

PARLIAMENTARY INQUIRY QUESTION ON NOTICE

Department of Health and Aged Care

Senate Standing Committee on Community Affairs Legislation Committee

Inquiry into the Aged Care Bill 2024 (Provisions)

03 October 2024

PDR Number: IQ24-000157

Supporter framework

Written

Senator: Marielle Smith

Question:

How will the supporter framework interact with state and territory appointments like guardians and enduring powers of attorney.

Answer:

The supported decision-making framework set out in the Aged Care Bill 2024 is intended to work in parallel with state and territory arrangements.

A supporter relationship, under the Bill, is generally registered with the consent of both the older person and the individual they have asked to support them in their decision-making in the aged care context. Supporters are not permitted to make decisions for an older person and their engagement should also be at the direction of the person they are supporting.

The Bill does not restrict an individual subject to an active guardianship order, enduring power of attorney or similar arrangement from making decisions that need to be made under aged care legislation. Such individuals do not have to have a supporter relationship registered by the System Governor in order to undertake actions in the aged care context, however there are significant benefits to registering with the system as a supporter.

These benefits include the ability to be authenticated by all relevant parties, receive direct access to information they require and be recognised as part of an older person's support network across the aged care system. Registration is required to facilitate these benefits as there is no national register of substitute decision-making relationships from which the System Governor could identify relevant arrangements in place.

The Bill does permit, in exceptional circumstances and for a limited time only, the System Governor to register a decision-making supporter. The System Governor will not register a decision-making supporter where it is aware that there is a guardian, enduring power of attorney or similar already in place to make decisions for an individual.

These provisions acknowledge that there are unforeseen circumstances where an older person may not have decision-making arrangements in place and require urgent support for decision-making. For example, an older person experiences acute incapacity and immediate decisions need to be made about aged care. This provides continuity of decision-making for the older person, while providing time for appropriate state and territory legal arrangements to be put in place.