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ECH Inc
174 Greenhill Road
Parkside SA 5063

T 08 8407 5151
F 08 8407 5130
1800 629 889
admin@ech.asn.au
www.ech.asn.au

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

Dear Secretary,

RE: AGED CARE AMENDMENT (2008 MEASURES NO. 2) BILL 2008 COMMENTS ON PROPOSED AMENDMENTS

I take this opportunity to respond to the Committee's invitation to provide a written submission to the Senate inquiry into the above Bill.

As a general comment, ECH supports the proposed amendments but believes that several aspects of the amendments require clarification, either in the legislation itself or in attendant Principles where relevant.

Regulation of approved provider

ECH supports the concept of linking approved provider status with an allocation of places, and making provision for further exclusions from the definition of *residential care*.

However, page 13 of the Explanatory Memorandum (the Memorandum) contains the statement that 'approved providers will need to define their service to ensure only aged care is captured by these provisions'. The stated intention of the amendments is to 'more clearly delineate when an organisation is subject to Commonwealth Government regulation'. Furthermore, Item 82 states that the definition of residential care is to be amended to 'enable the exclusion of, for example, types of care that are not Commonwealth Government funded and should not be inadvertently regulated under the Act'. Later Items in the Memorandum seem to link responsibilities of approved providers not simply to approved care recipients but only to approved care recipients in aged care services in respect of which the approved provider is approved. The intention of Item 89 on the other hand is very unclear as the first two paragraphs appear to have the same meaning, rather than the second establishing any difference.

Nonetheless, the presumed intention is to exclude situations where an approved provider might also operate a collocated retirement village or independent living units occupied by approved care recipients. However, the amendments would benefit from further clarification if the intention is to specifically include or exclude approved care recipients occupying non-approved places contained within an otherwise approved service (e.g. a 100-bed service with 95 approved (allocated) places and five non-approved places). This

latter situation is very common as many services include places that are additional to the number of allocated places. The proposed new definition of 'aged care service' will not exclude care recipients in non-approved places.

The requirement for approved providers themselves to define their services seems redundant if the proposed amendments would define residential care.

Key Personnel

While the intention of new Section 8-3A is supported, members of some more complex church, charitable and other not-for-profit organisational entities might become unintentionally subject to the *key personnel* provisions. For example, it could be open to the Secretary of the Department of Health and Ageing (the Department) to determine that members of a church council are key personnel even though the church's aged care services are operated by independently incorporated bodies with their own boards of directors. It is not uncommon for decisions regarding changes to an organisation's constitution or membership of the board of management of the incorporated body to be subject to the approval of an overarching authority such as a church council.

The intent of the amendments would be clearer if terms such as 'executive decisions', 'significant influence' and even 'governing body' were clarified through reference to specifically excluded personnel as well as the currently proposed inclusions under Item 7 of the Memorandum.

An additional level of administrative burden would be created if the intention is in fact to extend the definition of *key personnel* to entities that have some influence but not 'significant influence' over the activities of an applicant/approved provider.

Refund of pre-allocation lump sums

At face value, the intention of this amendment seems clear in terms of its attempt to protect the financial interests of new residents of newly allocated places. However, the Memorandum makes no apparent provision for pre-allocation lump sums, either in part or whole, to become accommodation bonds. The proposed amendment would require an unnecessarily complicated administrative process whereby the lump sums were refunded, only to be followed by a requirement for an accommodation bond to be paid. Despite the resident already being in care, they or their family might seek to delay or frustrate the payment of the bond, resulting in a financial disadvantage to the approved provider that does not currently occur.

The amendment should therefore provide for the amount of any refund of the lump sum, or balance payable in relation to an accommodation bond, to be determined on the basis of the amount of pre-allocation lump sum already held by the newly approved provider. This would avoid any unnecessary double-handling of the sums involved, namely, a refund of the lump sum on the one hand and a bond payment on the other.

The proposed amendment is also silent on the question of refunding pre-allocation lump sums in the case of sales and transfers of places (and potentially provisional allocated places) where a provider ceases to be an approved provider. Current common practice would be for the transferee to assume responsibility for any bond liabilities as part of the terms of sale. It is not clear whether the amendment would require the bonds to be refunded by the transferor (former approved provider), only to be required anew by the transferee.

Similarly, it is unclear whether the bond holdings (as opposed to pre-allocation sums) of a provider that is to become a 'former approved provider' (for example, by selling and exiting the industry) would be subject to the same refund requirements where the places were transferring to another approved provider. Again, it would be an unnecessary and an avoidable administrative requirement for bonds to be refunded only to have the new approved provider require fresh bond payments from residents. Normally, in such circumstances the new approved provider would take on the resident agreement and bond liability from the 'former approved provider' as part of the transfer process.

Transfer of provisional allocated places

The proposed amendment requires that the 'location in respect of which the place is provisionally allocated ... not change as a result of the transfer.'

A definition of 'location' is not provided for the purposes of new subsection 16-13 (2) and could be interpreted to mean the actual site on which the places are or were to be established. Such an interpretation would be untenable as the transferee cannot be guaranteed of a transfer of the site, only of the places.

Provisional Allocations are made on a regional/geographic or community basis but not in respect of specific sites. The Department's *Regional Distribution of Aged Care Places* section of its *ACAR Essential Guides* refers to 'Identified Geographic Locations', which are most often LGAs or references to commonly understood regions such as the Central Coast or 'Gold Coast suburbs'.

The meaning of 'location' for the purposes of Section 16-13 therefore requires clarification to determine that it is not a reference to a specific site that might then have to become the subject of a sale between the transferor and transferee. The reason for the transfer might well be the unsuitability of the originally proposed site.

As circumstances change over time, a better approach might simply be to require any new 'location' to be approved by the Secretary without the proposed requirement that the location not change. This would avoid any definitional problems entirely.

Assessment

ECH supports the proposal to eliminate unnecessary re-assessments of approved care recipients with a high care or respite approval.

Another change that would further reduce the number of assessments would be the removal of the requirement that a person with a low care (ACAT) approval be re-assessed by an ACAT if they have aged-in-place to become high care, even if they transfer to another service.

A sample of residents who have aged-in-place and been assessed under the ACFI as high care could simply become the subject of the Department's existing validation program if they change service, without the need for re-assessment of every such resident by an ACAT.

Determination that no accommodation bond be charged and setting a maximum amount of an accommodation bond

While ECH has no objection to the proposed amendment to allow the Secretary to set the maximum bond amount, there is no explanation of:

1. the status of a person whose bond is subject to a maximum amount (or who is not to be charged a bond for a specified period or subject to a specified event) in relation to being a Concessional or Assisted Resident; or
2. how the maximum bond is to be calculated; or
3. the timeframes applying to the Secretary's decisions.

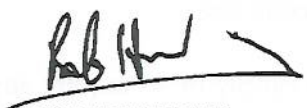
These considerations could have a bearing on a person's ability to secure timely admission to an aged care service and Approved Providers would need information about the prospective resident's status as part of the admissions process.

Reporting of missing residents

Page 18 of the Memorandum refers to changes to the Aged Care Principles but provides no information about the changes. ECH would be concerned if the current intention of introducing a simple reporting requirement became something more complex or burdensome.

Thank you for the opportunity to make this submission.

Yours faithfully,



ROB HANKINS
Chief Executive – ECH Inc.