



ALLAMBIE HEIGHTS  
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Retirement Villages & Residential Aged Care

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To Whom It May Concern.

**Re: Exposure Draft, Aged Care Bill 2023.**

Please find comments below:

A new Aged Care Act is welcomed following a criticised 1997 Aged Care Act which has never proceeded to keep pace with the changing needs of older persons in Australia.

As a general comment, I suggest that all monetary/financial references in a new Aged Care Act should refer to 'Financing Aged Care' and replace an outdated and confusing terminology of 'Funding aged care'. This requires changing the paradigm of how Australia views rights, responsibilities, benefits and entitlements along with a user-pay approach to financing aged care.

This Bill, rather than aspirational, is punitive and harsh in many sections, lacking in vision about how Australia needs to address a changing populations' current and future needs.

There is no proportionality about the obligations of a registered provider and those of family members and friends of an individual receiving care. Aged Care should be about 'shared care' and Share Care should be at the centre of an Aged Care System.

There are serious omissions from this Bill as currently presented in this Exposure Draft. The Bill should be suspended until all Parts of the Bill, are provided for public scrutiny and comment. In saying this, these serious omissions and the requirement that comments on the existing Aged Care Bill 2023, Exposure Draft be provided to Government by February 2024, extended to 8 March 2024, has been an unnecessary pressure and cost to those who have taken time to so respond to the existing Exposure Draft.

It is also unacceptable that we have had to read and comment on a Bill that was not accompanied by any Regulations or Rules. Some of the serious Omissions among others within Clauses stating [To be drafted] are:

Chapter 4, Fees, payments and subsidies: Part 1, Introduction [To be drafted]; Part 2, Means testing [To be drafted]; Part 3, Subsidies [To be drafted]; Part 4, Payments and fee arrangements [To be drafted].

Chapter 6, Regulatory mechanisms: Critical powers [to be drafted]; Part 11, Critical failures powers [To be drafted].

Chapter 8, Miscellaneous, Part 2, Review of decisions [To be drafted].

A Table of Penalty Units and the implications/consequences associated, would be purposeful and should be included.

### **Chapter 1, Part 1,**

5 (g): To 'provide for sustainable funding arrangements for the delivery of funded aged care services' is most welcomed but says nothing about how or which entity is responsible for these;

6: A Policy for Whistleblowers and Protections for whistleblowers is not supported (see below, 96 (d)); 356 and 357 (2)

6: Criminal penalties and civil penalties for failures to meet requirements under the Act and compensation can be sought in cases of serious failures by registered providers, needs to be re-thought. Should the current Bill be accepted, senior management, volunteer and paid Directors/Members of Board, will leave the Industry;

### **Part 2, Division 1, Definitions,**

7 (b): Approved Quality Auditor: Should read, meets and (not or) other training and qualification requirements prescribed by the rules. Providers are regularly frustrated at auditors of the Aged Care Quality and Safety Commission concealing their qualifications and experience and it is alarming to learn that some have no professional qualification as reported by some Providers of residential aged care facilities;

### **Part 2, Division 2, Key Concepts,**

10 (4): "An Aged Care Worker of a registered provider means:  
(a) an individual employed or otherwise engaged (including as a volunteer) by the registered provider".

This potential treatment of a volunteer as an "aged care worker" is wholly unacceptable. Employment law treats paid employees very different to volunteers

and the rights, benefits and protections of volunteers is very different to that of paid employees.

This definition must be changed to remove 'volunteer' from the definition of an aged care worker. The meaning of volunteer has always been clear in Australia's rich history of volunteering, it is unpaid, its roles have obligations, some greater than other volunteering roles. This attempt to equate both roles as commonly understood, a worker and a volunteer, will threaten the Australian culture of volunteering and in respect of their contribution to aged care, likely result in fewer people providing their skills, knowledge and time to meaningful acts in aged care settings. Furthermore, many Boards of Aged Care Organisations, representing governance have volunteers as Directors/Members in a non-executive role, they are not operational workers, they are not aged care workers and should not be;

14 (f): "how registered providers must support individuals accessing funded aged care services in approved residential aged care homes", is not defined and provides no information about how the registered provider might agree or disagree with this requirement, how long the engagement might last, the implications of service provision being taken away from others in their care and how the provider will be paid for providing this service;

16 (1): a Restrictive Practice as defined, has no appreciation or understanding of an act of safety being used to safeguard a person who for example has a mental impairment or is lacking in mental capacity to cause harm to another person or to place themselves in harm's way. The definition needs to be re-defined;

19: There is no description or definition of what constitutes 'high quality care'. The word 'high' should be removed as its subjective use might cause significant confusion to many parties. Quality care is sufficient and can in itself, be readily understood;

19 (c) (vi) and (vii): "Supporting" is not defined and the requirements of a supportive act, should not place the burden of cost on the registered provider to have the individual to remain connected to their community, their animals and pets. These clauses are poorly written and are not required';

19 (c) (x): "bilingual aged care workers and interpreters being made available if requested by the individual" should not feature in a Bill or an Act. This can be made available on a user-pays basis for the arrangement rather than the employment of the provision of the worker.

It should be recognised that federal policy regarding workforce and border controls etc. is a Federal Government responsibility, a registered provider cannot be responsible for this service or its cost.

### **Part 3, Division 1, Aged Care Rights**

22 (5): "The Commonwealth aged care system builds the capacity of registered providers and connections with individuals in the community to support:

(a) continuity of funded aged care services".

There is no detail about how the Commonwealth will provide proper financing or continuity of finance to aged care services.

The wording is carefully obscure in Governments' responsibility here and it is actually relinquishing its responsibility for financing or for continuity of financing. It unreasonably places responsibility on registered providers.

Remove the Clause, it is obscure;

22 (7): The reference to "carers should be considered partners with registered providers" needs to be strengthened to denote that carers, family members and friends of the individual are part of a Shared Care system and as a consequence, denote that they share responsibilities with the registered provider;

22 (10): This recognises the rights and obligations of individuals to pay for services on a user-pay basis if they have the financial means to do so.

There are no Regulations or Rules accompanying this Bill describing how this and other acts, requirements are to be implemented.

The reference to an individual paying on a user-pay basis, is fully supported but this should be to the Registered Provider, not deducted from the registered provider's income from Government.

#### **Part 4, Division 1, Actions and duties of supporters and representatives**

Refer also to Chapter 8, Part 4 of this submission below:

This section should be removed. There is not a need for Supporters and Representatives to be given similar Powers than those given to Powers of Attorney, Enduring Powers of Attorney, Guardians or Enduring Guardians or Powers provided by the Office of the Guardian or similar entities.

The introduction of significant powers to new entities of a Supporter or a Representative is unnecessary and will cause immense confusion and potential conflict with those holding legally vested Powers.

#### **Chapter 2, Entry to the Commonwealth aged care system, Part 1, Introduction**

36: There is no sufficient reasoning, why a person "age 50 or over and an Aboriginal or Torres Strait Islander person or homeless or at risk of homelessness is eligible to undergo an aged care needs assessment by an approved needs assessor", should need to be accommodated in a residential aged care facility.

People who represent the above age and groups should be able to receive services specific to their specific age and needs. What for example is the purpose and aims of the NDIS?

Aged Care services are specialist settings. Aged Care services cannot be all things to all people or to all Governments.

This section should be removed from the Bill.

## **Part 2, Eligibility for entry, Division 1,**

40 (ii) and (iii): These sections should be removed from the Bill for the purposes outlined in Clause 36 above.

## **Chapter 3, Registered providers, aged care workers and aged care digital operators, Part 1, Introduction**

65: The establishment of an aged care worker screening scheme which facilitates mutual recognition of worker screening across aged care and disability sectors, is welcomed.

However, the worker screening scheme should be across all care sectors;

96 (d): A Policy for Whistleblowers and Protections for Whistleblowers, are not supported. Registered providers promote and deliver customer complaints systems and are required to do so as part of regulatory requirements. Many registered providers provide robust customer complaints systems in a transparent manner and from which feedback and experience, services are improved. This approach of promoting a robust customer complaints system, needs to be enshrined in an Aged Care Act and its use, supported and encouraged as the primary process of making a complaint.

A policy and protection for whistleblowers will, if permitted to proceed, open up a potential for vexatious and uncorroborated complaints from disgruntled individuals and staff who bypass complaints and grievance systems and which will be wasteful of time, increase costs and potentially be damaging to the reputation of a registered provider or person, with no recourse to defend against the whistleblower;

100 (4): It is unacceptable that an Aboriginal Community Controlled Organisation should in an Aged Care Act, be allowed to be less accountable in its governance or in the composition of skills of a governing body of a registered provider from that of all other Australian registered providers. Their exemption from such governance and accountability needs to be removed;

114 (1) (a) (i) (ii) (b) (c): Clarification is needed regarding the criteria against which the suitability of a reasonable person is to be measured once every 12 months.

This section is considered unnecessary. The governance of a Company would for Board Directors/Members and in relation to the requirements of ASIC and ACNC, require that its responsible persons are fit for purpose and practice and in relation to the line management structures of operational responsible persons, similarly so.

### **Part 5, Statutory duty and compensation, Division 1 Provider and responsible person duties**

120 (a) and 120 (7): The penalties directed at the registered provider and responsible persons of up to 5 years imprisonment, are unfair, harsh and unnecessary. This, if entered in to a new Aged Care Act, will have significant consequences and implications for existing Board Directors/Members and for the engagement of future Board Directors/Members, particularly for those who act as volunteers, thereby affecting the whole governance structure of the Australian Aged Care Industry.

The consequences and implications for senior management and executives who are responsible persons, are similar and will lead to resignations and gaps for future recruitment. This Section's punitive penalties of imprisonment of up to 5 years, is unnecessary and should be removed.

A registered provider and/or a responsible person cannot be responsible for the act(s) of a staff member(s)/employee(s) who wilfully injures or causes death to an individual receiving the services provided by a registered provider.

Should this Section be permitted to remain, then the same punitive penalties should extend to employees of the Australian Aged Care Quality and Safety Commission, employees of the Department of Health and Ageing and to the Ministers and politicians of Governments who along with Board Directors/Members and Responsible Persons, are engaged in regulatory governance.

In the above context, Chapter 6, Part 4, Division 5, Immunity of officers and persons assisting, 222 Protections from liability for authorised Commission officers and persons assisting, resolving such Government personnel from any liability or civil proceedings etc., must be removed.

### **Division 3, Compensation pathway**

127, Compensation orders: This proposed compensation pathway will merely encourage and strengthen a disgruntled complainant to litigate in a culture that embraces litigation generally.

This Division is not supported and must be removed. It is unnecessary. Any person who believes that they have evidence to support a claim for compensation may take a civil action and pay the consequences, if they fail.

## **Chapter 5, System Governor**

132 (1) (b): Detail and clarity is required as to how the System Governor, will “support the continuity of funded aged care services when the delivery of services by a registered provider is disrupted”;

132 (1) (c): The reference to ‘high’ quality care should be removed as stated earlier unless a specific definition of what “high’, is provided;

132 (1) (c) (ii): “promoting the availability of funded aged care services in areas of unmet demand”, should read, promoting and providing;

## **Division 6, Financial and Prudential Standards**

163 (2) (a) (ii): It is unacceptable for registered providers that are “government entities” to be excluded from the requirements of Financial and Prudential Standards;

164 (1) (a) and (1) (b) (ii): What are the solutions if the registered provider does not remain financially viable and sustainable?;

164: An upgrading of nomenclature is required in relation to accommodation bonds and entry contributions, to reflect current vocabulary and to avoid confusion with entry contributions associated with retirement villages and retirement villages’ State Acts.

## **Division 7, Worker Screening**

This section is most welcomed and I suggest that all client groups engaging in care, be registered in a National Database of Care Workers. The Database should be accessible by all Care Registered Providers and be free with no fees involved.

## **Part 5, Complaints Commissioner**

This Part needs to advise and encourage the use of the registered provider’s own Complaints System.

## **Chapter 6, Part 4, Division 5, Immunity of officers and persons assisting,**

222: Protections from liability for authorised Commission officers and persons assisting which resolves such Government personnel from any liability or civil proceedings etc., must be removed in the context of this Division and Chapter 3, Part 5, Statutory duty and compensation, Division 1 Provider and responsible person duties.

**Division 4, Notices to attend to answer questions or give information or documents,**

278 Notice to attend to answer questions etc. relevant to Commissioner's functions (1) (a): There should be a Statute of Limitations in relation to a time period after a registered provider and responsible person has terminated their responsibilities or have left the registered provider.

**Part 12, Banning orders**

287 (1): A banning order prohibiting or restricting a responsible person or an aged care worker in a range of responsibilities, is welcomed.

292 Banning orders are not legislative instruments: Clarification is needed as to what is meant by this.

296 (6) (a) Making a Register of banning orders publicly available: is welcomed.

**Chapter 6, Part 15, Authorised Commission officers and authorised System Governor officers, Division 1, Appointment,**

313 (1) (b) The Bill needs to outline the training and qualification requirements of Commission Officers, it doesn't.

**Chapter 7, Part 5, Whistleblower protections,**

This Section is unnecessary and should be removed.

356: As submitted earlier, this is unnecessary. An Aged Care Act should encourage and promote individuals to use the complaints system of a registered provider in the first instance and when needed, the Commissioners process. '

There is a significant threat of vexatious and unreasonable persons using this protection to avoid any complaints process in place, threatening cost, reputation etc. of the registered provider or individuals unfairly and without any accountability or responsibility. The identity of the whistleblower would be protected but potentially not that of an individual against whom untrue allegations, might be made

It is unfair and should be removed;

357 (2): There is nothing to stop a potential 'Whistleblower' who should be known and treated more precisely as a "complainant", to be encouraged and directed to avail of all systems readily available under internal and external complaints systems and intended to be available under a new Act with Offices of and additional Offices such as, the System Governor, the Commission, the

Inspector-General of Aged Care, the Police and any range of organisations advocating and representing older persons.

#### **Chapter 8, Part 4, Appointment of supporters and representatives**

The proposed inclusion of supporters and representatives is unnecessary and this Part, should be removed in its entirety.

Should it be permitted to remain, it would confuse the existing instruments of Powers, Power of Attorney; Enduring Power of Attorney; Guardian; Enduring Guardian; Powers of the Office of the Guardian; Powers of the Guardianship Tribunal.

It would bring the holders of such powers into potential conflict with supporters and representatives.

It would create an additional and new bureaucracy that is unnecessary within the Aged Care Industry.

I trust this submission is of assistance and please feel free to contact me if I can clarify or assist further.

Yours sincerely



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