

PARLIAMENTARY INQUIRY QUESTION ON NOTICE

Department of Health

Senate Community Affairs Legislation Committee

Aged Care and Other Legislation Amendment

(Royal Commission Response No. 2) Bill 2021

9 November 2021

PDR Number: IQ21-000277

Accountability of approved providers and workers engaged by the approved provider

Spoken

Hansard Page number: 36

Senator: Janet Rice

Question:

Senator RICE: Finally, I want to go to the issue that these measures, like the code and banning orders—as it has been put to us, and I'm not sure whether it's explicit and deliberate—aren't going to be required of nonapproved providers. In particular, there's the example of Mable, which say that they're not an employer; they're just a service, so they won't have to comply with the provisions that are outlined in this. Could I get your response to that?

Ms Laffan: Senator, non-approved providers aren't funded by the Commonwealth. If you're not an approved provider, you won't need to fit with the obligations of the code of conduct, but neither do you receive Commonwealth funding

[...]

Mr Lye: I've just checked with my colleagues, and I understand that the worker, having been engaged by the approved provider—the approved provider would be accountable, and the individual worker would be accountable, too, for the quality of their work. So, if they did something wrong, they would be covered.

Senator RICE: Okay. I'm interested in getting some more feedback. In fact, if you did have more information about that—

Mr Lye: Yes, I'd be happy to.

Senator RICE: as with some of the other people who have submitted to us. Thanks very much, Chair.

Answer:

The code of conduct and banning order provisions to be introduced under Schedule 3 of the Aged Care and Other Legislation Amendment (Royal Commission Response No. 2) Bill 2021 (Bill) apply to all aged care workers and governing persons (as defined) of approved providers.

Schedule 3 includes an intentionally broad definition of 'aged care worker' so that the code of conduct and banning order provisions apply to all workers involved in care of older people funded under the Aged Care Act 1997. Specifically, an aged care worker covered by the code of conduct and banning order provisions includes any person employed or otherwise engaged, including on a voluntary basis, by an approved provider.

The definition of 'aged care worker' also includes any person who is employed or engaged by a contractor or subcontractor of an approved provider, and who provides care or other services to older people through an aged care service of the approved provider. This includes any worker engaged by an approved provider under labour-hire arrangements or through a recruitment agency to provide care services.

The provisions also apply to 'governing persons', that is, those people responsible for executive decisions or who have authority, responsibility or influence over planning, directing or controlling the activities of approved providers.

Approved providers will also be required to comply with the code of conduct.

Any substantiated contravention of the code of conduct may result in compliance and enforcement action being taken by the Aged Care Quality and Safety Commission. In the most serious cases, this may include making an application to a court to have a civil penalty applied, the maximum amounts of which differ for individuals and bodies corporate.

For approved providers, a breach of the code of conduct may also result in a sanction.

The obligation under Schedule 2 of the Bill is for approved providers to ensure that specified kinds of aged care workers and governing persons (to be defined in the Accountability Principles 2014) are appropriately screened in accordance with requirements to be included in the Accountability Principles. Over a transitional period, this requirement will replace the existing police checks, which currently apply to staff members and volunteers of approved providers that have, or are likely to have, access to care recipients.

One option being considered is that worker screening checks will apply to anyone that currently requires a police check to work in aged care. It will be a criminal offence for an approved provider to fail to comply with their worker screening obligations.

The primary purpose of these measures is to ensure the safety of older people who are receiving aged care and services.