handling process. These are commitment, fairness, resources, visibility, success, assistance, responsiveness, charges, remedies, data collection, systematic and recurring problems, accountability and review. This is a useful checklist for the development of a complaints handling system.

Interpersonal management of complaints

The next aspect of complaints and conflict management is what I term interpersonal management. It is my view that people who work in the

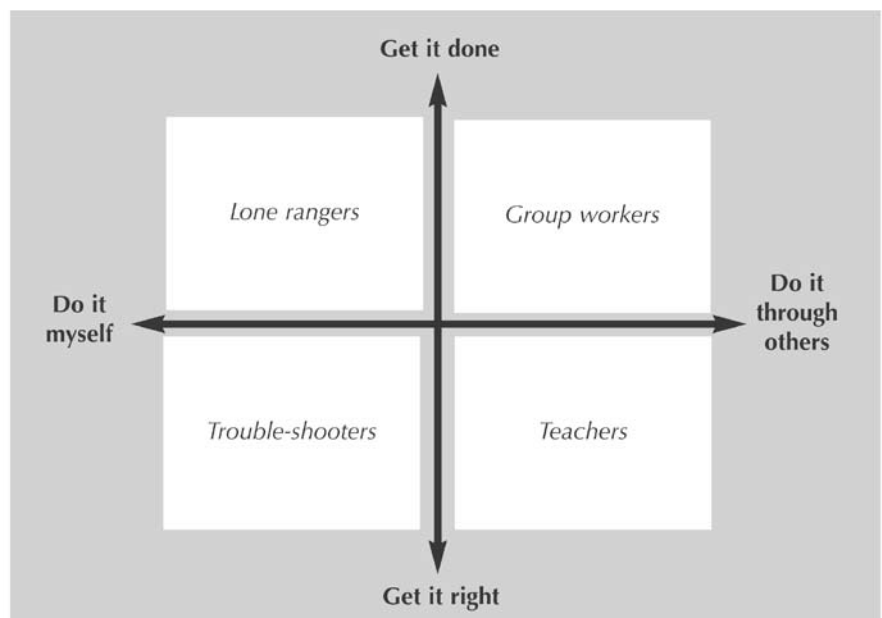
human services sector, particularly those occupying managerial positions, should be able to understand and manage what I describe as ‘the three levels of conflict’ that could concern us when we are managing difficult conversations with complainants, staff or residents. Level 1 is personality and interpersonal factors, Level 2 is managing resistance and Level 3 is managing dirty tricks. Much conflict is badly dealt with because not only are structural features of the system not in place (usually policy and procedure), but management and staff are unable to deal with or inadequately deal with various interpersonal dynamics that happen to them day by day.

Personality and interpersonal factors

I have classified personality and interpersonal factors as Level 1 conflicts because they are constantly, and often unconsciously, with us. They lead us into difficulties even in those situations where the expectation is that cooperation to achieve common goals is understood by all. We often move into conflict for reasons that are not the result of a deliberate confrontation, negotiation, competition or fight, but simply because the personalities and resultant styles of the participants are different.

The last two centuries have seen enormous advances in the way we understand the general relations between our internal and external lives. Apart from Freud, Jung has been the most

Diagram 1: Four frames of reference





influential theorist and practitioner. He suggested that people tend to process information about the world in terms of sense or intuition, and to make judgments in terms of thought or feeling. According to this analysis, the dominance of a particular set of functions will give a good indication of how any particular person will manage the world. This idea has had widespread application by psychologists and most popularly by Myers and Briggs. However, I will use a more simplified system that I have found most useful in better analysing and responding to conflict situations.¹⁶

In this model there are four initial frames of reference that people bring to bear in their relationships with each other. These *four types* have different ways of getting things done. The personality types are classified by reference to the extremes of two priority scales.

The first scale (the horizontal axis in Diagram 1) ranges between the two extremes of *doing things by ourselves* or *doing things through others*. The second scale (shown as the vertical axis in Diagram 1) is a balance between an extreme preference for *getting things right* and checking the detail regardless of time and *getting things done* within the time constraints. Most of us have a preferred position along each of these scales.

Most people recognise where others fit in terms of these four personality types immediately, others take longer to work it out. In managing our interactions with those around us we have to work out how they are processing what is going on. Finding out their particular style for getting things done is a useful beginning.

Managing resistance

Managing resistance is what I term Level 2 conflict management. When people are fearful or threatened they tend to go into resistance mode. This can manifest in difficult behaviours, a tendency made worse where there has been prolonged or serious conflict.

The result is that if you create or come across an environment where ongoing destructive conflict is the norm it may be difficult to break this pattern. Resistance is built into the system to such an extent that changing and adapting to new

circumstances may require a great deal of effort. Resistance can manifest itself in a number of ways and it requires flexibility in being able to respond. The beginning point is to recognise that it will inevitably occur, especially where change is required. Resistance will occur all the time in work and personal life. When you want to go in a certain direction others will not necessarily want to go along for the ride. Whether your children do not want to go to school, the dog does not want to play or your boss is reluctant to consider your training needs there will be resistance.

Your own words and behaviour may contribute to resistance, therefore you have to analyse your assumptions and the way in which you are attempting to deal with the issues or problems you are trying to mend or policies or programs you may be implementing.

In particular, you should try to closely ascertain the nature of the problem you are trying to address and the outcomes you want to achieve. Often we generate unnecessary resistance because we are trying to solve or manage something in a misguided or counter-productive way because we are not properly aware of the problem. We are therefore likely to work on the wrong problem or the wrong level of the problem. Further, those affected by these changes will, when they see misguided attempts at change, be harder to convince of the virtue of any change and will be more likely to resist. When considering your responses it will be necessary to take account of reactions and resistance that they create.

Resistance can sometimes escalate into 'dirty tricks', which is the third level of conflict management that I want to mention.

Managing dirty tricks

People often engage in dirty tricks and deceptive behaviour when they can least afford to. None of us are necessarily at our best when confronted with difficult situations. For example, ask yourselves these questions:

- Are you always honest?
- Are you always thinking of the longer term?
- Are you always co-operative?

The answer, in most instances, is probably, 'No'. If you ask yourself the further question, 'Why not?' you will

come up with a list of reasons why many of us engage in this behaviour from time to time.

There are three main forms of dirty tricks and deception:

- (1) deliberate deception
- (2) psychological warfare
- (3) positional pressure tactics.

The typical responses to dirty tricks are to respond in kind, or let the other get away with it: that is to react rather than respond. In my workshops training personnel about managing complainants I use a variety of techniques to provide them with simple cues they can use to prevent 'reactions' which can make the difficult encounter even more so.

Other critical elements of difficult encounters relate to perceptions, feelings, behaviour and cognition or self-talk. When we are in a difficult conversation we have to engage or talk to the other person or persons on at least four levels:

- The first is to discuss with the other our perceptions and theirs about what is happening.
- The second is the talk about affect and feelings.
- The third is to name and identify behaviour that is occurring and be aware of our own.
- The fourth thing we need to talk about is what we are telling ourselves about what is happening — that is, we question our own assumptions and self-talk, which can help the other do the same thing. Sometimes we need to privately challenge our self-talk or myths about a particular situation. Being aware of our behaviour and controlling our self-talk are critical in maximising our responses to the difficult encounter.

It is useful to train staff, particularly management, in what I call 'verbal jujitsu' techniques. These are ways of joining with another person who may be difficult without being oppositional and improving the chances of successfully managing outcomes at the interpersonal level.

I would summarise a number of key elements as follows:

- When we are dealing with a difficult behaviour or a difficult person we need to learn how to *respond* rather than *react* to the changes that will be occurring around us.



- *Reacting* and *avoiding* are our most common responses to difficult situations or people.
- We often have to move out of our accustomed ways of behaving and thinking.
- Conflict can be an opportunity to make things better.
- Conflict has structural, cultural, ideological as well as interpersonal causes.
- There are three levels of interpersonal conflict — personality, resistance and dirty tricks.
- Mirroring can be a useful technique.
- The STAR Approach (Stop Attend Respond) is a useful way of thinking about the ‘essentials’ in a difficult situation.

Conclusion

The management of complaints and conflict within the aged-care sector presents particular challenges, not least is coming to terms with the plethora of legislation and government regulation that continues to increase. Recent changes to the ACA indicate the highly politicized nature of the field. The careful production of policies and procedures will become more important, not only will service providers have to think about complaints and conflict management, but also about conflict prevention. The role of mediation and similar processes will continue to be important. The proper training, supervision and preparation of those involved in the management of complaints and conflict in this area will be imperative. ●

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Endnotes

1. *Herald Sun*, 13 December 2006, reporter Ben Packham.
2. While there is concern in the community about the vulnerability of older people and this requires constant monitoring it is worth keeping in mind the research in Australia and overseas consistently indicates that older people are overwhelmingly less at risk of criminal victimisation than other age groups.

3. Commissioner for Complaints, *Quarterly Report Statistical Data: 1 July 2006*, 30 September 2006.

4. *The ABC News*, 28 February 2006; *Herald Sun*, 27 February 2006, reporter Nicolette Burke.

5. Office of the Minister for Ageing, Senator Santo Santoro, Media Release reference SS 68/06.

6. This provides the legislative basis but at the time of writing the ‘Investigation Principles’ which will set out the specifics of the new regime have not been provided.

7. Hon Rob Knowles, Commissioner for Complaints, Speech to the Association of Gerontology Annual General Meeting, 2001.

8. The Commissioner’s report for the quarter ending 30 September 2006, noted that 79 per cent of calls to the Aged Care Complaint Resolution Scheme were ‘information calls’ and 21 per cent were ‘complaints’.

9. The relatives of residents lodge the majority of complaints (64 per cent). 13 per cent of complainants were extra care recipients, only 3 per cent were staff, 2 per cent were friends and 1 per cent ex-staff. During the quarter, 70 facilities were visited and there were 74 site visits.

10. The 13 categories are: health and personal care, consultation and communication, medication, falls, choice/dignity, environment, specified care, food catering, personnel, financial, personal property, security of tenure, abuse/restraint. This is the order of frequency of complaints occurring.

11. Andrew Robertson, ‘Compulsion, delegation and disclosure — changing forces in commercial mediation’ (2006) 9(3) *ADR Bulletin* 50.

12. Condliffe, Peter, *Conflict Management: A Practical Guide*, Lexis Nexis Butterworths, 2002.

13. Condliffe, Peter, *Working With Persistent Complainers and Difficult Parties: The Handbook*, 3rd Ed, self-published, 2005.

14. Lester, ‘The vexatious litigant’, *Judicial Officers Bulletin*, V17, No 3 April, 2005, 17. Lester et al, ‘Unusually persistent complainants’ *Br J Of Psych*, (2004), 184, 352–356. Mullen et al, ‘Study of stalkers’, *The Am J of Psych*, 156, 1244–1249, August 1999.

15. Section 56.4, ACA.

16. Taken from Condliffe, note 12 above.