

Submission in respect of Aged Care Amendment (Residential Care) Bill 2007

General

Aged Care Association Australia (ACAA) has reviewed the Aged Care Amendment (Residential Care) Bill 2007 and has set out below a number of issues of concern regarding the current content of the legislation or issues that the Association believes remain unaddressed or issues which are not included in this legislation but will be included in the principles or issues that are of general concern within the Industry.

The Aged Care Amendment (Residential Care) Bill 2007 intends to put the framework in place which will permit the Government to move from the existing funding scheme called the Residential Care Scale (RCS) to a new funding model titled Aged Care Funding Instrument (ACFI).

Further it is intended that the new ACFI scheme come into operation from 20 March 2008.

The implementation of the ACFI scheme has come about following a number of representations from the Industry and a recommendation from Professor Warren Hogan when he undertook a major review of the financial viability of the aged care sector and reported to government in 2004. The Industry had been making representations to government for many years that the validation inspections undertaken by commonwealth nursing officers in verifying the subsidy classification assessment that aged care providers determined appropriate for each of their residents was based upon a detailed examination of the written record maintained by the aged care facility and that this process drove facility staff to excessive documentation in maintaining an adequate record to satisfy commonwealth nursing officers. Professor Hogan in his report to government recommended that the current eight classification RCS be simplified to a three classification payment scheme with specific supplements being added to the basic subsidy.

Accountability for Public Expenditure (Validation)

The Industry maintains a high level of concern that the new scheme proposed will not in fact drive a significant reduction in documentation required to be maintained by the Industry to satisfy the validation accountability requirements imposed by the Department of Health and Ageing. As this has been an underlining fundamental objective of the whole funding scheme review process it will be a major failure of the implementation of the ACFI if a significant documentation reduction is not achieved. The Department of Health and Ageing commissioned a pilot study of validation using the ACFI instrument in late 2006 with the report of that pilot study having recently been released to the Industry but is not yet in the public domain.

ACAA has argued for some time that the introduction of the ACFI provides a substantial opportunity for the Department of Health and Ageing to completely reconfigure the validation system that it requires of the Industry. We do not believe that it is acceptable that an accountability system which is achieving an average downgrade rate running at close to 50% is acceptable especially as there are considerable variations between the downgrade rates occurring between states.

In addition, ACAA believes that the Department needs a far more substantial system for targeting operators who are consistently downgraded whereas the majority of the Industry, we believe, undertakes their assessment processes in a manner meant to achieve the most accurate possible outcome for each of the provider's residents.

ACAA has also argued consistently during the development of the new funding instrument that considerable resources need to be applied to the Industry to ensure the ACFI instrument will be fully electronically enabled from commencement and for as many aged care providers as possible to be accessing and utilising the system on an electronic basis and that desk audits and other review processes undertaken by the Department to satisfy their accountability obligations for the expenditure of public funds can be substantially undertaken remotely in an electronic environment with departmental validators only being required to visit a site occasionally when the targeting parameters being utilised to the Department demonstrate that there is a systemic assessment problem occurring at a particular facility.

ACFI Funding Scheme

There is an enormous amount of anxiety in the aged care industry regarding the financial outcomes attached to the implementation of a new funding scheme. The existing RCS scheme and the proposed ACFI are fundamentally important to the viability of the aged care industry. The Industry has had ongoing concerns in endeavouring to compare ACFI assessment outcomes with RCS assessment outcomes and has been constantly alarmed at the significant variations that will occur between the old scheme and the new.

Such outcomes may be acceptable in larger facilities where on a swings and roundabouts basis one could expect to have increases and decreases in subsidy that even out at sufficiently large enough statistical sample. However, in smaller facilities it will certainly be possible under the new scheme that aged care providers may suffer considerable reduction in subsidy income thus substantially threatening the very viability of that facility.

ACAA brought these concerns to the notice of the former Minister in mid 2006 following which it was agreed that Access Economics be commissioned to undertake an analysis of the industry trial undertaken in 2005, an analysis of the winners and losers under the new funding scheme and the likely grandparenting requirements if government were to protect the Industry from significant volatility in subsidy income and apply a grandparent scheme to all existing residents.

In summary, Access Economics estimated that the cost of grandparenting would be somewhere between \$500 - \$700 million over four years and that with the application of those funds the Industry would be protected from subsidy income volatility with an estimate that 14% of the Industry would suffer some losses over the ten year period from date of implementation.

Access Economics however did not undertake any independent analysis of the individual assessment outcomes attached to an ACFI assessment process as compared to an RCS assessment process. The Industry is still left wondering what the impact of the ACFI is going to be once implementation actually commences. With a significantly reduced grandparenting protection which the Government has now included in the recent Aged Care Package and funded to the extent of \$286 million over four years. ACAA is concerned that the position of the industry after the first two years of the new scheme using the ACFI will in fact leave the Industry in a lesser income position than under the current RCS scheme even with the reduced grandparenting arrangements.

ACAA have undertaken an analysis of the Access Economics/AACS (the original consultants commissioned by the Department of Health and Ageing to undertake the review of the funding instrument) and considered the likely impact on each of the existing funding scales within the RCS. The results of that analysis can be seen at attachment two to this submission and clearly indicate significant losses in income at various RCS equivalent points in any transition from ACFI to RCS.(1) There is no doubt that without some grandparenting provisions many aged care facilities income volatility would be such that their very existence would be threatened within the first twelve months of the new funding instrument. Income losses, in many instances, would be more than any projected surplus a facility might expect to make in that twelve month period.

ACAA considers that the current course is an extremely risky process without the final instrument being field tested to ensure that the funding that will flow without grandparenting attached under the new instrument will place many aged care facilities in an ongoing financially untenable position. The risk with the new scheme is an assumption that with implementation of the new scheme facilities will be conservative to start with in their assessment processes and will become more effective at maximising income once the new assessment tools are more clearly understood. This may or may not happen and should not in the opinion of ACAA form a fundamental component of any new funding scheme.

AACS, the consultants commissioned to undertake the review of the existing funding scheme were clearly instructed to produce a new funding scheme within the existing budget outlays. Whilst at the same time the consultants were instructed to move additional subsidy into high end care. There has been no real change in subsidy recognition of the fact that Level 1 and Level 2 RCS residents now represent nearly 50% of all residents within the residential care program with the adequacy of the costs of RCS Level 1 and Level 2 subsidy had not occurred since 1996 with the consequence that the changed care and dependency levels of particularly Level 1 residents has not been and is not being reflected in the existing subsidy framework.

When Professor Hogan submitted his report to government and included a recommendation that the Industry move to a simplified three classifications of care there was no indication that his recommendation was that the new scheme be restricted to the existing budget outlays and certainly every indication that he intended that any additional supplements have significant funding attached to them and not be drawn from the existing funding pool. Unfortunately other than the allocation of \$82m over four years announced in the recent aged care package there are no additional dollars allocated to either the funding scheme or the supplements attached to the new funding scheme.

Specific Items within the Bill

In commenting upon this part of the Bill we have adopted the numbering system used in the explanatory memorandum.

Item 6

The amendment to subsection 25-3(2) of the Act precluded the appraisal of a resident under the ACFI during the first seven days after admission and it precludes the submission of the appraisal under the ACFI for 28 days after admission. ACAA is concerned that if the resident passes away or otherwise leaves the facility what will be the situation of the aged care facility? New subsection 25-3(2)(a) states that the classification principles will outline circumstances where subsection 25-3(2) does not apply however as the Industry is yet to see the amendments to section 9.23 of the classification principles it is difficult to know how this section will ultimately apply and what impact it may have on the management of admission, discharge and submission appraisal and submission processes for aged care facilities.

Item 13

The amendment to subsection 25-4(5) requires the Secretary to notify the approved provider of the decision to either suspend or not to suspend the approved provider of making appraisals or reappraisals. Given that the heading to section 25-4 is "suspending approved providers from making appraisals and reappraisals", is not the requirement to advise that the approved provider is **not suspended** a rather superfluous requirement?

Item 22

A. The new subsection 27-4(4) indicates that the circumstances in which the residents care needs are taken to have significantly changed will be set out in the classification principles. As stated above ACAA is yet to see the amendment to the classification principles which makes comment on these provisions difficult.

B. The new section 27-9 allows for the date of effective renewals (reappraisals at the initiative of the approved provider). This covers:

1. Residents who are twelve months on a previous classification;
2. Residents whose care needs have significantly changed;
3. Residents entering from another facility within 28 days of leaving the former facility; and
4. Residents on the lowest classification.

This section states that if the reappraisal is received before the start of the reappraisal period in respect of the expiry date for one, two and four above then the classification takes effect from the date the reappraisal is received. This appears to allow the provider to submit a reappraisal when the residents' needs increase and negate the needs for item two above.

In relation to item three above the resident may have been classified at facility A as ADL1, behaviour 1 and complex care 1. The resident moves to Facility B and after four months the ADL increases to a category 2 and a reappraisal is submitted. The date of effect under subsection 27-9(d) appears to be the date the resident entered the aged care service.

ACAA would contend that this is probably not intended within the Legislation and needs some clarification.

Item 25

This amendment replaces section 29-3(3) it allows the Secretary to change the residents' classification based on a single question or a group of questions. It also allows the Secretary to take into account information that has been available since the classification was made. This potentially will allow the Secretary to simply concentrate on the questions where he/she considers the likely result will be a downgrade and to ignore the questions where the facility has 'underscored'.

The Secretary should always take into account all questions except where the person has been reappraised under section 24-4(3), significantly increasing care needs. In the case of a reappraisal under 27-4(3), the Secretary could limit the review to the type or types of care that have significantly changed. The Secretary should only be able to take into account information that was available to the facility at the time of the appraisal or reappraisal.

Item 27

The repeal of section 42-1(4) means that 'high care leave' is no longer available under the Aged Care Act 1997. The rationale for this is that it is no longer necessary since the changes to allow residents to 'age in place'. This assumes that all facilities are embracing 'ageing in place'. In fact many facilities are not able to embrace 'ageing in place' and still confine their care to the lower categories of care and ask residents to relocate when high care needs become apparent. This amendment adversely affects the residents as the only option now is to transfer the resident to hospital it also promotes cost shifting.

ACAA does not believe that this provides the optimal choice of care service domains for residents and contends that this provision should not repeal the option of 'high care leave' being available to those facilities unable to provide an 'ageing in place' environment.

Item 28

There is no reference in the Bill to the level of funding for extended hospital leave other than that the Minister may determine a lower amount.

Item 29

The same issue applies where by there is no reference to the level of funding for hospital leave other than that the Minister may determine a lower amount.

Item 31 and 32

The amendment to paragraph 44-3(3)(c) states that the Minister may determine a different subsidy amount in respect of extended hospital leave and the repealing of section 44-4 means that the existing system of having a two category reduction during an extended period of hospital leave no longer applies.

The section provides no information as to what funding will in future apply to hospital leave and apparently leaves it totally at the discretion of the Minister.

Item 33

The amendment to paragraph 44-6(2)(a) should in our opinion go further. There is no reason why the concessional supplement should not be paid to the approved provider on behalf of the resident who has the lowest possible classification. The approved provider is entitled to charge an accommodation payment if the resident has the asset backing. Accordingly the Government should pay the concessional supplement where the resident does not have the asset backing. This provision is discriminatory and leads to the exclusion of these residents from the aged care system.

Differentiation between High Care and Low Care

These comments apply to items 47 and 48 in the explanatory memorandum and are of fundamental importance to the future capital capability of the residential aged care industry.

These sections of the Bill state that high/low level of residential care has the meaning given by the classification principles. As previously stated the classification principles are not available to the Industry and therefore the Industry is uncertain as to the impact that this section or the revisions to the classification principles may have.

The background paper indicates that:

Care recipients will be considered to receive a high level of residential care where they are classified as either being **one of the following**:

- a medium or high level ADL category
- a high level behaviour category; or
- a medium or high level complex health care recipient

Low level residential care is to be defined as a level of residential care that is not a high level of care.

The ramifications of the above definitions are that there will be many more residents entering care requiring high care. Accommodation bonds will not be able to be charged to these residents. This will deplete the Industries already declining low care base of lump sum contributions due to the diminishing the number of residential care entrants in low care and this is in addition to the recent planning ratio reduction from 48 to 44 low care places. This provision will also require the Industry to meet more costs for residents due to the requirements of schedule 1 of the Quality of Care Principles which imposes upon aged care providers a much higher level of incidental costs in the support of residents care needs.

Asset Testing

The Bill, in the opinion of ACAA ignores one additional component of assessment and that relates to asset testing residents when they move from facility A to facility B. This Bill enables a resident to transfer from facility A to facility B at the same classification level (and accordingly the same ACAT approval) provided that the resident enters facility B within 28 days of discharge from facility A. The same should apply to the asset test. If a resident transfers from facility A to facility B within 28 days of discharge from facility A then there should be no requirement for another asset test to be undertaken by that particular resident.

Attachment References

1. Analysis of the Results of Access Economics and ACS Reviews of the Funding Schemes