



23 February 2007

Mr Elton Humphery  
Secretary  
Community Affairs Committee  
Parliament House  
CANBERRA ACT 2600

Dear Mr Humphery,

**AGED CARE AMENDMENT (SECURITY AND PROTECTION) BILL 2007**

Thank you for your invitation to make a submission to the inquiry by the Senate Community Affairs Committee into the Aged Care Amendment (Security and Protection) Bill 2007.

The contents of this Amendment Bill have been discussed with Aged & Community Services Australia (ACSA) through its participation in the Aged Care Advisory Council (ACAC). There are however still a number of issues that need to be considered and addressed before the legislation is finalised. This brief submission highlights these for each of the three key components of the Bill:

- The establishment of the Aged Care Commissioner;
- compulsory reporting; and
- protection for those who report.

*Aged Care Commissioner*

ACSA supports the introduction of investigative powers for the Aged Care Commissioner. Under the previous dispute resolution model, with the Commissioner for Complaints, complaints could not be investigated and were often left unresolved. The new investigatory powers should enable complaints to be considered and resolved.

However the Investigation Principles are still to be drafted pursuant to s.96.1 of the Aged Care Act. It is important that industry is consulted on the contents of the investigation principles.

The principles should outline/include:

- what will trigger an investigation (particularly the “own motion” investigations). It is important to ensure that not all requests for information be treated as potential complaints under the amendments;
- triggers for a reconsideration or examination of any recommendations made as a result of an investigation;
- the process for managing vexatious complaints and/or those complaints that are not made in good faith and any penalty that may apply in these circumstances;
- the ability for aged care providers to appeal the recommendation of requirements of an investigation;
- procedural fairness in all processes of the Aged Care Commissioner;
- the circumstances in which aged care providers are to be given prior notification of allegations that are the subject of any investigation.

The amendment requires approved providers to “comply with any requirement made of the approved provider under the investigation Principles” (s.56). At this stage however there is no guideline or definition of what a requirement is and this needs to be clarified. Compliance with requirements must also be considered in light of any appeals process that may be in place or underway.

The Bill does not adequately address the issue of informing both the complainant and the party complained about on the outcomes of an investigation. The legislation should specify that both parties are informed of the outcomes of an investigation.

ACSA is pleased to note that the Aged Care Commissioner will maintain the ability to undertake mediation where this will result in the best outcome for the parties involved. There is always a number of complaints which can be satisfactorily resolved using this approach.

It is also appropriate that the role of the Aged Care Commissioner includes the ability to investigate the behaviour of the Aged Care Standards & Accreditation Agency. ACSA members report inappropriate behaviour of Agency personnel which has a significant negative impact on the staff of residential care. It is important that parties, other than approved providers, are accountable for their actions.

Clarification is also required about whether aged care providers and staff can lodge complaints against other parties, such as resident’s families.

### *Compulsory Reporting*

ACSA is concerned that the introduction of compulsory reporting takes away the rights of competent older people to determine whether or not they wish to take any action on an assault. Under the provisions of this Bill, approved providers are required to make reports in the absence of the alleged victim’s consent and even in the face of their refusal to grant such consent. This is a concern and, it has been suggested, is in tension with other parts of the Aged Care Act which protect or are premised on such rights. This issue warrants further consideration in ACSA’s view.

In Section 63-1AA the Bill outlines the requirements of an approved provider in relation to “reportable assault”. A “reportable assault” is defined 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 receiving Commonwealth funded residential aged care services. Providers are required to report when either they receive an allegation or “start to suspect on reasonable grounds” that a reportable assault has occurred. The use of terms “unreasonable” and “start to suspect” are vague and open to interpretation. A tighter definition of these terms is required. Providers should not be *required* to report on the basis of suspicion - this is likely to waste time and resources of both the providers and the police forces.

Approved providers are also required to report any alleged/suspected reportable assaults both to the police and the Secretary of the Department as soon as practicable but at least within 24 hours. It is not clear why a report must be made to the Secretary and what the Secretary would do about such a report. It may be reasonable to notify the Department of Health & Ageing of any major issues but it would seem more appropriate to focus, in the first instance, on reporting any such cases to the police for investigation prior to other parties being notified. In other areas of human service delivery problems have been reported where too many agencies involve themselves in the investigation of incidents compromising or even destroying evidence that could have later been used in a court process.

63-1AA (6) provides protection for staff member informants from victimisation. The Bill seems to envisage that all such informants are likely to be staff members of the approved provider and does not fit the case of the staff of contractors of various sorts. It is difficult for a provider to be held responsible for the actions of a contractor once the contractor is off site or has completed their role. It is impossible for the provider to ensure protection once the person is no longer on site. The legislation should make the contractor responsible for the actions of their employees. The definition of a staff member needs to be narrowed to reflect this. A provider should not be held responsible for a third party.

The Bill has made an exception on compulsory reporting for circumstances where a resident assaults another resident and where there is a “diagnosed mental impairment (such as dementia)”. This exception is welcomed however it may still be too restrictive to cover the range of behaviours which result in resident to resident abuse occurring. It is recommended that this be broadened, still with the requirement for “effective behaviour management” to be in place. The industry should be consulted in determining the alternative arrangements required in these circumstances.

The legislation does not address what would happen to a resident accused of a reportable assault which is subsequently proven, and the resident may be convicted. This needs to be addressed in relation to the security of tenure provisions in the Aged Care Act.

*Protection for Reporting Assaults*

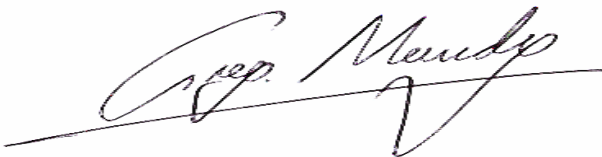
Section 96 – 8 outlines protection to be provided for staff who report an assault. Once again the term “reasonable grounds” is used and there is not sufficient definition of this.

The legislation needs to include more details about disclosing in good faith. Vexatious complaints can be made and can seriously harm another person.

This legislation only provides protection for staff who report an assault. There is no protection afforded for providers and staff against wrong or unlawful accusations and this needs to be addressed.

I trust these comments prove useful in your review and consideration of the Aged Care Amendment (Security and Protection) Bill 2007. I would welcome the opportunity to appear before the Committee to discuss these comments.

Yours sincerely

A handwritten signature in black ink, appearing to read "Greg Mundy". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

**GREG MUNDY**  
**Chief Executive Officer**