21 February 2007

Mr Elton Humphrey
Community Affairs Committee Secretary
Parliament House
Canberra ACT 2600

Dear Mr Humphrey

Re Aged Care Amendment (Security and Protection) Bill 2007

Thank you for the opportunity to comment on the above bill. The Australian and New Zealand Society for Geriatric Medicine (ANZSGM) is the professional society for geriatricians who specialize in the medical care of older persons. Advocacy for health care for older people is also a major objective of the society. Many of our members are involved in the care of residents of residential and aged care facilities. We are represented on the Aged Care Advisory Committee by Dr Jeffrey Rowland.

We are very pleased to see the increased funding available to the Aged Care Industry in response to the rising number of older people in our population, and in recognition of the importance of giving them choices about remaining in their own homes with funding for support services.

We also support the need to protect older people who are frail or who have dementia or cognitive impairment, from potential abuse while they are in residential care, and to introduce a process for concerned staff or families to be able to report suspected abuse situations. The proposed Office of Aged Care Quality and Compliance should improve the reporting and handling of such incidents.

Our main concerns about the bill relate to the implementation. These have been raised within the Aged Care Advisory Committee. We also refer to the ASGM Position Statement on Elder Abuse, which can be accessed on the ANZSGM website at www.asgm.org.au/documents/Revision-ElderAbuse-5-9-03.pdf

Allegations or suspicions of unlawful sexual contact or unreasonable use of force on residents may be very difficult to substantiate. Dementia and cognitive impairment are very common conditions in residents of nursing homes (at least 50%) and hostels (at least 30%), so this will be a major factor in implementation of the legislation.

Older people with dementia may misinterpret appropriate personal care as unlawful contact and may have mildly paranoid ideas about staff or carers. Their capacity to explain events reliably may be significantly impaired. Their families may be quite unclear about whether or not a comment about a staff member should be reported.

The laws of evidence also pose a challenge to the reporting mechanism. People with cognitive impairments may have incomplete or inaccurate recollection of events, even quite soon after the alleged abuse. A policeman taking a statement from a frail older person with dementia may be quite intimidating and distressing for the person.

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The police will need support from trained professionals used to managing and assessing people with dementia, such as the ACAT. Similarly, collecting of other evidence of abuse or inappropriate care may be quite intrusive for the person. Young rape victims have the option of treatment without police intervention. Cognitively intact elderly residents should be accorded the same right. A substitute decision maker (the next of kin or statutory health attorney) may be in a very difficult position about deciding how much questioning is appropriate.

The staff of residential care facilities may have concerns about their rights if they are thought to be behaving inappropriately. There must be safe guards for staff against false or mistaken accusations. This will need to be balanced against the requirement for reporting. While this is incorporated in the bill, there may be considerable disruption to the operation of the residential care facility if each complaint is reported. It is not clear how the discretion not to report will be implemented.

The occasional incident of one resident assaulting another is particularly distressing for all concerned. While we completely agree that the facility has a responsibility to make the environment as safe as possible, over concern about this issue may make it very difficult for some people with dementia to access any residential care. In most cases the resident could not be held criminally liable because of diminished capacity.

The ANZSGM supports the initiatives to reduce the risk of physical and sexual abuse of vulnerable older people in residential care facilities. However, the main emphasis should be on prevention, by adequate staffing levels, with suitably qualified staff. Education of staff in management of challenging behaviours, expert back up from psychogeriatric and geriatric services should be available, and other interventions to support staff and reduce stress levels which may contribute to abuse. Assistance should be given to develop protocols to monitor staff who may need more training and supervision to deliver adequate care. Ensuring the quality of nursing and personal care in residential care requires adequate staffing, appropriate numbers of trained nursing staff and expert support for those residents who pose a challenge to the skills of staff and the safety of other residents.

Yours sincerely

Dr Louise Dillon
Hon Secretary
Australian and New Zealand Society for Geriatric Medicine

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