



Australian Government
Department of Health and Ageing

SECRETARY

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

E-mail: community.affairs.sen@aph.gov.au

Dear Mr Humphery

Aged Care Amendment (Security and Protection) Bill 2007

Thank you for your letter of 9 February 2007 inviting submissions to the Community Affairs Committee inquiry into the Aged Care Amendment (Security and Protection) Bill 2007 (the Bill). Please accept this as the Department of Health and Ageing's submission in relation to this matter.

Background

In April and July 2006 the Australian Government announced a package of measures, totalling \$100 million over four years, to strengthen the protection of care recipients from sexual and physical assault. This package includes the following key components:

- aged care workers and certain volunteers in Australian Government-subsidised aged care services will be required to have police background checks. This legislation came into effect on 21 December 2006 and will be implemented progressively from 1 March 2007;
- more frequent unannounced visits are being undertaken to aged care homes by the Aged Care Standards and Accreditation Agency (the Agency) to ensure compliance with care and safety standards for care recipients. The Agency's program of increased unannounced visits commenced on 1 July 2006;
- a regime of compulsory reporting of certain types of assault in Australian Government-subsidised residential aged care services is to be introduced. Subject to the passage of this Bill, this is proposed to take effect from 1 April 2007. This compulsory reporting requirement will also include legislative protections for people who make such disclosures; and

- new aged care complaints investigations arrangements, including the replacement of the current Commissioner for Complaints with a new Aged Care Commissioner.

The Bill gives effect to the compulsory reporting requirements, protections for staff and providers who report and the establishment of the Aged Care Commissioner. The Bill will also enable the making of Investigation Principles which will detail the new investigation arrangements.

A new Office for Aged Care Quality and Compliance has been established within the Department of Health and Ageing and will manage the investigation of complaints.

Introduction of the Bill

The Bill was introduced into the House of Representatives on 8 February 2007, and second reading speeches were presented by members on 14 and 15 February 2007.

During these speeches, members raised key issues in relation to the Bill which will be addressed as part of this submission. These issues were:

1. Why the Investigation Principles are not available for consideration alongside the Bill;
2. How the \$90.2 million committed by the Government for the new complaints investigation, compulsory reporting and whistleblower protection arrangements will be expended; and
3. Extent of consultation undertaken by the Government in the development of the detail of the Bill.

1. Why the Investigation Principles are not available for consideration alongside the Bill.

In developing legislative amendments to give effect to the new arrangements, the Department has worked through a range of technical, policy, definitional and cross-jurisdictional issues. These issues are complex and sensitive and have required the extensive consultation outlined below to ensure appropriate outcomes are achieved.

For these reasons, the first opportunity the Government has had to introduce this Bill into the Parliament was the Autumn 2007 sitting period.

It is recognised that the Bill contains the power to make Principles under the legislation to provide more detail about certain aspects of the new measures, particularly the new processes and procedures for complaints handling and investigation of issues by the new Office.

Recognising that the Principles cannot be finalised until the Bill is passed, a detailed Explanatory Guide has been prepared setting out the proposed content of the Principles in order to provide stakeholders with information about the totality of the proposed arrangements.

A copy of the Explanatory Guide is provided as part of this submission (at **Attachment A**) and is also available on the Department of Health and Ageing's website at www.health.gov.au/oacqc.

The Department will continue to consult on the content of the proposed Principles as they are developed and welcomes input from stakeholders. The Department would also be pleased to provide the Committee with any further details on these matters.

2. Expenditure of the \$90.2 million committed by the Government for the new arrangements

As part of the \$100 million package announced by the Government in 2006 to provide greater protection for aged care recipients, the Government has committed \$90.2 million over four years for the new complaints investigation, compulsory reporting and whistleblower protection arrangements.

The \$90.2 million was provided as departmental and capital funding, and will provide for the implementation and ongoing operation of the Office of Aged Care Quality and Compliance which will administer the new arrangements.

These costs include establishment and fit-out of the Office and development of new legislation and detailed procedures. They also include communication of the new arrangements to the aged care industry, consumers and the wider community.

The communications strategy will ensure that all care recipients, their families, providers and other relevant stakeholders are aware of the care that consumers should expect to receive in Australian Government subsidised aged care. The strategy will also provide information on where people can raise concerns they may have about quality of care and services.

The measure also provides an additional 140 average staffing level (ASL). This will allow recruitment of dedicated investigation officers in each State and Territory who will receive specialised investigation training in order to undertake their functions. The funding will also enable travel and other costs in order to undertake investigations Australia wide.

As detailed in the Explanatory Guide attached, these investigation officers will have the responsibility for investigating any information about a possible breach of approved provider responsibilities under the *Aged Care Act 1997*. These reforms significantly enhance the Government's capacity to deal with all information and complaints about the quality of care and services in aged care, including, but not limited to, abuse.

Further, these arrangements shift the current focus from the resolution of "complaints" to a new system whereby the Office receives information from various sources for investigation. The focus will not only be on attempting to resolve specific issues, but also on using information as a potential trigger for investigating whether or not there has been a breach and requiring approved providers to take action where this is the case.

Finally, capital funding is provided for the development of a new data management system to guide, promote and ensure nationally consistent intake and investigation practices. It will also enable analysis of data and identification of trends.

3. Extent of consultation undertaken by the Government in the development of the detail of the Bill.

The Minister for Ageing and the Department of Health and Ageing have undertaken extensive consultation in the development of this Bill and associated arrangements. Consultation with the aged care sector has, in part, been through the Minister for Ageing's Aged Care Advisory Committee (ACAC) which has considered the issues on four separate occasions through 2006. ACAC is constituted by representatives from professional, industry and consumer aged care groups including:

- Aged Care Association Australia
- Aged and Community Services Australia
- Catholic Health Australia
- Anglicare Australia
- Baptist Community Services
- UnitingCare Australia
- Allied Health Professions Australia
- Australian Medical Association
- Australian Nursing Federation
- Australian Society for Geriatric Medicine
- Pharmaceutical Society of Australia
- The Royal College of Nursing Australia
- The Royal Australian College of General Practitioners
- Alzheimer's Australia
- Australian Pensioners and Superannuants
- Carers Australia
- National Seniors Association
- Older Women's Network
- Australian Government Department of Veterans' Affairs

In addition to ACAC, the Minister has met with as many people involved in the aged care sector as possible – nurses, managers, care workers, residents, their families and some of the victims of abuse. The Minister also invited members of the public, including concerned care recipients and their families, to write to him through the Residential Aged Care Abuse Taskforce established in February 2006. The information received through the Taskforce was provided to a special meeting of ACAC on 14 March 2006 and has been considered carefully in the development of these arrangements. The Minister has also received and responded to many emails from the public, and held face-to-face meetings with a wide range of people.

These consultations have been critical to the Minister's and Department's understanding of the needs of the sector, and to how best implement appropriate reforms.

The Minister met with the State and Territory Ministers responsible for aged care. At this meeting, held on 10 April 2006, there was agreement to the need to improve the culture surrounding the reporting of abuse, to strengthen incident reporting for certain serious offences, such as sexual or physical assault, and to ensure protection for those staff who report such matters, within the residential aged care industry.

This Department has also consulted widely with other Australian Government departments to ensure the appropriateness of the provisions contained in the Bill. These departments include:

- Department of Prime Minister and Cabinet
- Attorney-General's Department
- Department of Finance and Administration
- Office of Best Practice Regulation
- Office of the Human Rights Commissioner
- Office of the Privacy Commissioner

I look forward to the Committee hearing on 2 March 2007 and if, in the meantime, the Committee has any queries regarding the Bill or associated materials please do not hesitate to contact Carolyn Smith, First Assistant Secretary, Office of Aged Care Quality and Compliance on (02) 6289 1005 or via email at carolyn.smith@health.gov.au.

Yours sincerely



Jane Halton
Secretary

23 February 2007