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23 February 2007

Committee Secretary  
Community Affairs Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

To The Committee Secretary,

**RE: Provisions of the Aged Care Amendment (Security and Protection) Bill 2007 referred to the Community Affairs Committee for inquiry and report by 14 March 2007.**

Thank you for your invitation for Aged Care Association Australia (ACAA) to make a submission regarding the Provisions of the Aged Care Amendment (Security and Protection) Bill 2007 which has been referred to the Senate Community Affairs Committee for consideration.

ACAA is an industry association of employers operating in the aged care environment and represents in excess of 1000 providers of residential and community aged care services as well as providers as seniors housing providers across Australia.

ACAA members are interested in the outcomes flowing from the introduction of this legislation as many aspects of this Bill will have a direct impact on the way in which aged care providers will need to conduct their business and the responsibilities that the legislation will place upon them in respect of policies and procedures that will govern the activities of providers and their staff and the reporting obligations the legislation will impose upon them in the future.

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The Association recognises that the introduction of this Bill has a number of aspects which have the general support of the Association as to their underlying intent.

The Association recognises that the reporting of sexual abuse incidents in 2006 cannot be condoned under any circumstances and though the incidents of such reports are low, the fact of one event occurring to the residents for whom we are responsible is simply one event too many. ACAA has therefore been supportive of measures being introduced which are geared towards ensuring that the community has the highest possible level of confidence in the security and safety of residents within our care.

At the same time, the Association has made representations to Government that considerable reform was needed to the Complaints Resolution Scheme and to the Office of Commission for Complaints to make the scheme more transparent and procedurally fair whilst allowing those officers receiving complaints to properly investigate matters brought to their attention and to have the capacity to deal actively with the complaint and the complainant or to bring a matter to closure where the officer undertaking the investigation considered that there was either no grounds to the complaint itself, the provider had acted appropriately in the circumstances, the provider had since addressed the matters the subject of the complaint or that the complainant was now satisfied as to the response received from the provider or remedial action undertaken.

ACAA does however have a small number of concerns regarding both the existing legislation and the proposed amendments.

These concerns are:

### **Investigations**

- that the existing legislation makes provision for the lodging of anonymous complaints which the Association considers inappropriate given that it is the only scheme, of which we are aware, operating in the broad health and related environments within Australia where anonymous complaints are permitted. ACAA has no objection to the legislation making provision for matters being maintained in a confidential manner when the officer undertaking the investigation considers that the disclosure of the

complainant may jeopardise the interests of the party making the complaint. However this is a different status than that currently provided within the legislation which specifically permits the lodging of anonymous complaints and which in our opinion creates a situation where the complaint cannot possibly be resolved. The complaint having been accepted in such circumstances often is pursued by officers of the department as a defensive practice rather than a procedurally fair investigation. This then imposes upon aged care providers a situation where investigation is undertaken where the nature of the complaint is often unclear, poorly stated and procedurally unfair to the staff of a facility who cannot deal with the complaint as a quality improvement opportunity but rather must deal with it as a star chamber investigation.

- ACAA is concerned that the effective time available to aged care providers to introduce these reforms will be exceedingly short by the time the legislation is passed and the amended Principles are tabled in Parliament. We believe the industry should be afforded a period of two months for full implementation of the scheme not what will amount to approximately two weeks

- ACAA is concerned that the existing scheme will be permitted to run indefinitely thus creating a complicated dual system with which providers and complainants will both need to deal. It is our opinion that the existing scheme should be brought to a conclusion within a specified timeframe and we would suggest 31<sup>st</sup>. December 2007 would be a sufficient period for existing matters to be finalized.

- ACAA has always considered that complaint handling and management is an integral part of any quality improvement process and that as such any complaints should be treated as a learning exercise. Positive learning opportunities are generally seen as being much more positive learning experiences than negative experiences. Part of positive learning relates to language. All of this legislation is written in the negative term 'complaints'. Staff in aged care facilities are faced with a highly negative impression of an investigation about a 'complaint' being undertaken by the department. There is never any positive feedback in this process. If the facility staff are found to have acted appropriately in all respects the response to the matter will almost

certainly be 'no case found' rather than a positive comment to the staff of the facility. As an industry struggling to attract and retain staff we believe that this attitude must change as future staff will simply not continue to work for us if they feel their efforts are being so under valued by government.

- One reason ACAA supported the changes to the existing scheme was to create greater clarity between the role of the Aged Care Standards and Accreditation Agency (Agency) and the Complaints Resolution Scheme. This legislation does not deal with this very important objective. It would be unfortunate indeed, if all these amendments achieve is to enhance the compliance power of the department without any clarity in the role and function between department and Agency. ACAA believes the department is the entity responsible for compliance, the Agency is responsible for quality improvement

- A procedural issue that has caused considerable concern to the industry for some years is the treatment by the department of complaint management information. The concern relates to the maintenance by the department and the Agency of complaints lodged about a facility and that this information is used in an ongoing way to impact upon future decisions regarding compliance, spot checks, and new place allocations. This concern relates to the possible impact of these matters even when the issue has been settled to the entire satisfaction of parties or there is a decision that the aged care provider had no case to answer. We believe that the department's records should be either open to the provider to inspect so they know what information is being retained or that only matters relating to a complaint which has generated a required plan of action by the approved provider should be maintained on the record.

### **Aged Care Commissioner**

- ACAA is concerned that the amendments make provision for the Commissioner to initiate own motion actions whilst allowing a complaint about inappropriate process undertaken by departmental or Agency officers. Our concern relates to the potential conflict that may arise on an occasion where there is an own motion action relating to the same or similar matter as a complaint about departmental or Agency processes or staff

- The Bill seems to confine the areas of possible investigation by the Commissioner to matters relating to the Investigation Principles and the Accreditation Grant Principles. ACAA believes that the Commissioner should be granted authority across all activities of the Aged Care Division, of the Department of Health and Ageing and not just the Investigation Principles and the Accreditation Grant Principles.

### Reporting Assaults

- ACAA has argued strongly for recognition of a resident on resident assault that could be considered clinical rather than criminal and is therefore pleased that the Government will deal with this provision in the Principles to ensure that every minor transgression does not become a matter requiring reporting to the police

- ACAA is concerned that the legislation obliges an employee to report any allegations or concerns and instructs employees that they can elect to whom they may report an allegation or suspicion. Though ACAA does not want to avoid matters being brought to the attention of the appropriate authorities in the timeliest fashion we are concerned that the wording of this section leaves the way open for possible abuse. Our preference would be that the employee should be made aware of the approved providers policies regarding reporting and that an employee must report any suspicions or allegations to:

The approved provider;  
 One of the approved provider's key personnel;  
 Another person authorised by the approved provider  
 to receive reports of suspected reportable assaults.

### Protection for reporting reportable assaults

- ACAA is concerned that though there are specific provisions that obliges employers to protect employees who report a reportable assault there appears little protection for employers who undertake their obligations under the legislation but are still potentially liable for unfair dismissal action, defamation and slander where action is taken in response to an allegation or suspicion which subsequently proves erroneous or false.

- ACAA is also concerned that approved providers may be left with staff on special leave, at considerable cost, for protracted periods of time while a matter is investigated.
- There are considerable protections for the reporting employee in this legislation and in the usual circumstance that is fine. However, the industry has encountered situations, in the past, where for a variety of reasons complaint processes can be used vexatiously against an employer and in some cases other employee/s. There is nothing in this legislation that requires a reporting person to do so in good faith and nothing to protect the approved provider or their staff in the event the new arrangements do get used in a vexatious manner
- The obligations placed on a contracted supplier of labour such as a nursing agency are much lower than those placed on an aged care provider. Much of the industry is dependent on the supply of agency staff and though these staff will now be required to undertake a police check much of the human resource function is entirely within the ambit of the Agency. However, the aged care provider is the entity that can have their business threatened by sanctions imposed by the department not any contracted third party.

Thank you for the opportunity to submit our comments on this legislation. If you require a representative of the Association to appear before the Committee and answer further questions or provide additional comment on this submission we would be happy to so.

Yours sincerely



Rod Young  
Chief Executive Officer