

Additional comments by Coalition Senators

1. Introduction

1.1 The Coalition Senators do not oppose the Bill and commend the ongoing commitment of the Department of Health and Ageing and of the various providers of high-standard care to the aged members of our community.

1.2 The Aged Care Act, introduced by the Coalition Government in 1997, created the legislative support necessary for ensuring the rights of our older citizens to live with dignity and respect in appropriate facilities. Currently, the aged care industry is well regulated, but after ten years of operation, evolving business practices, and changed community standards and expectations, Coalition Senators acknowledge and support the need for enhancement of the act to ensure the protection of our older and more vulnerable citizens.

1.3 Although we support the mainly non controversial amendments of the Bill in principle, we note several areas of concern raised, by providers in particular, that should be addressed.

2 Points of Concern

2.1 Several submissions raised concerns about the standard of consultation by the Department of Health and Ageing (DoHA) on the bill and the lack of opportunity to view the proposed guidelines or amended Aged Care Principles. There was concern expressed that, contrary to the view of some peak bodies, the Department promulgated the view that all sectors of the industry were supportive of the proposed amendments. One witness at the public hearing¹ indicated that:

‘...it is certainly true that there was consultation with the aged-care sector on the detail of the material that was in the bill. What is not recorded in the explanatory memorandum is that we did not agree with all of it. We were spoken to, but there were a couple of issues—and one issue in particular that I have highlighted in this submission—where, from my recollection, no-one agreed with the proposition. I thought it was worthwhile making that point because silence is sometimes taken as assent, and we did not assent.’

Whilst the Aged Care Principles will be a legislative instruments, witnesses stated their ongoing frustration, with one witness² commenting:

‘It is extremely frustrating. We have on not infrequent occasions in the past come to this committee and others to give evidence; you are dealing with a bill but you do not know the details of the principles that are going to sit behind that. Then you have a secondary issue with the department which is an administrative instrument that sometimes you can reach agreement on but many times you cannot.’

The concern of the various bodies in relation to the guidelines and Principles was addressed in a supplementary submission from DoHA³ stating that:

¹ Mr G Mundy, CEO, Aged and Community Services Australia. *Proof Committee Hansard*, 14 November 2008.

² Mr R Young CEO, Aged Care Association Australia. *Proof Committee Hansard*, 14 November 2008.

³ A Stuart First Assistant Secretary, DoHA. 14 November 2008.

'The Department is preparing a comprehensive Guide to the new arrangements, which, subject to the Bill's passage through Parliament, will be sent to approved providers.'

But this ongoing concern regarding timeliness should be addressed.

The legislation is now about 1,000 pages long with more than a dozen subsets of regulations. It is now an extraordinarily complex regulatory environment that directors of nursing, managers and CEOs are expected to understand, and this complexity is further exacerbated by the unknown content of guidelines and regulations.

2.3 Concern was raised in regard to broadening the current section 8-3 of the Act by adding proposed section 8-3A in respect of "common key personnel who have 'significant influence' planning, directing, or controlling the activities of the entity"⁴. This is of particular concern to church based organisations, many of which have an overarching body which delegates authority to the particular undertaking. Whilst it is acknowledged that transparency is an issue in some management arrangements, further clarification, not covered in the amended submission of the department⁵, should be urgently provided to those concerned.

2.4 Despite comments in the Explanatory Memorandum that there would be no additional costs imposed on the providers, evidence suggests this will not be the case. This point was specifically raised during the public hearings in relation to the additional police checks required by the amendments. Witnesses indicated that checks undertaken in compliance with the current requirements had cost the industry around \$30 million.⁶ Because of the difficulty in attracting staff and the salaries paid, employers generally meet the costs of these police checks. The industry generally works on a per capita cost of \$100 including a printout from CrimTrac costing \$50-\$60⁷ and other administrative and record-keeping costs. Whilst all sectors of the industry acknowledge the need to ensure the safety and privacy of vulnerable residents, providing such checks for staff that may not necessarily come into contact with residents is likely to result in substantial further costs to operators.

2.5 The issue of police checks for tradespersons called upon by approved providers in emergency situations was noted as a concern. However, it is noted that, in the departmental supplementary submission⁸, independent contractors who are not under the control of the approved provider will not be required to obtain a police check.

2.6 Concerns have also been raised regarding the sanctions proposal and the resultant increased power of the Departmental Secretary. Issues raised in this particular context included the new amendment 65-2(2). The amendment will require the Secretary to give *paramount consideration* to the effect of non-compliance that threatens or would threaten the health, welfare or future care of recipients. As indicated in the submission of the Aged Care Alliance this amendment raises the 'question of the purpose of sanctions and how that determination is to be arrived at.'⁹ The power to impose sanctions as a deterrent against future non-compliance introduces ambiguity and complexity into the legislation. Further questions also arise as to whether the Department should be

⁴ Proposed s8-3A(1)(b) *Aged Care Amendment (2008 Measures No 2) Bill 2008*

⁵ *Supra*

⁶ Mr G Mundy, CEO, Aged and Community Services Australia. *Proof Committee Hansard*, 14 November 2008

⁷ *Supra*.

⁸ A Stuart First Assistant Secretary, DoHA Supplementary submission. 14 November 2008

⁹ Submission. Aged Care Alliance 4 November 2008. P16

required to consult the family of residents or others in relation to problems with approved providers before deciding on sanctions.

2.7 The reporting requirements in relation to 'missing' residents are also of concern to many approved providers, with providers suggesting that there had been unanimous disapproval for this measure during consultations.¹⁰ Whilst all supported the need to provide safe and consistent care for residents, the need to separately advise the department in addition to the police is questioned. The operators were concerned that enquires by the department may lead to unacceptable limitations on the freedom of movement enjoyed by residents.

2.8 An important issue raised by various witnesses related to ACAT assessments. Most approved providers welcomed the amendment relating to unnecessary assessments. However, the issue of most concern to approved providers related to the default payment of \$44.14 per day when an ACAT assessment rates the new resident as low care, but in reality the resident requires (and receives) high care that normally attracts a subsidy of \$135.00 per day. There is sometimes a delay of up to 12 weeks¹¹ before an ACAT re-assessment is made, but there is no backdating of the subsidy to the higher care rate. This has resulted in lost subsidies of up to \$50,000 for some approved providers.¹² Any delays in rectifying this matter are unacceptable given the already threatened viability of the industry and the Coalition senators urge the Minister to act promptly in this matter.

3. Conclusion

3.1 The Coalition Senators do not oppose passage of the Bill as the overall thrust is to provide greater surety and safety for current and prospective aged care residents and their families, but recommends that the Department and the Minister provide further clarification on the issues raised in these additional comments to approved providers and, where appropriate, seek further consultation with the various sectors of the aged care industry.

Senator Gary Humphries

Senator Judith Adams



Senator Sue Boyce

¹⁰ Mr G Mundy, CEO, Aged and Community Services Australia. *Proof Committee Hansard*, 14 November 2008.

¹¹ Mr R Young CEO Aged Care Association Australia Ltd. Submission of 4 November 2008 p2 (letter).

¹² Supra.