

Chapter 3

Aged Care Funding Instrument (ACFI) Appraisal

3.1 The current wording of the section in the legislation requires that a substantial number of appraisals must be involved before invoking the Secretary's powers to suspend providers from making ACFI appraisals

3.2 The proposed change is to remove the words 'substantial number'.

3.3 The Coalition is concerned that the proposed change to remove the wording "... *substantial number* ..." will provide greater opportunity for the Secretary of the Department of Health and Ageing to suspend an Approved Provider based on any false, misleading or inaccurate information.

3.4 It is our contention that the current wording provides sufficient scope and capacity for the Secretary of DoHA to take necessary action in any situation where such intervention is required.

3.5 Our position on this issue is supported by evidence from, Dr Lucy Morris from ACSWA, who gave the following evidence during the hearing in Perth:

But now with the proposed removal of the word 'substantial' it means that you can make one mistake and get pinged for it, whereas the current system says that it could be several and you have time and room to work stuff out and make sure that it was a genuine mistake and correct it. Now there is the capacity under the proposed legislation with the removal of that word to, in theory, get done after one mistake. It means that the accreditation can be quite inconsistent between assessors. So there is a lot more room for error on both sides.¹

3.6 Mr David Kemp from ECH Inc, has similar concerns:

*Our final, main concern is around the ACFI appraisals and the proposal to remove the word 'substantial' number of claims and make the sanctions provisions, if I can call them that, apply in the case where after, I think, a first warning, if there is a second offence, if you like, a provider could be suspended from making appraisals. We think that is quite a radical shift away from what is now a word of 'substantial' to a term of 'just one or more cases,' which might just be an inaccurate claim. It could be an inadvertent error.*²

3.7 Masonic Care Alliance, Board Director, Mr Felix Pintado has these reservations:

1 Dr Lucy Morris, Aged & Community Services WA, *Committee Hansard*, 29 April 2013, p.39.

2 Mr David Kemp, Chief Executive's Adviser, ECH Inc, *Committee Hansard*, 29 April 2013, p.47.

The legislation proposes to impose sanctions on providers if they make a single mistake in appraising or reappraising that person's level of care. We believe that that is excessive and punitive to providers. We see no evidence to suggest that there is a large proportion of providers in the current system who have been sanctioned because of errors they have made in claiming for ACFI³.

3.8 Adjunct Professor John Kelly, CEO ACSA states that the current legislation provides procedural fairness and that there is no need to change:

We would recommend that we stick with the existing legislation. The secretary has wide powers currently. The major difference- we are approaching it from a procedural fairness point of view- is currently the secretary would have to show that there are substantial numbers of appraisals that are involved in a process where you might consider a suspension of that approved provider status. To change it to 'false, misleading or inaccurate on any one or more occasions' is just in our view not procedurally fair. You may make a mistake in you ACFI statement- it may not be fraudulent; it may be an innocent misrepresentation - yet that would count as the first strike, if you like, of a process that could lead to sanctions. We feel that it is going too far and that the current powers of the secretary are sufficient for her to carry out her responsibilities under the act.⁴

Recommendation

That the current wording and intent of the existing legislation regarding 'Suspending an Approved Provider from ACFI Appraisals' be retained.

3 Mr Felix Pintado, Board Director, Masonic Care Alliance, *Committee Hansard*, 30 April 2013, p.36.

4 Adj Professor John Kelly, Chief Executive Officer, Aged and Community Services Australia, *Committee Hansard*, 30 April 2013, p.50