



Australian Government

Department of Health and Ageing

Ms Lisa Fenn
A/g Committee Secretary
Australian Senate Community Affairs Committee
PO Box 6100
PARLIAMENT HOUSE
CANBERRA ACT 2600

Dear Ms Fenn

AGED CARE AMENDMENT (2008 MEASURES NO. 2) BILL 2008

The Department welcomes the opportunity to provide the Committee with further information on the Aged Care Amendment (2008 Measures No. 2) Bill 2008 (the Bill).

While detailed information about the specific measures has been provided in the Explanatory Memorandum, I would like to take this opportunity to provide you with some further information about the expected impacts of the proposed legislative changes along with information about the consultation process that gave rise to the Bill.

Impacts of the proposed legislative changes

In net terms, the changes decrease, rather than increase, the regulation of providers of aged care. The impact of each of the changes has been assessed and is detailed in the Regulation Impact Statement included in the Explanatory Memorandum to the Bill. As noted, each of the changes will have either a low, or positive, impact on providers of aged care while increasing the protection of consumers.

The proposed changes:

- strike a balance by allowing beneficial investment in aged care and not unnecessarily impeding commerce or reducing confidence or investment;
- provide greater clarity and regulatory certainty with regard to which entities are subject to Commonwealth Government legislation and which are not;
- ensure that the Department has the powers necessary to protect aged care residents;
- will lead to a significant reduction in assessment waiting times for older Australians; and
- address unexpected outcomes that have been identified following experience with the operation of the bond security legislation and the Guarantee Scheme, which may be seen as inequitable or unfair to some care recipients of aged care services.

In summary, the proposed changes will provide greater certainty for care recipients and providers about their respective rights, obligations and protections. The package will improve protection for residents and promote public confidence in the aged care industry.

Questions and Answers on the Aged Care Amendment (2008 Measures No. 2) Bill 2008 are provided at **Attachment A**.

Consultation

The proposed amendments have been the subject of extensive consultation with the aged care sector through the Aged Care Assessment Program officials and the Ageing Consultative Committee which comprises peak industry, professional and consumer bodies. Membership and Terms of Reference for the Committee is detailed at **Attachment B**.

Distribution was at the discretion of Committee members but included some providers (both charitable and commercial), peak bodies, consumer representatives, consumers, and other interested parties. Thirteen written submissions were received in response to the Consultation Paper from a mix of State and Territory Governments, providers, peak bodies and consumer representatives.

The majority of the consulted stakeholders indicated support for the proposed changes. It was recognised that the legislative framework needs to adapt to the changing structure and business practices of the aged care industry. It was also agreed that comprehensive and effective safeguards for consumers are crucial for all stakeholders in promoting confidence in the aged care industry.

As a result of feedback, some of the proposals were either not been pursued in this Bill or have been amended to better achieve the policy intent.

Two issues raised by stakeholders were the need to ensure adequate time for approved providers to adjust to the changes and also the importance of the Department providing detailed information to assist approved providers to comply with the new requirements.

As a result of these suggestions, the Bill has been drafted such that it takes effect on 1 January 2008 but includes a transition period of 6 months for existing approved providers.

During this time, the Department will work closely with aged care stakeholders, including consumer representatives, to ensure that the scope of the change is well understood and that a coordinated approach is applied to communication about implementation of the regulatory changes.

A detailed information package is currently being developed and, subject to passage of the Bill, will be made available to providers of aged care prior to the commencement of the legislation. Providers will receive information by direct mail and will also be able to access information on the Department's website and through a 1800 information line.

The Department is also working with National Seniors Australia to identify the best means for distributing information to consumers. National Seniors Australia has also offered to work with the Department to ensure that any communication is appropriately pitched.

Issues raised

Since the introduction of the Bill on 16 October 2008, the Department has been contacted by interested parties with concerns about, or to clarify how, certain new arrangements will work. While the Department has discussed these issues directly with concerned parties, I would also like to take the opportunity to address them with the Committee. The two issues raised are as follows:

1. Sanctions

If passed, the legislation would require the Secretary to the Department of Health and Ageing to consider the desirability of deterring future non-compliance when imposing sanctions on an aged care service. Concern has been raised that this amounts to a punishment and is inappropriate in the context of the aged care legislation.

The amendments clarify that the Department can take action on non-compliance even where there may be no immediate impact on the health, safety or well-being of care recipients. For example, the Department may decide it is appropriate to impose sanctions on an approved provider who fails to refund accommodation bonds, where the refund amounts have already been paid to former care recipients through the Government's Accommodation Bond Guarantee Scheme. The well-being of these former care recipients is not impacted, as they have received a remedy through the Commonwealth. However, in such a circumstance, the Government is keen to ensure the aged care industry is aware that the non-repayment of bonds is unacceptable.

The amendments to the Act put beyond doubt the appropriateness of imposing a sanction in such cases in order to deter future non-compliance either by the sanctioned provider or others.

2. Police checks

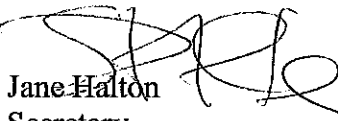
Clarification has also been sought about the detail of the proposed new arrangements for police checks. The proposed new arrangements (to be implemented through Principles made under the Act) strengthen measures introduced by the former Government in 2007 to ensure that people with convictions for murder, sexual assault, and serious physical assault are not permitted to provide care or services in an unsupervised capacity.

The proposed changes will make police checks mandatory for *all staff*, regardless of whether they have supervised or unsupervised access to residents.

The Department has consulted with providers, peak bodies and unions seeking their views on this issue. The Minister is expected to table the amendments to the Principles (delegated legislation) in November this year to implement the new measures from 1 January 2009.

Thank you again for the opportunity to provide a submission to the Committee and should the Committee require any further information please do not hesitate to contact Andrew Stuart, First Assistant Secretary, Aged and Ageing Division, on 6289 5480.

Yours sincerely



Jane Halton
Secretary
Department of Health and Ageing

3 November 2008

QUESTIONS AND ANSWERS

AGED CARE AMENDMENT (2008 MEASURES NO. 2) BILL 2008

SUMMARY

Q1. What is the purpose of the Aged Care Amendment (2008 Measures No. 2) Bill?

The purpose of the Bill is to amend the Act and the *Aged Care (Bond Security) Act 2006* (the Bond Security Act) to address current legislative inadequacies and maintain effective regulatory safeguards for ensuring high quality care for older Australians.

When the aged care legislation was developed ten years ago, the typical business model adopted by aged care providers was one whereby the owner of the facilities also operated the aged care facility. The regulatory framework reflected the “cottage” nature of the sector as it then was. In recent years a different model of aged care has emerged, one in which the owner and operator of a facility have distinct roles and responsibilities and may function quite separately. The last decade has also seen a significant increase in the level of investment in the sector from large corporate entities. The regulatory framework has not kept pace with this shift in business practice. This lack of consistency between the regulatory framework and contemporary business practice means that the regulations have not been able to be applied equally to all approved providers regardless of their corporate structure.

The shortcomings of the existing regulatory framework are varied, impacting upon care providers, care recipients and the broader community. Under the current regulations, there is limited capacity for the Department of Health and Ageing to consider the record of “related entities” when making decisions about approvals, which unnecessarily and inappropriately limits the ability of the Department to make an informed assessment of a company’s record in service delivery and its suitability to be approved to deliver care in the future. The Bill addresses this issue, provides better protection for residents and promotes public confidence.

Under current arrangements, those “pulling the financial strings” may not be currently be considered “key personnel” for the purposes of regulatory scrutiny. Amendments to the range of people considered to be “key personnel” of an approved provider will broaden the definition of “key personnel” ensuring scrutiny is applied more appropriately and that the relevant provisions apply consistently to approved providers.

Another feature of the sector in 2008, not envisaged in the 1997 legislation, relates to the provision of a broad range of aged care services within the one facility. Increasingly developers are putting aged care, retirement villages and sometimes disability or step down care all in the same development, giving rise to uncertainty relating to the regulatory reach of the Aged Care Act. Changes to the regulatory and administrative framework will clarify that only the aged care services are regulated by the Aged Care Act.

In recent years there has been significant growth in the value of accommodation bonds held by aged care providers. As at 30 June 2007, around 970 approved providers (75% of all approved providers) held accommodation bonds, with a total value of \$6.3 billion. It is obviously extremely important in terms of consumer confidence, and to maintain and increase the level of corporate investment into the sector, that the regulatory framework that governs these financial arrangements is as robust and current as possible.

Changes will ensure that any accommodation bonds (or like payments) that have been paid by care recipients for entry into aged care services are fully protected under the Accommodation Bond Guarantee Scheme (the Guarantee Scheme) and that residents in similar circumstances are accorded similar protections. Since the introduction of the Guarantee Scheme in 2006 (which guarantees the refund of bonds in the event that an approved provider becomes insolvent), experience has highlighted some areas in which the protections for residents could be strengthened. The Bill amends both the Act and the Bond Security Act to improve the operation of the Guarantee Scheme.

The Bill also clarifies that the key responsibility of the Secretary of the Department of Health and Ageing when considering the imposition of sanctions on an aged care provider is to protect the health, welfare and interests of current and future care recipients.

In addition, feedback from the sector clearly reflects a level of dissatisfaction with the complexity and number of assessments required of an individual's care needs, by Aged Care Assessment Teams. Some assessment points required in the existing process have been identified by the Department as being unnecessary or administrative in nature. The amendments contained in the Bill will streamline assessments of frail older Australians, so as to enable more timely, consistent and quality assessments for aged care.

The amendments will also make some minor, operational changes to improve the administration of the legislation so that it operates more efficiently and effectively.

Q2. What is the financial impact of the changes?

While there may be some costs to the aged care sector as the result of implementing some of the changes, they are expected to be minimal. Other measures are expected to lead to efficiencies and savings, so that on balance there is likely to be a minimal financial impact.

Transition costs, associated with change to systems, will also impact on Government, but these will be absorbed in the existing budget allocation to the Department. There will be a long transition period, during which the Government will work closely with approved providers to ensure smooth implementation.

Q3. What consultation has been undertaken on the proposed changes?

The changes outlined in the Aged Care Amendment (2008 Measures No.2) Bill have been the subject of consultation with the aged care sector through the Ageing Consultative Committee, which comprises peak industry, professional and consumer bodies. Consultation included preparation of a Consultation Paper and a face-to-face meeting with the Committee in June 2008. As a result of that meeting, the Consultation Paper was revised and provided to the Committee and Aged Care Assessment Program officials for wider distribution to stakeholders. Distribution was at the discretion of the officials and Committee members, but included providers (both charitable and commercial), peak bodies, consumer representatives, consumers, and other interested parties. Written submissions were considered in the development and fine tuning of the complex legislative and policy reform process.

Q4. When do the amendments take effect?

Most of these reforms will, subject to passage of the Bill by Parliament, commence on 1 January 2009, with specified provisions not taking effect until 1 July 2009, allowing for a transition period and the implementation of systems changes.

Prior to that time the Government will be developing delegated legislation (to support the amendments to the Aged Care Act) which will provide further details about the reforms.

B. MORE DETAILED INFORMATION ABOUT THE PROPOSED CHANGES

Q5. How will the changes increase protections for residents?

All of the amendments are ultimately designed to better protect aged care recipients. Some of the specific measures, and their impacts on care recipients, are described below:

– **Sanctions**

The new arrangements will put the intention of the legislation beyond doubt in relation to sanctions imposed on providers who fail to meet their responsibilities in relation to, for example, user rights, quality care standards or accountability requirements. The Aged Care Amendment (2008 Measures No.2) Bill ensures that the safety, health and well-being of current and future care recipients is the paramount consideration and their interests must be protected ahead of any other interests, such as the financial interests of the approved provider.

– **Police Checks**

Currently, the police check arrangements permit people with convictions for serious offences to work in aged care with access to care recipients, provided they are under supervision. However, it is difficult to monitor approved providers' compliance with requirements for supervised access. Strengthening of the current police check requirements will make it necessary for all employees of aged care facilities aged care staff, with access to care recipients, whether supervised or unsupervised, to have a police check. This will be done through Aged Care Principles made under the Aged Care Act.

- **Missing persons**
The protection of aged care residents will be increased by requiring providers to raise the alarm with the Department of Health and Ageing when a facility has determined that a resident is missing without reason and has reported this to the Police. This will allow the Department to determine whether appropriate action has been taken by the service in respect of the missing resident and whether there are adequate systems and processes in place to ensure other residents' safety.

- **Complaints Investigation Scheme**
Changes to delegated legislation (the Aged Care Principles) will make the Complaints Investigation Scheme more accessible and workable from a practical perspective. The proposed changes will, for example, allow the Aged Care Commissioner to accept an oral application from persons who are dissatisfied about a decision. This assists residents who may not be able to make a written complaint.

- **Increased coverage of the Accommodation Bond Guarantee Scheme**
Changes will ensure that accommodation bonds (or like payments) that have been paid by care recipients for entry into aged care services are fully protected under the Accommodation Bond Guarantee Scheme and that residents in similar circumstances are afforded similar protections.

- **Improved access to ACAT assessments to establish eligibility for aged care**
Changes will streamline assessments by Aged Care Assessment Teams. The amendments will make the Aged Care Assessment process significantly more efficient and lead to a reduction in assessment waiting times. This improvement in the efficiency of the Aged Care Assessment Teams will ensure reassessments are conducted only for the people who genuinely need them. This has benefits for consumers who avoid the need for reassessment when their care needs have not changed and increases the likelihood of a prompt and timely assessment when they need care or their needs have changed.

Changes will streamline assessments by ensuring approvals for respite care and high care residential care do not automatically lapse after 12 months, and by allowing people to access Community Aged Care Packages if approved for Extended Aged Care at Home or Extended Aged Care at Home (Dementia).

Q6. How will these changes affect existing approved providers?

One of the significant changes to the legislation will be clarifying who is and is not regulated under the Aged Care Act. This will be achieved by linking approval of providers to the allocation of places which is directly linked to Commonwealth funding.

This change will have no impact on existing approved providers with an allocation of places. However, if an existing approved provider does not have an allocation of places for any services, then its approval as a provider will automatically cease from 1 July 2009. If, before this time, the provider acquires places, then it will continue to be an approved provider in respect of the service for which it has received places.

If an existing approved provider has a number of services, some with allocations and some without, it will cease to be an approved provider in respect of the services with no allocations from 1 July 2009, unless it acquires places for the services.

Other changes to the legislation may require approved providers to make small systems or administrative changes. A six month transition period (to end June 2009) will assist in ensuring a smooth transition. The Department will also issue more detailed information to approved providers to assist them in transitioning to the new system.

Q7. How will the new arrangements work for entities applying for approved provider status?

From 1 January 2009, when an applicant successfully applies for approved provider status, it becomes a “qualified applicant.”

If, at the time an entity is applying for approved provider status, the Secretary considers that the suitability of the applicant is dependent on a particular circumstance (e.g. the ongoing engagement of a particular management company) then the Secretary may impose a condition of allocation that the circumstance (e.g. use of the management company) should not be changed unless the provider has obtained the agreement of the Secretary.

As a qualified applicant, the entity would be required to comply with the obligation to notify the Department of certain changes in its circumstance and the obligation to give information relevant to its suitability to be an approved provider when requested.

Approved provider status would not take effect until such time as the qualified applicant has an allocation of places for a particular service. This may occur either as the result of being awarded an allocation by the Department or as the result of an approved transfer of places from another approved provider. The qualified applicant would automatically convert to an approved provider in respect of that service, when the places (provisional or operational) are acquired.

The approval as a qualified applicant is proposed only to take effect if the qualified applicant receives an allocation of places (in respect of any service) within two years. If an allocation is not received within two years, the entity would be required to re-apply for approved provider status. This ensures that entities do not remain “qualified applicants” indefinitely.

When approved provider status takes effect the entity will need to refund the balances of all unregulated lump sums held (i.e. lump sum entry fees taken before they became an approved provider) and can then enter into accommodation bond or accommodation charge agreements with eligible care recipients in accordance with existing rules, provided that there is no disadvantage to the care recipient.

Q8. How will the changes affect former approved providers?

The Aged Care Amendment (2008 Measures No.2) Bill 2008 addresses unintended outcomes of the current legislation and extends accommodation bond refund obligations to approved providers who become former approved providers after 1 January 2009. Changes will ensure responsibilities in relation to the refund of bonds survive the lapsing or revocation of approved provider status. The Accommodation Bond Guarantee Scheme will also protect residents whose bonds are not refunded in circumstances where the former approved provider becomes insolvent.

Q9. What changes are being made to the transfer of places?

The Aged Care Amendment (2008 Measures No.2) Bill 2008 amends the Aged Care Act to enable the transfer of provisionally allocated places in exceptional circumstances. The amendments provide that in deciding whether to approve a transfer, the Secretary to the Department of Health and Ageing must consider, among other things, whether:

- a) the transferor has made significant progress towards being in a position to provide care, in respect of the places;
- b) whether it would be contrary to the interests of the aged community in the region not to permit the transfer; and
- c) whether the transferee is likely to be in a position to provide care in respect of the places within a short time after the transfer.

This change allows a transfer in cases where the provider has expended significant resources (time and funds) gaining the relevant planning approvals for the proposed service and has progressed development to a point where significant delays in the provision of care would occur if the development of the aged care service was not completed as quickly as possible. If the provider could not continue the development, the places could be transferred to another provider that could ensure completion, but only at the location in respect of which the places were allocated.

The major advantage for all concerned is that this provides practical support for the goal of making provisional allocations operational in the shortest possible time. If the transfer of provisionally allocated places is in the interests of the community in order to enable operational beds to come 'on-line' more quickly, then this amendment enables this to occur.

Q10. Where can I get more information about the changes?

Subject to the passage of the Bill through Parliament, the Department of Health and Ageing will be developing detailed implementation guidelines. These will be provided to all approved providers and will also be posted on the Department of Health and Ageing website. It is expected that these guidelines will be available in late 2008.

AGEING CONSULTATIVE COMMITTEE

TERMS OF REFERENCE

The Ageing Consultative Committee is the major forum for consultation, discussion and advice on issues of relevance to aged care. Members:

- provide advice to the Minister for Ageing on current and proposed arrangements within community and residential aged care, with a particular focus on implementation of election commitments;
- collect the views of stakeholders on issues of importance to the aged care sector and present these views for discussion and suggested response; and
- communicate deliberations of the Ageing Consultative Committee to the groups they represent.

MEMBERSHIP

Member organisation
<i>Provider representation</i>
Aged Care Association Australia
Aged and Community Services Australia
Catholic Health Australia
Anglicare Australia
UnitingCare Australia
ACH Group
Retirement Village Association of Australia
Baptist Community Services
Babcock & Brown
<i>Consumer representation</i>
National Seniors Australia Ltd
Carers Australia
Alzheimer's Australia
Federation of Ethnic Communities Councils of Australia
Australian Pensioner and Superannuants Federation Inc
COTA Over 50s Ltd
<i>Professional/employee representation</i>
Australian Medical Association
Health Services Union of Australia
Australian and New Zealand Society for Geriatric Medicine
Allied Health Professions Australia
Royal College of Nursing Australia
Australian Nursing Federation
Liquor, Hospitality and Miscellaneous Workers Union
<i>Government representation</i>
Department of Health and Ageing
Department of Veterans' Affairs
Aged Care Standards and Accreditation Agency Ltd