AGED CARE AMENDMENT (RESIDENTIAL CARE) BILL 2007

THE INQUIRY

1.1 The Aged Care Amendment (Residential Care) Bill 2007 (the Bill) was introduced into the House of Representatives on 21 March 2007. On 29 March 2007, the Senate, on the recommendation of the Selection of Bills Committee (Report No. 5 of 2007), referred the provisions of the Bill to the Community Affairs Committee (the Committee) for report on 17 May 2007.

1.2 The Committee received 6 submissions relating to the Bill and these are listed at Appendix 1. The Committee considered the Bill at a public hearing in Canberra on 1 May 2007. Details of the public hearing are referred to in Appendix 2. The submissions and Hansard transcript of evidence may be accessed through the Committee's website at http://www.aph.gov.au/senate_ca .

THE BILL

1.3 The purpose of the Bill is to amend the *Aged Care Act 1997* (the Act) to introduce a new arrangement for allocating subsidy in residential aged care. Schedule 1 to the Bill amends the Act to support proposed amendments to the *Classification Principles 1997* (the Principles) to replace the Resident Classification Scale (RCS) with the Aged Care Funding Instrument (ACFI) as the means for allocating subsidy to providers of residential aged care.

1.4 The Bill also proposes the following amendments:

- change the way in which classifications expire to avoid unnecessary classifications;
- allow the Secretary of the Department of Health and Ageing (the Secretary) to define the type and form of records that the approved provider must keep in order to support the classification made for a resident;
- allow an approved provider to choose to accept a resident's current classification, when a resident moves from one aged home to another, rather than being required to submit a new appraisal;
- remove a provision allowing more than one aged care home to be paid a subsidy for the same resident when a person is on High Dependency Care Leave; and

- allow the Secretary to stay the suspension of a provider from failing to conduct appraisals or reappraisals for funding purposes if the provider meets certain obligations such as undergoing training or seeking advice.[1]

1.5 The amendments to the *Classification Principles 2007* will contain most of the substance within the Bill and have not yet been made. The Commonwealth has released a policy paper giving some details of the intended amendments.

1.6 The Commonwealth has also announced that it will provide an additional $393.5 million over four years to assist homes manage the change to the ACFI.[2]

1.7 The financial impact of the Bill is:

Year	Total resourcing
2006-07	$0. m
2007-08	$18.3 m
2008-09	$122.0 m
2009-10	$135.3 m
2010-11	$118.0 m

Scrutiny of Bills

1.8 The Senate Scrutiny of Bills Committee has the responsibility for examining all legislation that comes before the Senate. Its terms of reference include matters relating to rights and liberties and also parliamentary scrutiny. The Scrutiny of Bills Committee identified the following three concerns with the Bill:

- item 2 in the table to subclause 2 (1) allows for a delay in the commencement of more than six months;
- proposed subsection 27-2 (6) authorises amendment of the Act by delegated legislation without explanation; and
- proposed subsection 25-4D(1) allows the Secretary to require further information to be provided within a short period of 14 days.[3]

1.9 The Scrutiny of Bills Committee has requested the Minister's advice as to the reason for these provisions and also sought explanation and further detail in the Explanatory Memorandum.

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1 Bills Digest, *Aged Care Amendment (Residential Care) Bill 2007*, 29 March 2007, no.128, p.2.

2 *Submission* 4, p.3 (DoHA).

3 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest 4/07*, pp 6–8.

BACKGROUND

1.10 In response to recommendations from the *Review of Pricing Arrangements in Residential Aged Care* released in May 2004 and the RCS Review (2002-2003), the Commonwealth Government announced in the 2004 Budget that it would, after trialling the funding instrument and consulting with relevant parties, implement a new funding system for residential aged care. Following the 2004 Budget announcements, the Department of Health and Ageing (the Department) commissioned Applied Aged Care Solutions to undertake a major study to identify and assess structural options for the new funding model. The study was completed in December 2004 and the final report describes the principles behind the development of the new funding model and the ACFI.[4]

1.11 In August 2004, the (then) Minister for Health and Ageing established the Aged Care Funding Instrument Reference Group to provide a forum for discussion and advice to the Department in relation to the development and implementation of the new funding model and the administration of the current RCS.

1.12 A national trial of the ACFI was conducted in 2005. All Australian Government funded homes were invited to participate and 678 homes participated in the data collection phase. Based on trial data and participant feedback, amendments were made to the version of the ACFI used in the national trial.[5]

ISSUES

1.13 Most of the submissions received were broadly supportive of the provisions within the Bill and the new ACFI. However, some areas of concern were identified:

- the Secretary's power to limit the approval of a person;
- six-monthly reviews after hospitalisation;
- removal of High Dependency Care Leave;
- ministerial discretion to determine a lower basic subsidy amount;
- external assessments;
- absence of detail on the proposed *Classification Amendment Principles 2007*;
- funding amounts attached to the ACFI;
- the impact on smaller aged care facilities;
- implementation date of 20 March 2008; and
- the need for a formal review.

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4 For further information, see http://www.health.gov.au/internet/wcms/publishing.nsf/content/ageing-acfi-structural.htm

5 For information on the Outcomes of the National Trial for the ACFI see, http://www.health.gov.au/internet/wcms/publishing.nsf/content/ageing-acfi-outcome.htm

Secretary's power to limit the approval of a person

1.14 Items 1 and 2 amend the provisions to allow the Secretary to limit an approval of a person as a residential care recipient to a low level of residential care under the new ACFI rather than the existing subsection which details care levels applicable under the RCS.[6]

1.15 Catholic Health Australia (CHA) commented that this provision should not be necessary once the ACFI is implemented and emphasised that the level of care determination has implications that relate to specified care and the payment of accommodation bonds. CHA stated:

> The concern that we have is that the level of care of a care recipient should be determined by the aged-care funding instrument rather than the secretary having specific powers to limit the care to a particular level…The difference between the aged-care funding instrument and the existing RCS is that the aged-care funding instrument will assess the care that is needed by the person as opposed to the RCS, which determines the level of care that is provided.[7]

1.16 The Department responded that this provision is duplicating the current situation and is intended as a 'control'. Subsections 22-2(3) and 22-6(2)(c) allow for a re-examination of a resident who may have been assessed as low care by the initial ACAT assessment and subsequently assessed as high care by the aged care provider. The Department explained:

> It is assumed that although there is some discrepancy between ACAT assessments and assessments by facilities that where an ACAT did not assess a person as eligible for high care there ought to be a re-examination rather than simply accepting the home's appraisal. In other words, there ought to be an occasion for a review, if you like, if there is a discrepancy between the two. It is a brake on the possible over classification of people on entry.[8]

Six-monthly reviews after hospitalisation

1.17 Item 22, new subsection 27-2 (1), specifies the circumstances when a particular classification will expire and when the expiry date occurs. The concerns raised by witnesses related to the requirement to reappraise a resident six months after an inpatient hospital episode or extended hospital leave.

1.18 Aged and Community Services Australia (ACSA) commented that this provision does not provide an 'incentive structure for good care' and suggested that this provision be monitored for a period and a sunset clause applied. ACSA stated:

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6 Explanatory Memorandum, p.3.

7 *Committee Hansard*, 1.5.07, p.1 (CHA); see also *Submission* 1, p.2 (CHA).

8 *Committee Hansard*, 1.5.07, p.21 (DoHA).

> I have suggested a sunset provision here to make sure that there is a review and it may well be the case that there is no need to review the classification of people admitted from hospital after six months. If the aged care home has worked hard to improve the level of functioning of that person and made them more independent, should they be effectively penalised for doing so or should they be rewarded?[9]

1.19 The Department explained that the requirement to reappraise a resident six months after a hospital stay identifies the possibility that a resident's 'care needs may well have changed because the aftermath of the hospital episode is behind them, and therefore there ought to be a trigger to reassess'. The Department further commented:

> …it is a balance between trying to reduce the assessment burden, through things like not having the classification expire and not requiring it on transfer, and ensuring that the classification really does reflect the person's needs. At this point we think this is required to ensure that latter requirement.[10]

Removal of High Dependency Care Leave

1.20 Item 27 repeals subsection 42-1(4) which allowed more than one residential care service to be paid a subsidy for the same resident. This provision would remove the ability of an aged care facility to continue to receive a low care service subsidy for a permanent resident while that resident is temporarily requiring a high level of residential care in another facility.[11]

1.21 The Aged Care Association Australia (ACAA) argued against the rationale underlying this change and stated:

> 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.[12]

1.22 The Department responded to concerns raised and indicated that the number of facilities using this provision was very small and that the ACFI Industry Reference Group had supported the removal of this leave type. The Department explained:

> A review of utilisation of the High Dependency Care Leave provisions indicates that over the past few years only a small number of homes

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9 *Committee Hansard* 1.5.07, p.11 (ACAS)

10 *Committee Hansard* 1.5.07, p.24 (DoHA); see also *Submission* 4, p.2 (DoHA)

11 Explanatory Memorandum, p.12.

12 *Submission* 3, p.5 (ACAA); see also *Committee Hansard* 1.5.07, p.14 (ANF); *Submission* 1, p.2 (CHA); *Submission* 6, p.5 (ANF).

> (around 20 in any given year) had accessed the arrangements and that in six out of the eight states and territories, the provisions were not used at all.[13]

1.23 The Department, during the public hearing, hypothetically discussed situations in which this provision may be required but also emphasised that the review they undertook did not indicate any of these hypothetical situations actually existed. The Department also stated that the review indicated that in 'a number of instances it [the Care Leave] probably wasn't applicable' and could also result in the potential of 'a double payment from government' and a 'double charging of users'.[14]

Ministerial discretion to determine a lower basic subsidy amount

1.24 Many submitters commented on the absence of information on Items 28, 29, 31 and 32 which allow the Minister to determine a lower basic subsidy level where a resident is receiving extended care in hospital.[15] The ACAA highlighted the impact of Item 32 which repeals section 44-4 which specified the effect on classification levels of long periods spent by a care recipient in hospital:

> 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.
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> 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.[16]

External assessments

1.25 The Australian Nursing Federation (ANF) commented on external assessments and stated 'our understanding is that there is certainly a move away from that [external assessments], the department is tending towards allowing the facilities to make their own assessment internally'. The ANF commented that 'in an ideal situation, we would like to see the ACATs perform the assessment before the patient is admitted to the residential facility'.[17]

1.26 The Department explained that it had considered this issue and that the national trial had included ACATs performing assessments. A problem arising from the results of the national trial was that '…we [the Department] had insufficient data,

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13 *Submission* 4, p.3 (DoHA).

14 *Committee Hansard* 1.5.07 p.32 (DoHA).

15 *Submission* 6, p.6 (ANF); *Committee Hansard* 1.5.07 p.16 (ANF); *Submission* 3, p.5 (ACAA); *Submission* 1, p.3 (CHA).

16 *Submission* 3, p.5 (ACAA).

17 *Committee Hansard* 1.5.07, p.14 & p.15 (ANF); see also *Submission* 6, p.2 (ANF).

quite literally, to understand the extent to which the external assessments tallied with people's assessments on entry'. The Department indicated that it is still interested in trying to develop an understanding of how well external assessment would work and that it needs to 'do some work on the conceptual side of how it might work, and that might lead to some further work in cooperation with the industry around the possibilities for external assessment'.[18]

Absence of detail for Classification Amendment Principles 2007

1.27 Most of the substance of the Bill will be contained in the Principles, which are yet to be amended. The Minister for Ageing tabled a policy paper outlining the changes to the Principles with the Second Reading Speech for the Bill. However, 'since some important definitions and substantive issues raised by this Bill will be contained in the proposed amendments to the Classification Principles', the ability to usefully analyse the extent and effect of the proposed amendments is restricted.[19]

1.28 ACAA explained the importance of the aged care sector understanding the differentiation between High Care and Low Care, the definitions of which will be contained in the Principles. ACAA stated:

> 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.[20]

1.29 Many submitters requested reassurance that 'adequate time for consultation and consideration of these amendments should be made available to the aged care sector in due course'.[21]

Funding amounts attached to the ACFI

1.30 Many submitters called for the Department to release information which would allow approved providers to anticipate the level of funding attached to the ACFI. CHA explained why providers need this information:

> An example is if the aged-care funding instrument with respect to new residents coming in is going to impact adversely simply because there will

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18 *Committee Hansard* 1.5.07, p.23 (DoHA).

19 Bills Digest, *Aged Care Amendment (Residential Care) Bill 2007*, 29 March 2007, no.128, p.12.

20 *Submission* 3, p.6 (ACAA).

21 For example see *Submission* 6, p.6 (ANF); *Submission* 3, p.4 & p.6 (ACAA); *Submission* 2, p.9 (ACSA).

> be insufficient funding to support certain levels of residents into that facility, and that currently is an important catchment for them in terms of new residents, then they will have to think about how they will adjust their resident profile and also their staffing mix to match the expected levels of residents and levels of income that will flow to them under the ACFI.[22]

1.31 The Health Services Union (HSU) reiterated the need for aged care facilities to be able to assess the implications of ACFI for their own facility and stated 'there is little publicly available information on all of the funding levels'. HSU recommended the immediate public release of more detailed funding information including any modelling undertaken by the Department.[23]

1.32 The Department indicated that it would release indicative figures shortly and noted that this is because prices will be determined by ministerial determination prior to their introduction.[24] The Department will conduct workshops beginning mid-May 2007 to the early part of June 2007 around the nation to assist people to better understand elements of the future package and indicated that the ACFI indicative prices will form part of the workshop information.[25]

1.33 The Department also stated that 'the government is also making available a pool of financial advisers who will be able to work with individual providers to help them to better understand the incentives that are available under this package'.[26]

Impact on smaller aged care facilities

1.34 Witnesses expressed concern for smaller aged care facilities that have a predominant mix of low care services and questioned whether the implementation of the ACFI would impact on their future viability and funding levels. CHA provided the following example of a Melbourne facility:

> A classic example is Corpus Christi out at Greenvale, an outer suburb of Melbourne. It has 84 beds and caters exclusively for homeless alcoholic men. They are, generally speaking, 5s, 6s and 7s under the RCS. So if the ACFI is going to result in it being uneconomic to provide new residents coming in with the level of care that they need then that is going to impact adversely on that facility. They will be protected in the short term, with the grandparenting, but the impact will be as new residents come in.[27]

1.35 The Department responded to these concerns and stated that 'how this [the ACFI] will affect a particular home will depend on the mix of residents that they have,

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22 *Committee Hansard* 1.5.07, pp.3–4 (CHA); see also *Committee Hansard* 1.5.07, p.11 (ACSA).

23 *Submission* 5, p.5 (HSU).

24 *Committee Hansard* 1.5.07, p.31 (DoHA).

25 *Committee Hansard* 1.5.07, p.31 (DoHA).

26 *Committee Hansard* 1.5.07, p.29 (DoHA).

27 *Committee Hansard* 1.5.07, p.4 (CHA).

the mix of new residents that they have coming in and so on under ACFI and how they are classified'.[28] The Department further cautioned that they would be very wary about making assumptions on the effect as the ACFI is a multidimensional instrument and provides for assessment of activities of daily living, health care needs and behavioural challenges. After the implementation of the ACFI, 'it is quite possible that somebody who at the moment is classified as low might score more than people might expect, particularly under behavioural challenge'.[29]

Implementation date of 20 March 2008

1.36 The original implementation date was 1 July 2007 which was pushed back until 20 March 2008 to allow detailed financial analysis, the development of software for aged care providers and to implement the ACFI at the same time as other related changes to aged care payments. Both CHA and ACSA requested that the ACFI not be implemented mid-month and suggested the option of 1 July 2008.[30]

1.37 The Department indicated that that the 20 March 2008 implementation date was chosen 'because the rescheduling occurred as part of a larger package, which includes a number of changes to funding arrangements'. The Department stated that it would be 'best if the ACFI were done sooner rather than later' and provided the following explanation for aged care facilities concerned about beginning the ACFI mid month in a financial reporting cycle:

> …it is not as though there is an intensive burst of activity. In addition, the outcomes will not affect the revenue of a home except at the margin. By far, the bulk of residents in any home will still be on the RCS by the end of that financial year. So, in a sense, it gives homes a taste of the changes and it gives the capacity to start working with them but in a time frame that means for that financial year it will have, at most, a marginal impact on their overall revenues. I think that is a good balance.[31]

Need for a formal review

1.38 The majority of submitters called for a formal review of the ACFI some time after implementation.[32] The ACSA expressed why a review is needed:

> …our overall conclusion is that we are broadly supportive of the introduction of the ACFI but it is a very big and complicated system, and changing something as big and complicated as the whole funding system for residential aged care is hard to assess all at once and all in a piece. For

28 *Committee Hansard* 1.5.07, p.30 (DoHA).

29 *Committee Hansard* 1.5.07, pp 30–31 (DoHA).

30 For further comments see *Submission* 1, pp 1–2 (CHA); *Committee Hansard* 1.5.07, pp 8–9 (ACSA); *Committee Hansard* 1.5.07, p.2 & p.5 (CHA).

31 *Committee Hansard* 1.5.07, p.20 (DoHA); see also *Submission* 4, p.6 (DoHA).

32 For example see, *Submission* 5, p.6 (HSU); *Submission* 2, p.3 & p.9 (ACSA).

> that reason we have argued that one of the things we should do is make provision for a fairly robust review 12 months down the track. There was in fact a fairly robust review of the RCS about a year after its introduction, and a number of changes were made. I think we are foreshadowing signalling the things that, if they pan out as they were designed, will be absolutely fine, but it would probably be unrealistic to expect that to occur in 100 per cent of the cases.[33]

Conclusion and recommendations

1.39 The Committee supports the measures being introduced in the Aged Care Amendment (Residential Care) Bill 2007 and recognises the broad support for the Bill from the aged care sector. The Committee acknowledges the extent of consultation the Department has undertaken with the sector to ensure a level of understanding and engagement on the issues.

1.40 The Committee notes that the provision allowing more than one residential care service to be paid a subsidy for the same resident will be repealed and that the Department has indicated that only a small number of aged care facilities use this provision and in some cases it was not applicable in the circumstances. However, the Committee considers that circumstances may arise where it is appropriate and fair that a subsidy be paid temporarily in both aged care facilities and therefore recommends the omission of Item 27 of the Bill and the monitoring of the use of the provision.

Recommendation 1

1.41 That the Bill be amended to omit Item 27 repealing subsection 42-1(4) of the *Aged Care Act 1997* and that the Department of Health and Ageing monitor the use of this subsection by aged care facilities to ensure the it is used appropriately.

1.42 The Committee has considered the evidence received requesting a change to the 20 March 2008 implementation date of the ACFI. However, the Committee is unconvinced that there is merit in recommending another date which would delay the implementation of the ACFI.

1.43 The Committee acknowledges the comments from witnesses on the lack of detail on Items 28, 29, 31 which allow the Minister to determine a lower basic subsidy level where a resident is receiving extended care in hospital and also Item 32 which removes the existing provision in section 44-4 outlining the possible reduction in a classification level under the RCS. Questions were raised by the aged care sector with regard to the minimum amount of the new basic subsidy level and the basis for these determinations. The Committee recommends that the Minister ensure that the lower basic subsidy level is reasonable and a minimum level of subsidy other than 'nil' be implemented as a safeguard.

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33 *Committee Hansard* 1.5.07, p.8 (ACSA).

Recommendation 2

1.44 That the Bill be amended to ensure that determinations made by the Minister under items 28, 29 and 31 are reasonable and a safeguard similar to that in section 44-4, which item 32 repeals, be implemented under the new ACFI to determine a minimum lower basic subsidy level.

1.45 The Committee notes that the aged care sector, at this time, does not have the full details of the proposed amendments to the *Classification Principles 1997*. The Committee is satisfied that the Department has consulted extensively with the aged care sector in formulating this Bill and the development of the ACFI. The Committee would recommend that this high level of consultation continue as amendments to the Principles are drafted.

Recommendation 3

1.46 That the Department of Health and Ageing ensure that the aged care sector is consulted and has adequate time to consider the amendments to the *Classification Principles 1997*.

1.47 The Committee recognises that this Bill represents major change to the aged care sector and has the potential to impact on the funding available to aged care facilities. The Committee is reassured by the Department's comments that it will monitor the changes as soon as they are implemented. However, the Committee considers that a full and robust review of the ACFI eighteen months post implementation is required.

Recommendation 4

1.48 That a review of the new Aged Care Funding Instrument (ACFI) be undertaken eighteen months after implementation to assess the implications to all aged care service providers and ensure that stated benefits are achieved.

Recommendation 5

1.49 That subject to the above recommendations, the Committee recommends that the Senate pass the Bill.

Senator Gary Humphries
Chairman

May 2007