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and Aged Care,
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Response to Aged Care Bill

Dear Sir/Madam,

This assessment of the Aged Care Bill is provided in response to the Department of Health and Aged Care seeking comments on the Bill.

ISSUE 1

The Aged Care Bill recognises that the Aged Care Act needs to have a priority to ensure the best outcomes for aged residents and recipients of the Commonwealth aged care services such that they have the best chances of happiness and fulfillment in the latter years of their lives through these services.

Thus, the Bill includes detailed processes for the investigation and curtailment of those persons and processes that might cause harm to the residents and service recipients.

However, it does not provide an adequate system for ensuring that the views of those persons that have a long-standing and/or expert opinion (be they family members or treating professionals, such as psychiatrists) of the individual's personal needs are adequately taken into account and contribute to a successful outcome for the individual.

Although the Bill recognises the need to seek the views of the individual on what services would suit him/her, it does not give adequate emphasis to the fundamental requirement of carefully ensuring that the individual (who may not be able to have a view on their situation) gets the best of the Commonwealth aged care services.

That is a fundamental, major weakness of the Bill as care for the individual's services should be the primary focus of the Bill and it is not.

Nice words in the Bill that the needs of the individual are to be respected are words only and will not, on their own, overcome this weakness.

The System Governor is not able to understand the individual's needs properly without help from those that know and understand the individual—no matter what expertise the System Governor may have or what processes in the Act may assist him/her.

Individual services may appear to be very similar to each other, but in fact the subtle differences may make all the difference whether the individual is happy under them or not. Those that understand the individual will perceive this.

The System Governor cannot spontaneously 'know' the individual and thus the individual's needs. Thus, the individual's assessment report on which the Systems Governor decides the funded aged care services for the individual may be seriously deficient unless very careful recognition is taken of the particular circumstances of the individual. (Chapter 2 Part 1 sect 36). The Bill's procedures are seriously deficient on this vital matter.

ISSUE 2

The Bill is poorly presented. It is over legalistic and over bureaucratic.

It needs to be shortened, tightened and focussed better. It does not have the correct tone of co-operation and care.

The Bill should be no more than a half to a third of its existing length and focussed on the fundamental issue of getting the services right for the individual and in the co-operative effort in achieving this.

Page after page after page are devoted to index, prelude and definitional material. This has a stultifying effect and loses the fundamentals of the Bill in a deluge of verbiage.

Furthermore, service providers and family members will not have the stamina to read beyond all this preliminary material and will thus not be aware of the provisions of the Bill/Act. Summary reports are not an adequate alternative.

ISSUE 3

The System Governor has wide, sweeping powers that supersede the decisions of courts in various jurisdictions and the Guardian Tribunal.

The Act will bind the Crown, but the Crown is not liable to prosecution under it (Chapter 1 Part 2 Sec 3(1)). That seems to me to be a legal contradiction.

Furthermore, Ch 5 Pt 4 Sect 222 (1) and (2) provide for immunity for officers and persons assisting the Governor Surveyor.

This would seem to be a completely unnecessary and dangerous legislative over-reach.

ISSUE 4

The System Governor and Aged Care Quality and Safety Commissioner, for best effect, need to work co-operatively with individuals, their families, the psychiatrists involved, with the courts and the Guardianship Tribunal and with the States and Territories.

The Bill is not presented as being one of co-operation and working with others.

On the contrary, the Bill is stating that the System Governor can override decisions of the Guardianship Tribunal and the Courts in the various jurisdictions.

How is all this going to happen successfully? What expertise and resources will there be to achieve this over-ride?

The Bill, it seems, will impose requirements on service providers to present their services to the System Governor in a way which suits him/her best. I can't find much that puts him/her under much obligation.

ISSUE 5

The Commonwealth Government is better at policy issues and international issues and shows clear weaknesses and inabilities with concrete programmes (the Postal Commission and the armed forces excepted).

The Bill shows that a huge new programme is envisaged.

It is important to ask what capacity the Commonwealth has to run such a huge programme effectively?

Is this Act going to augur in a new NDIS disaster? The issues above show signs this may happen.

Surely it is beholden on us to do what is necessary to avoid the mistakes of the past and to be careful that the Commonwealth delivers a programme that is truly as beneficial for the individual aged recipients as it can be.

Examination of the approaches adopted by the Scandinavian countries with their legislation and their aged programmes may assist the Commonwealth in

delivering an Act and approach that will produce the best outcome for the aged and for the community.

Yours sincerely,

Dr Barry Shaun Lennon

Alzheimer's advocate for Alzheimer's Australia and one time policy adviser for the NSW State and Commonwealth Governments.