



The
Aged Care Alliance

**Supplementary Submission to the Senate Community Affairs Committee
in relation to Amendments to the *Aged Care Act 1997*
and *Bond Security Act 2006***

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Introduction

The Aged Care Alliance appreciates the opportunity to respond to the Supplementary Submission provided at 1pm Friday November 14 by the Department of Health and Ageing to the Senate Inquiry. The Alliance will address that supplementary submission using the headings in the order that they appear in the Department's document.

The supplementary submission fails to recognise that the consultation process undertaken with the sector lacked both depth and clarity. Many large organisations were unaware of the existence of the Bill and the reasons for its necessity.

The Member for Weirra on November 13 during resumption of the second reading debate, states¹ that "the Bill has been subject to significant consultation with the sector and substantial written submissions received from stakeholders" relying as a Member of the Government upon advice from the Department. Evidence provided to the Committee on November 14 suggests that the consultation was confined to a select audience.

Effective consultation is very important as the amendments at issue are substantial ones which imply additional compliance obligations, costs and diversion of operational resources. In the case of this Bill, the regulatory impact statement should have included assumptions, modeling, costing and details of consultation with providers.

The assertion by the Department that the regulatory costs are minimal has not been demonstrated in its regulatory impact statement. The guidelines laid down by the Office of Best Practice Regulation have not been fully utilised in this instance. The superficial treatment of the matter of compliance costs is puzzling in the light of the policy of the Minister for Finance which was articulated² in Parliament in March 2008.

Clarifying the range of people who are key personnel

The basic difficulty with this amendment remains the ultimate scope of this amendment. It seeks to identify any person who may exert significant influence over the operational delivery of care. The first type of entity that is affected by this amendment is church and community organisations.

¹ House of Representatives. 13 November, 2008. Hansard, p96

² House of Representatives. 17th March, 2008. Hansard. pp1889 - 1891

The reach of the amendment was described by Peter Lindsay, CEO of Baptist Care in the Alliance submission where significant influence can be exerted in church and community organisations where policy is made at annual meetings or by superior boards. Church organisations' determine policy and therefore financial parameters often at levels which are distant from the board of Baptist Care and the CEO.

If the amendment proceeds in its current form it will apply to the legal entity which is the Church Board, the Queensland Baptist Union and not as is now the current effect, on Queensland Baptist Care, the separate board responsible for aged care services. The case for this new range of compliance has not been established in evidence by the Department.

The second type of entity affected by the Bill is private for-profit providers and the owners. The Department asserts that the amendment is a response to complex corporate structures, which for instance apply to current financial market investors, such as Babcock and Brown Communities, the Macquarie Capital Alliance Group and AMP Capital (Principal HealthCare). The prominent entry of such investment and financial intermediaries into ownership roles in the sector has occurred in response to the stability of the subsidy regime and the minimal competitive risk in a closed market for services.

The Committee and the sector would have been better informed if the Department had been able to illustrate the effect of the amendment on Babcock and Brown which holds a position on the Ageing Consultative Committee. Similarly, evidence on the existence of type, complexity and number of business structures should have been provided so both the degree of regularity risk and the feasibility of new compliance was better articulated.

Changes relating to ongoing suitability of approved providers (especially where a management company is relied upon)

The Department has not provided evidence on the turnover of such management companies either in terms of the frequency or number or evidence of the detrimental effects on compliance with the Accreditation Standards.

The current provisions require notification of changes in key personnel which would enable the Department to monitor such changes whereas the amendment intrudes upon and

restricts legitimate business or organisational decisions. The amendment effectively removes the ability of a Chief Executive Officer to make key operational decisions. The Department's submission also overlooks a key goal of Accreditation which is to measure outcomes and not inputs, which is, the entity or owner carries the responsibility for how it manages its service delivery.

Missing Residents

The Department has provided no substantial evidence of the frequency or detriment that has occurred in these circumstances. Providers are required to notify police and relatives and the Accreditation system establishes the compliance framework for providers.

Sanctions

The effect of the amendment is only partially clarified by the Department's supplementary submission where the example is provided by the Department in respect of the recovery of bonds. In that example, the intention is to use sanctions so as to force a provider to honor a financial contractual obligation. This is an amendment that bears no relationship to quality of care, which is the principal and existing purpose of the sanctions power in the Act.

The supplementary submission confirms the statement quoted in the Alliance submission of that the Department seeks to minimise challenges to sanctions and consequent closure. We reiterate our position that the safety and care of residents in such circumstances is not the issue but we also emphasise that a requirement to consult is a necessary step and the amendment proposed by the Alliance would give effect to such a process without diminishing the Department's ability to meet the needs of residents.

If the Alliance is able to further assist the Committee, please do not hesitate to contact us.