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Aged Care Amendment Bill 2000

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No. 51 2000–01

Aged Care Amendment Bill 2000

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Contents

Aged Care Amendment Bill 2000

Date Introduced: 7 September 2000

House: House of Representatives

Portfolio: Health and Aged Care

Commencement: The day after Royal Assent, except the amendments relating to key personnel in Schedule 2, which commence 28 days later.

Purpose

The Bill has two main purposes:

- to provide the options of deferred or staged implementation of sanctions against approved providers of aged care services, where they have failed to comply with their responsibilities under the Act, and
- to provide civil, administrative and criminal measures against the inclusion of certain disqualified individuals amongst the key personnel of an approved provider of aged care services.

Background

The *Aged Care Act 1997*

In the 1996-97 Budget the Howard Government announced a series of reforms to residential aged care in Australia. The main reforms were contained in the *Aged Care Act 1997* (the Principal Act) which effectively replaced the sections dealing with the operation of residential aged care facilities in both the *National Health Act 1953* and the *Aged or Disabled Persons Care Act 1954*.

At the time of their implementation the Government maintained that the reforms were essentially a response to the ageing of the population. They included an extension of the user pays system in the form of accommodation bonds designed to help raise funds needed to provide adequate nursing home/hostel accommodation. The new arrangements introduced by the Principal Act mean that aged people with 'sufficient' means now

contribute more towards their care than was formerly the case. The main features of the reforms contained in the Principal Act include:

- a single resident classification scale (i.e. doing away with the old distinction between nursing homes and hostels) which is now used to ascertain the amount of subsidy for each resident. Nursing homes are now referred to as 'high care' facilities and hostels as 'low care' facilities

- a new system of resident entry contributions (accommodation bonds/charges) for residential care

- income testing of residential care benefits for all new residents. Formerly, nursing home residents had to pay a standard fee per day (irrespective of private means) towards the cost of their care and hostel residents paid variable fees. The new system means that all residents now pay a proportion of their private income towards the cost of their residential care, and

- an accreditation system emphasising quality assurance. This was aimed at ensuring that, before residential care operators can become part of the new arrangements, they need to obtain certification and show that the quality of the care that they provide is up to appropriate standards. Included in the *Aged Care Act 1997* were a range of sanctions that the Government could impose on aged care facilities that are not up to an appropriate standard.

Recent Issues in Residential Aged Care

The key issue in recent times with respect to residential aged care has been how the Government (through the Commonwealth Department of Health and Aged Care and the Aged Care Standards and Accreditation Agency) has handled the issue of ensuring that residential aged care facilities provide appropriate care and standards of accommodation for their aged residents. This was highlighted earlier this year when a number of nursing homes and particularly the Riverside Nursing Home in Melbourne (which had its 'approved provider' status revoked by the Government) became the focus of a public debate about standards in aged care facilities.

In February 2000 the Minister for Aged Care, Mrs Bishop, announced that sanctions had been imposed on a Victorian nursing home. The sanctions included the 'revocation of aged care provider status of the proprietor unless an independent administrator is appointed' (and) 'no new residents will be funded at the facility for six months'.[1]

Prior to the Minister's announcement the Aged Care Standards and Accreditation Agency had inspected the home and found a number of problems including concerns about medication, concerns about skin treatment including the use of kerosene baths, poor continence management and poor building maintenance. As a result of continuing problems at the home the Minister, on March 6, announced that Commonwealth funding

to the Riverside Nursing Home would cease, its 'approved provider' status would be revoked and that all residents were to be moved to St Vincent's Hospital. At the time the Minister was criticised for giving residents and relatives only a few hours notice of the impending closure of the home and the need for all residents to be moved to a nearby hospital. However, it may be that the Minister and the Department did not have legislative backing to allow them to provide anything other than very short notice of the closure of the home. The *Aged Care Act 1997*, as it presently stands, does not expressly give the Minister and the Department the power to 'nominate a future time from which a sanction takes effect'.[2] The first amendment to the *Aged Care Act 1997* contained in this Bill is aimed at remedying this situation and, if passed, will allow a period in which advance notice can be given to residents and their relatives of any actions and sanctions that may result in the closure of a residential aged care facility.

The second amendment (related to staff in 'key' positions that have been convicted of an indictable offence, are insolvent under administration or are of unsound mind) will allow greater flexibility in terms of how sanctions are applied. Under current arrangements the Minister and the Government can take action against such people but it necessarily involves the revocation of the operator's approved provider status. The amendment will allow action to be taken against 'key' personnel in these categories without approved provider status being withdrawn.

A Need for Other Reforms?

Another issue highlighted by the Riverside debate is the fact that approved residential aged care facilities are not compelled to allocate a certain proportion of their funds to certain aspects of resident care such as nursing staff and personal care. Prior to the 1997 reforms, aged care facilities were required to apportion certain amounts of funding to specific areas of care. A return to this situation would help ensure that an adequate number of qualified nursing staff were employed in each facility and that appropriate levels of funding were apportioned to direct resident care. According to Professor Brodaty, Professor of Psychogeriatrics at the University of NSW, and Lewis Kaplan, Chief Executive of the Alzheimer's Association of NSW:

> There is also matching of funding of care hours to residents' needs. Proprietors now have full autonomy as to how funding is allocated. Neither nursing homes nor hostels are required to provide a specified quantity of qualified staff relating to the assessed care needs of residents. In response, we propose that the Government prescribe funding for nursing/personal care hours according to a formula that directly links the residents' assessed needs to nursing/personal care hours. Adequate staffing ratios must be established and monitored.[3]

A number of other suggestions for reform to the current residential aged care system also arose in the context of the Riverside debate. For example:

- Catholic Health Australia (CHA) has argued that a substantial boost in funding is needed for the residential aged care system:

> CHA executive director Francis Sullivan said the Commonwealth needed to increase funding to nursing homes and hostels by a minimum of $188 million to adequately ensure standards of care. The industry had been stretched by the recently introduced accreditation process, which soaked up considerable staff time…Complaints procedures for nursing homes and hostels needed a fundamental overhaul, with more people employed to do the work and systems closely scrutinised…There were significant gaps in services, particularly in rural and remote areas.[4]

- the Council on the Ageing (COTA) believes that one of the biggest concerns is the lack of resources and support in the home and community care area which means that many people who could stay in their own homes are being forced into residential aged care facilities. According to the executive director of COTA:

> a recent survey had revealed that it was the inability to look after the house and garden that pushed most people into hostels. Ironically, these low-level services were the hardest to get in home and community care packages. It was economically absurd not to provide this very basic and inexpensive help, when the alternative was an expensive hostel place.[5]

- the Australian Democrats advocate the establishment of emergency aged care teams that can be used, at very short notice, in cases where there is an urgent need for proper care to be provided in a particular nursing home or hostel. The Democrats have said that their policy of 'emergency aged care teams' was supported by organisations such as Baptist Community Services and Anglican Aged Care.[6]

- a range of organisations and individuals including COTA, the Commonwealth Ombudsman and Aged and Community Services Australia (ACSA) have called for an upgrading and overhaul of the Complaints Resolution Scheme that currently operates in residential aged care. For example, ACSA on 24 July this year said that they:

> agreed with the Ombudsman's view that the Complaints Resolution Scheme needs strengthening.[7]

- the Federal Opposition have called for the development and implementation of an Aged Care Crisis Management Plan to help counter a 'looming crisis' with respect to nursing homes in Victoria:

> The President of AHHECA Victoria has predicted that as many as 60 nursing homes in Victoria will close by 1 January 2001 as a result of the introduction of accreditation. The Minister for Aged Care has refused to heed calls from the sector to implement a plan to manage the fallout from these closures…This Plan would involve consultation with families that are likely to be affected by the closures to ensure that they are given as much time as possible to find alternative accommodation; consultation with the sector and peak provider groups to identify additional aged care

beds that could be brought online ahead of schedule; and consultation with the State Government over possible contingency arrangements for accommodating residents.[8]

Recent Government Initiatives

Apart from the amendments contained in the Aged Care Amendment Bill 2000 the Government has recently introduced or announced a series of initiatives in the area of residential aged care. These include:

- additional funding for the Aged Care Standards and Accreditation Agency. In May 2000, Mrs Bishop announced that the Government would provide an additional $11.7m to the Accreditation Agency to help it investigate sub-standard nursing homes.[9]

- the establishment of the Office of the Commissioner for Complaints. In July, Rob Knowles, a former Victorian Minister for Health and Aged Care, was appointed Commissioner for Complaints. At that time it was stated that a key role of the new Commissioner was to oversight the operation of the Aged Care Complaints Resolution Scheme and to promote public confidence in that scheme.[10]

- agreement to establish specialist teaching nursing homes. In March 2000 the Australian Medical Association's aged care spokesperson, Dr Gerald Segal, called on the Government to set up some nursing homes as teaching centres so that the industry in general could benefit from learning about the 'best' ways to manage aged care. On 6 July Mrs Bishop said that 'a federal Health Department workforce committee was developing a plan for these specialist homes.'[11]

- the stepping up of the program of random spot checks of residential aged care facilities. On 27 July 2000 Mrs Bishop stated that there would be a 'stepped up program of random spot checks right across Australia of all facilities. The money for this is provided in the May Budget'.[12]

Main Provisions

Sanctions in the Wider Context of the Act

The Principal Act regulates personal and nursing care provided to aged people in residential, community and other settings. It describes how 'places' which will attract Commonwealth funding are allocated across States and regions and amongst providers who gain approved status under the Act. It also sets out the administrative framework for grants and subsidies to be paid by the Commonwealth Government and under which bonds, fees and charges can be levied by providers.

In Chapter 4, the Principal Act fixes approved care providers with certain statutory responsibilities. These responsibilities relate to accountability, consumer entitlements and quality of care (the much-discussed *accreditation* requirements for residential care providers form part of the statutory responsibilities to ensure quality of care). The Act provides the Department of Health and Aged Care with a range of sanctions which it can impose on a provider who fails to meet these responsibilities. In the most serious cases of non-compliance, the Commonwealth may revoke the 'approved provider' status which is a precondition to receiving Commonwealth subsidies. As a 'last chance reprieve', the Department can refrain from enforcing such a revocation if the provider agrees to operate according to specified conditions, such as the appointment of an administrator (a section 66-2 agreement).[13]

Schedule 1—Deferring or Staging the Implementation of Sanctions

At present, apart from emergency situations,[14] the Act provides a staged process for imposing sanctions on a care provider. It begins with the Department issuing a notice of non-compliance. This is followed by either a notice of intention to impose a sanction or a notice to remedy the non-compliance (or, alternatively, a notice which carries both those messages). Finally the Department gives the provider notice of the decision to impose a sanction.[15]

The Act describes the 'sanction period' as the period specified in the last of these notices.[16] This may imply a power to delay implementation of a sanction to some point after it is notified. But the Minister said in her Second Reading Speech that currently 'there is no power to nominate a future time from which a sanction takes effect',[17] presumably an interpretation based on the opening words of section 66-1. Any doubt about such a power will in any case be removed by **proposed Division 67A**. Similarly, other proposed amendments in **Schedule 1** of the Bill will expressly empower the Department to *progressively* revoke or suspend the allocation of funded places to a provider found to have breached their responsibilities under the Act, where the loss of allocated places is considered the appropriate sanction. The overall intention in Schedule 1 is to 'give more powers to the Department…over providers who cannot or will not comply with the Act'[18] and to 'increase the range of options available to the department'.[19]

Under the proposed amendments the 'section 67-5 notice time' is defined by **item 9** to be the time at which a notice imposing a sanction is given to the approved provider. In most situations this also marks the time when a sanction takes effect: **proposed section 67A-2**. This 'basic rule', however, will be subject to two exceptions,[20] as foreshadowed above and discussed in detail immediately below.

Deferred Implementation

The first exception applies when the Secretary decides to defer implementation to some time after the sanction notice has been given to the provider, and makes that clear in the

notice. The Bill specifies matters which the Secretary must consider before opting for deferred implementation of a sanction: **proposed subsection 67A-4(2)**. These include the risk to care recipients and the desirability of giving them and those close to them advance notice of the sanction taking effect. If the most serious sanction—that of revoking 'approved provider' status—is involved, then implementation cannot be delayed beyond 14 days.[21] The 14 day limit only applies if revocation is the only sanction imposed and the Secretary has decided against any 'last chance reprieve' in the form of a section 66-2 agreement (to continue operating but under specified conditions, as discussed above). These two conditions presumably indicate that the situation will be grave and the risk of further delay is unacceptable.

Although the Government promotes the amendment on the basis that it will 'allow the department to give notice to residents and relatives of action to be taken'[22] which might result in the closure of facilities or beds and evacuation of residents, the Explanatory Memorandum states that 'the Secretary is not *required* to give notice to any person'.[23]

Staged Implementation

The second exception is where some or all of the places allocated by the Commonwealth to the non-complying provider are suspended or revoked on a *progressive* basis. Obviously the power to impose sanctions in this form provides the Department with an enhanced ability to penalise non-compliance while minimising disruption to the aged and often vulnerable people in receipt of care from the provider in question. Instead of revoking or suspending places immediately, or on a deferred basis as just discussed, **new section 67A-5** enables the Department to revoke or suspend an allocation as places fall vacant. The sanction first 'soaks up' any places which are vacant at the time the sanction is imposed.[24] It then progressively applies to occupied places as they fall vacant, which will occur usually because the patient dies or moves out of the provider's care. The rolling effect of the sanction on places as they fall vacant ceases when the number specified in the sanction notice is reached.[25] Progressive implementation is not an option where, at the outset, the number of vacant places exceeds the number of allocated places specified in the sanction.[26]

A residential place will not be considered vacant if a patient is merely absent on a particular day for hospital treatment or when the absence is within the permitted 'allowance' of 52 days per year: see section 42-2 as amended by **item 1**.

Where the sanction is revocation of 'approved provider' status, the 'basic rule' and the two exceptional circumstances just discussed are all subject to the capacity for the Department and a provider to enter into a 'last chance reprieve' agreement under section 66-2.[27] Thus if the notice imposing a sanction foreshadows an agreement to continue operating on specified conditions and the provider agrees, this displaces the effect of **proposed Division 67A**.

Other Amendments in Schedule 1

Because the Department cannot predict in advance the precise time at which a sanction notice will be given to a provider, nor precisely when an allocated place will fall vacant in the case of progressive revocation, **item 8** requires the Department to inform a provider in the notice itself at what point the sanction will take effect, either under the basic rule or under the two exceptions, whichever is applicable.

The amendments in Schedule 1 apply to any notices imposing a sanction issued after the day of Royal Assent to the Bill, regardless of whether the non-complying conduct pre-dated commencement: **item 10**.

The remaining amendments in Schedule 1 are minor or consequential. **Item 2** removes an ambiguity which might otherwise suggest the need for more than one notice imposing a sanction. **Item 3** corrects a typographical error in the Act. **Items 4** and **5** are consequential on provisions which permit deferred implementation of sanctions. **Proposed paragraph (cb)** in **item 6** is consequential on **item 8**, while **proposed paragraph (ca)** plugs a gap in the Act regarding the details to be included in particular sanction notices.

Schedule 2—Amendments Relating to Key Personnel

The purpose of **Schedule 2** is to create legislative barriers to the possibility that approved providers of aged care will involve or employ, as key personnel, people possessing characteristics deemed undesirable or inappropriate. The policy intent is that the 'care being provided to individuals in Commonwealth funded residential aged care is not compromised'[28] by the involvement of such 'disqualified individuals'. **Item 10** is the centrepiece of Schedule 2.

Key definitions are provided in **proposed section 10A-1**. In particular, a 'disqualified individual' is described as a person fitting any one of three categories:

- a person convicted of an indictable offence (including like offences against foreign law committed overseas)[29]
- an insolvent under administration[30]
- a person of unsound mind.[31]

The term 'key personnel' is already defined in the Act in relation to 'approved providers'[32] and, in very similar terms, in relation to *applicants* for approved provider status.[33] It basically applies to people with executive, management, nursing and operational responsibilities within the organisation providing aged care.

The rest of **proposed Division 10A** is concerned with the creation of criminal and civil remedies and disincentives against the possibility that disqualified individuals might end up as key personnel for an approved aged care provider.

For example, it is a criminal offence for a corporation with approved provider status recklessly to allow a disqualified individual to be one of the corporation's key personnel: **proposed subsection 10A-2(1)**. The maximum penalty is, as penalty units are currently calibrated, $33 000. The maximum penalty increases at the rate of $33 000 for each day the contravention continues.[34] An individual who is one of the key personnel in a corporation enjoying 'approved provider' status, meets the definition of a 'disqualified individual' and is reckless as to that fact is guilty of a criminal offence and subject to a maximum penalty of two years' imprisonment: **proposed subsection 10A-2(3)**.[35] The acts of the individual or the corporation are not however invalidated by the contravention of these provisions.[36]

Recklessness is a technical notion under the criminal law dealt with in section 5.4 of the *Criminal Code*. It relates to knowledge of a substantial risk that a circumstance exists and the unjustifiability of taking such a risk in the circumstances. It is a less strict requirement than actual knowledge or intention to commit a criminal act.

On the civil front, **proposed section 10A-3** confers jurisdiction on the Federal Court to make orders that will bring what is termed an 'unacceptable key personnel situation' to an end. Such a situation arises where a disqualified individual is one of the key personnel in a corporation enjoying 'approved provider' status: **proposed subsection 10A-3(1)**. This power extends to making interim orders, directing a person to do or refrain from doing specified acts and any related orders which the court considers just.

It appears that the only person who may make application for such orders is the Secretary of the Department of Health and Aged Care: **proposed subsection 10A-3(2)**.

As noted at the outset under the heading 'Main Provisions', the Principal Act fixes approved providers with statutory responsibilities, the breach of which can trigger the imposition of sanctions. One category of responsibilities relates to accountability. **Proposed section 63-1A** imposes on an approved provider the responsibility to take all reasonable steps to ensure none of its key personnel is a 'disqualified individual'. In other words, the elimination of disqualified individuals from the ranks of key personnel is not only backed by criminal liability and the possibility of remedial action in the Federal Court. Non-compliance on this front also draws in the range of sanctions which can be imposed on an approved provider under Part 4.4 of the Principal Act. **Items 1** and **11-13** are consequential on this amendment.

The Bill also seeks to prevent *applicants* from successfully attaining 'approved provider' status where any of their key personnel is a 'disqualified individual': **Item 2**.

Item 6 makes clear that the issue of whether a member of an applicant's key personnel is a 'disqualified individual' does not exhaust the issue of whether the applicant and its key personnel are suitable to provide aged care (another of the basic requirements for attainment of 'approved provider' status).

Items 3, **4**, **5**, **7**, **8**, **15** and **16** are related technical amendments which do not involve substantial amendment of the Principal Act.

If a member of an approved provider's key personnel is, or is about to become, a 'disqualified individual' the provider, to avoid breaching the Act, must remove that person from their key personnel role. Changes to key personnel must always be notified to the Department within 28 days.[37] Where the change is due or partly due to removal for reasons of disqualification, the obligation to notify will not be discharged unless the notification includes the reason why the person is or is about to become a 'disqualified individual': **item 9**.

It is notable that one of the grounds for disqualification—conviction for an indictable offence—operates whether the conviction occurred before or after this Bill commences: **proposed subsection 10A-1(3)**. As noted in the Concluding Comments, the Senate Standing Committee for the Scrutiny of Bills has registered its concern at the breadth of this ground for disqualification. On the other hand, the effect of the disqualifying provision is moderated by the continued operation of Part VIIC of the *Crimes Act 1914*: **proposed subsection 10A-1(6)**. Briefly, this means that where a conviction involved less than 30 months imprisonment, occurred more than 10 years ago (or 5 years for an offence by a minor) and no further offences have been committed, it is deemed to be 'spent'. In general, spent convictions need not be disclosed and must be disregarded by those who are aware of their existence.

Concluding Comments

Improving Quality of Care

As noted in the Background to this Digest, the public debate about residential aged care has been dominated by questions of accommodation standards and the quality of care. In the Background reference was made to some of the proposals which have been put forward for improving quality of care.

The Bill, while focusing on standards within the industry, is quite tightly focussed on two issues. The first—the manner in which sanctions are imposed—seems unlikely to have a direct role in improving the quality of aged care, as it is directed more to minimising adverse consequences for care recipients when sanctions are imposed. The second set of measures is more directly related to quality of care, but only focuses on weeding out certain people from the system where their track record suggests they would be undesirable participants for quite specifically defined reasons.

Parliament may wish to consider whether other improvements could be achieved by legislative amendment at this stage.

Is the Criminal Conviction Disqualification Too Indiscriminate?

The Senate Standing Committee on Scrutiny of Bills examined the Bill in *Alert Digest* No. 13 of 2000. The Committee was concerned that the category of 'indictable offence' is too indiscriminate a standard by which to measure disqualification. Arguably it includes many offences which are quite irrelevant to the question whether a person is suitable to be involved in the provision of aged care, while failing to capture criminal conduct which should be of central concern to aged care regulators. Also it is potentially quite unfair because it focuses on the *maximum* penalty which an offence attracts, not on the *actual* penalty imposed on the particular defendant in question. The Committee asked whether it might not be possible to define the criminal grounds for disqualification by reference to particular categories of conduct or offence (violence, fraud, dishonesty etc).

The Committee also asked whether the application to *any* indictable offence, no matter how long ago it was dealt with by the courts, is unfair (subject, it should be noted to the operation of the spent conviction provisions of the *Crimes Act 1914*). It drew attention to examples of recent legislation which confined consideration of past offences to those committed in the last 10 years.

The concerns of the Committee are extracted below for the information of Members and Senators:

> The Explanatory Memorandum states that pre-commencement offences have been included "because of the concern that such individuals pose a risk to frail, often vulnerable, aged care recipients while they remain key personnel, particularly where they have direct responsibility (executive, management, overall nursing or day-to-day responsibility) for the care of those care recipients".
>
> The Committee is mindful of the need to ensure the welfare of frail and vulnerable people in aged care. However, provisions such as those proposed raise a number of issues. First, proposed paragraph 10A-1(1)(a) does not specify what precise offences should lead to disqualification. This may see apparently 'irrelevant' offences taken into account while other apparently 'relevant' offences may be disregarded.
>
> Under section 4G of the *Crimes Act 1914 (Cth*), unless a contrary intention is apparent, indictable Commonwealth offences are those punishable by imprisonment for more than 12 months. Offences such as removing (in proclaimed waters) a fish from a net or trap while not the owner of that net or trap (under *Fisheries Act 1952* s 13A) or, without permission, using a transmitter on a foreign vessel, aircraft or space object to transmit radio or television programs to the general public in Australia (under *Radiocommications Act 1992* s 195(1)) or possessing unlawfully imported whale products (under *Environment Protection and Biodiversity Conservation Act 1999* s 233(1)) are all punishable by imprisonment for more than 12 months. Therefore, these are all apparently relevant indictable Commonwealth offences for the purposes of paragraph 10A(1)(a) of this bill. A person convicted of any of these offences at any time would be permanently disqualified as a member of the key

personnel of a provider of a residential aged care service even though there is little apparent relevance between the offence and aged care.

However, a nursing home proprietor or employee found guilty of influencing the vote of a nursing home resident under section 325A of the *Commonwealth Electoral Act 1918* (an offence punishable by imprisonment for only 6 months) would not have committed an indictable offence, and would therefore not come within the definition of a disqualified individual. Arguably, a conviction for such an offence would be highly relevant to a person's fitness to be involved as a provider of a residential aged care service.

A related issue concerns the reference to offences which are punishable by imprisonment for more than 12 months. As the Committee has previously noted, there is potential for unfairness in provisions which take away rights or privileges on the basis of the maximum penalty provided for the offence committed by a person, rather than the actual penalty imposed on him or her. A person found guilty of illegal fishing under section 13A of the *Fisheries Act 1952*, who received only a small fine for a comparatively minor breach of the legislation, would see themselves disqualified from involvement in the provision of aged care. However, a person found guilty of electoral fraud in a nursing home, who received the maximum penalty for a comparatively serious breach of the legislation, would not be disqualified.

It would be helpful if the bill set out a list of offences (perhaps those involving physical or emotional violence or cruelty, or fraud or dishonesty) the commission of which by a person would better reflect his or her suitability to provide aged care services.

A second issue concerns the inclusion of convictions recorded at any time before the commencement of the provision. Such a provision may be regarded as having retrospective effect, and exposing a person to double punishment for an offence which may have been committed many decades ago.

Comparable legislation recently considered by this Committee has limited consideration of 'old' offences in these circumstances to those committed within the previous ten years (see, for example, *Customs Amendment Act (No 2) 1999* s 67EB(3)(b) and *ACIS Administration Act 1999* s 29). It may be that a similar approach should be taken in the present instance.

The Committee, therefore, seeks the Minister's advice as to why the bill does not set out a regime of offences which are relevant to the disqualification of key personnel of aged care providers, and why the bill places no limit on the retrospective consideration of a person's previous offences.[38]

Reviewable Decisions

The Principal Act contains a long list of dozens of decisions which may be taken under its various provisions and which are classified as 'reviewable decisions'. Classifying them in

this way has a number of consequences under the Act, the main one being that the decision is subject to both internal review and review by the Administrative Appeals Tribunal.[39]

Schedule 1 in the Bill refers to two significant decisions by the Secretary. One is the decision that a sanction will take effect at some point after the sanction notice is delivered to the approved provider.[40] The second is the decision to implement the revocation or suspension of allocation of places on a progressive basis.[41] It appears that neither of these decisions will be treated as 'reviewable decisions' for the purposes of the Act. Parliament may wish to consider whether people whose interests are affected by such decisions should enjoy a right to internal and AAT review.

Endnotes

1 The Hon Bronwyn Bishop MP, 'Sanctions Imposed on Victorian Nursing Home', *Media Release*, 24 February 2000.

2 The Hon Bronwyn Bishop MP, House of Representatives, *Debates*, 7 September 2000, p. 20 387.

3 'The Aged Need More Care', *Age*, 10 March 2000.

4 The *Canberra Times*, 5 May 2000.

5 ibid.

6 Senator Meg Lees, 'Democrats Make Urgent Call for Emergency Aged Care Teams', *Media Release*, 1 August 2000.

7 ACSA, *Media Release*, 24 July 2000.

8 Senator Chris Evans, 'Minister Does Nothing to Avert 60 Nursing Homes Closing', *Media Release*, 21 June 2000.

9 *Australian*, 10 May 2000.

10 The Hon Bronwyn Bishop MP, 'Minister announces new Complaints Commissioner', *Media Release*, 25 July 2000.

11 *Age*, 7 July 2000.

12 The Hon Bronwyn Bishop MP, 'Aged Care Reforms Stepped Up', *Media Release*, 27 July 2000.

13 *Aged Care Act 1997* section 66–2.

14 Subsection 67–1(2).

15 Section 67–1.

16 Section 68–2.

17 The Hon Bronwyn Bishop MP, House of Representatives, *Debates*, 7 September 2000, p. 20 387.

18 Explanatory Memorandum, http://search.aph.gov.au/search/ParlInfo.ASP?WCI=Linked&table=EMS&ref=07090006.pdf (9 October 2000), p. 4.

19 The Hon Bronwyn Bishop MP, House of Representatives, *Debates*, 7 September 2000, p. 20 387.

20 **Proposed section 67A-3**.

21 **Proposed subsection 67A-4(3).**

22 The Hon Bronwyn Bishop MP, House of Representatives, *Debates*, 7 September 2000, p. 20 387.

23 Explanatory Memorandum, http://search.aph.gov.au/search/ParlInfo.ASP?WCI=Linked&table=EMS&ref=07090006.pdf (9 October 2000), p. 6 [emphasis added].

24 **Proposed subsection 67A-5(2)**.

25 **Proposed subsection 67A-5(4)**.

26 **Proposed subsection 67A-5(5)**.

27 **Proposed section 67A-6**.

28 Mrs Bronwyn Bishop, House of Representatives, *Debates*, 7 September 2000, p. 20 388.

29 **Proposed subsection 10A-1(2)**.

30 This term is defined in **proposed subsection 10A-1(2)** by reference to its meaning in the *Superannuation Industry (Supervision) Act 1993*, which at section 10(1) states:

> ***insolvent under administration*** means a person who:
>
> (a) under the Bankruptcy Act 1966 or the law of an external Territory, is a bankrupt in respect of a bankruptcy from which the person has not been discharged; or
>
> (b) under the law of a country other than Australia or the law of an external Territory, has the status of an undischarged bankrupt;
>
> and includes:
>
> (c) a person any of whose property is subject to control under:
>
> (i) section 50 or 188 of the Bankruptcy Act 1966; or
>
> (ii) a corresponding provision of the law of an external Territory or the law of a foreign country; or

(d) a person who has executed a deed of assignment under Part X of the Bankruptcy Act 1966 or the corresponding provisions of the law of an external Territory or of the law of a foreign country, if a certificate has not been given under section 232 of that Act or the corresponding provision of the law of the external Territory or foreign country, as the case may be, in respect of the deed; or

(e) a person who has executed a deed of arrangement under Part X of the Bankruptcy Act 1966 or the corresponding provisions of the law of an external Territory or of the law of a foreign country, if a certificate has not been given under section 237A of that Act or the corresponding provision of the law of the external Territory or foreign country, as the case may be, in respect of the deed; or

(f) a person whose creditors have accepted a composition under Part X of the Bankruptcy Act 1966 or the corresponding provisions of the law of an external Territory or of the law of a foreign country, if a certificate has not been given under section 243A of that Act or the corresponding provision of the law of the external Territory or foreign country, as the case may be, in respect of the composition.

31 But only as their mental capacities relate to their fulfilment of duties in providing aged care services: **proposed subsections 10A-1(4)** and **(5)**.

32 Section 9-1.

33 Section 8-3.

34 **Proposed subsection 10A-2(2)**.

35 Section 4B of the *Crimes Act 1914* provides a formula to convert a term of imprisonment to a fine and/or imprisonment.

36 **Proposed subsection 10A-2(4)**.

37 Paragraph 9-1(1)(b).

38 Senate Standing Committee on Scrutiny of Bills, *Alert Digest* No. 13 of 2000, pp. 6–8.http://www.aph.gov.au/senate/committee/scrutiny/alert00/Digest%20thirteen.pdf (10 October 2000),

39 Division 85.

40 **Proposed section 67A-4**.

41 **Proposed section 67A-5**.