

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]

21 October 2024

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Responsible person definition

Spoken

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Senator: Marielle Smith

Question:

Responsible worker definition

Answer:

Responsible person is defined in clause 12 of the Aged Care Bill 2024 (Bill) and there are three parts to the definition:

- people responsible for executive decisions,
- people who have authority or responsibility for (or significant influence over) planning, directing or controlling the activities of a registered provider, and
- registered nurses responsible for overall nursing services or nursing at a particular site and other people responsible for day-to-day operations of a registered provider.

This definition largely replicates the definition of key personnel in section 8B of the *Aged Care Quality and Safety Commission Act 2018*. That definition refers to recognised nursing qualification which has been updated to refer to registered nurses in recognition of the registered nursing requirements (generally referred to as 24/7 nursing) which commenced on 1 April 2023.

The definition of responsible person is relevant in several contexts, including:

- responsible persons need to be specified when an application for registration is made to the Aged Care Quality and Safety Commission (clause 104),
- responsible persons need to meet suitability requirements (clause 13 and Subdivision B of Division 2 of Part 4 of Chapter 3),
- changes in responsible persons or in matters relating to their suitability need to be notified to the Commission (clause 167), and
- the code of conduct and worker screening requirements apply to responsible persons (clauses 152 and 174).

The Aged Care Bill 2024 includes a new duty on responsible persons to act with due diligence to make sure that providers do not cause adverse effects to the health and safety of individuals (clause 180).

Due diligence means that responsible persons have to take **reasonable steps**:

- to understand the requirements of registered providers
- to understand the types of services a provider delivers and the risks associated with those services
- to ensure the provider has and uses the right resources to manage those risks
- to ensure the provider has processes for receiving and considering information about those risks and responding to that information, and
- providers have and implement processes to comply with duties and other requirements.

Where a responsible person does something that breaches this duty and they do not have a **reasonable excuse** a civil penalty may apply if their conduct puts a person at risk of death or serious injury or illness, or it actually results in death, serious injury or illness.

Following feedback received during the consultation process on the exposure draft of the Bill, responsible persons who are responsible for day-to-day operations were carved out of clause 180. This is because there was concern that people with no control over resources might be subject to a civil penalty.

The department has heard that there are remaining concerns that registered nurses who have responsibility for overseeing the nursing services of a provider or at a particular site may not have sufficient control over resourcing and may therefore be held responsible where an incident occurs.

That is unlikely because of the framing of the provision that requires **reasonable steps** and is subject to the defence of **reasonable excuse**. However, the concerns raised during the Committee's inquiry process are noted and an appropriate clarification is being considered.