Catholic Health Australia

Submission TO

SENATE COMMUNITY AFFAIRS COMMITTEE

INQUIRY INTO AGED CARE AMENDMENT (SECURITY AND PROTECTION) BILL 2007

February 2007

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1.0 The Catholic Sector

Catholic Health Australia (CHA) is the largest non-government provider grouping of health, community and aged care services in Australia, nationally representing Catholic health and Aged care sponsors, systems, facilities, and related organizations and services.

Services are provided in a number of settings, for example, residential, community care, in the home, the workplace, hospitals, medical clinics, hospices, correctional facilities, as well as for people who are homeless. In addition, services are provided in rural, provincial and metropolitan settings, in private facilities as well as on behalf of the public sector.

The Catholic sector plays a significant role in Australia's overall health care industry representing around 13 percent of the market and employing around 30,000 people.

The Sector Snapshot

* 19,000 residential aged care beds

* 6,080 retirement and independent living units and serviced apartments

* 5,354 Community Aged Care packages (CACP)

* 434 Extended Aged Care at Home packages (EACH)

* 6,100 Home and Community Care programs (HACC)

* rural and regional aged care facilities and services

* 9,049 beds in 74 health care facilities - publicly (21) and privately (53) funded hospitals and

* 7 teaching hospitals

* 8 dedicated hospices and palliative care services

* expanding day centres and respite centres

- approximately 30,000 people working in the sector

2.0 Purpose of the Bill

The purpose of the Bill is to amend the *Aged Care Act 2007* to:

- establish a scheme for compulsory reporting of abuse;
- require approved providers to report to police and to the Secretary of the Department of Health and Ageing, incidents involving alleged or suspected reportable assaults;
- take reasonable measures to ensure staff members report any suspicious or allegations of reportable assaults to the approved provider or one of the provider's key personnel or a person authorised accordingly;
- take reasonable measures for protecting the identity of any person who makes a report of a reportable assault;
- underpin these reporting arrangements with protections for approved providers and their staff who make disclosures about reportable assaults;
- enable the establishment of complaints investigation arrangements through new Investigation Principles; and
- establish the new role of Aged Care Commissioner to replace the Commissioner for Complaints with powers to examine certain actions taken by the Department of Health and Ageing and about the conduct of the Aged Care Standards and Accreditation Agency and its assessors.

3.0 Aged Care Commissioner

Under Section 95A-1 of the Bill, the Commissioner will be able to make recommendations to the Secretary or the accreditation body arising from the Commissioner's examination of:

- decisions made by the Secretary under the Investigation Principles;
- the Secretary's processes for handling matters under the Investigation Principles;
- complaints made to the Commissioner about the Secretary's processes for handling matters under the Investigation Principles;
- the conduct of the accreditation body relating to its responsibilities under the Accreditation Grant Principles; and
- complaints made to the Commissioner about the conduct of the accreditation body or an assessor carrying out an audit or making a Support Contact visit

Whilst the Commissioner may make recommendations in accordance with the above, the Bill is silent on such recommendations being binding on the Secretary or the accreditation body.

In addition, there is no provision for a complainant to be informed of the Commissioner's recommendations or have recourse should the complainant be dissatisfied with these recommendations.

The Annual Report of the Commissioner is to include a summary of the nature of the examinations made by the Commissioner but, unless spelt out in the Investigation Principles, not any recommendations flowing from these examinations.

The Commissioner may delegate all or any of his or her functions to an APS employee in the Department. This could result in the Department's own investigation officers from the Office of Quality and Compliance being asked by the Commissioner to examine matters handled by the Office.

The Bill is silent on this potential conflict of interest, however it is possible that it will be covered in the matters listed in the Investigation Principles.

4.0 Reporting assaults

Section 63-1AA of the Bill provides that if the approved provider receives an allegation of, or starts to suspect on reasonable grounds, a reportable assault, the approved provider is responsible for reporting the allegation or suspicion as soon as reasonably practicable, and in any case within 24 hours. The report is to be made to a relevant police officer and the Secretary. For all practicable purposes this will be the Office of Quality and Compliance.

Subsection (9) defines a reportable assault as unlawful sexual contact, unreasonable use of force, or assault specified in the Accountability Principles and constituting an offence against a law of the Commonwealth or a State or Territory, that is inflicted on a person when the person is receiving approved residential care.

The Accountability Principles may specify certain circumstances whereby such reporting responsibilities do not apply. Subject to these, currently the Bill places an obligation on an approved provider to report any allegations or suspicions of a reportable assault that takes place at the approved residential care service by a relative or friend of a resident. This could result in conflict arising between the approved provider, the provider's staff and either or both the resident and the relative/family of the resident at the centre of the allegation or suspicion. CHA is not proposing that this type of reportable assault be excluded from compulsory reporting, however the Committee needs to be aware that an

approved provider will need to inform relatives of residents of the legal obligation that will consequentially be imposed.

It is intended that the Accountability Principles allow for an approved provider to have discretion with respect to reporting minor assaults perpetrated by residents with a diagnosed mental impairment on another resident. The Principles will describe alternative arrangements for these very specific circumstances where the focus will be on effective behaviour management.

CHA will closely scrutinise the Accountability Principles and the new Investigation Principles when available. We are concerned as the practical application of these provisions with the need to have a diagnosis of mental impairment to before the alleged reportable assault takes place.

5.0 Protection for reporting reportable assaults

CHA welcomes the provisions of the Bill to protect those that report assaults (the discloser).

We note that Section 96-8 (6) and (7) deal with prohibitions on victimisation for disclosure. Whilst a person may not make a threat or cause any detriment to another person, the only action that the Australian Government can take to enforce these provisions is with respect to approved providers. Where an individual staff member or a relative victimises a discloser, the Commonwealth would be powerless to act.

6.0 Conclusion

This Bill is an important step in ensuring that the residential care environment for the frail aged is safe and free from undue force and both physical and sexual assault.

It imposes extra administrative, training and legal responsibilities on approved providers without any additional funding flowing to enable the process to be as effective as possible.

Notwithstanding this limitation, CHA supports the Bill.