

# LDK Seniors Living Response to the Exposure Draft Aged Care Bill

8 March 2024

Prepared by: Byron Cannon, CEO

**LDK**  
SENIORS' LIVING

# 1. Endorsement of other Submissions and Introduction

---

1. LDK welcomes the opportunity to respond to consultation on the new Aged Care Act (Exposure Draft) (the "Draft Bill").
2. LDK has had the opportunity to peruse the following submissions provided to the Department:
  - a. A letter dated 29 February 2024 signed by General Counsels of the following organisations:
    - i. Catholic Healthcare;
    - ii. Hammond Care;
    - iii. Baptcare;
    - iv. Australian Unity;
    - v. Anglicare Sydney
    - vi. Mercy Health;
    - vii. Calvary
    - viii. Opal Healthcare;
    - ix. Southern Cross Care (NSW and ACT);
    - x. BaptistCare;
    - xi. Knowles Group and Arcare;
    - xii. Regis Aged Care;
    - xiii. RSL Lifecare;
    - xiv. Villa Maria Catholic Homes; and
  - b. Response to the new Aged Care Act (Exposure Draft) by Anglicare Sydney dated March 2024.
3. LDK fully endorses and adopts the submissions outlined in these two documents.
4. LDK also supports the submissions prepared by ACCPCA and the Retirement Living Council.
5. For the sake of brevity, LDK does not intend to repeat the submissions made, but wishes to note its adoption of those submissions.
6. It is extremely difficult to form a meaningful interpretation and conclusion of the Draft Bill and prepare our business for further legislative burden and compliance, when key components are missing, including:
  - a. the Rules;
  - b. the Aged Care Taskforce findings;
  - c. the framework for the new Support at Home Programme.
  - d. the missing Parts of the Draft Bill not yet drafted, particularly around funding, prioritisation and allocation of places, and financial requirements.
7. LDK is committed to working with the Government and would welcome the opportunity to meet Government representatives at our Greenway Views Village. This would be invaluable to explain the practical implications of the Draft Bill and how it applies on the ground.

## 2. Residential Care Home in a Retirement Village Setting

---

1. LDK welcomes the concept of higher levels of care being funded in a retirement village setting. LDK has proudly innovated this concept and has spent many hours with Department officials and consultants providing information and examples of this initiative.
2. LDK provides all levels of care to our residents including secure dementia care, high care and palliative care, all within a retirement village. Residents fund the payment of the care through home care packages, DVA, privately, or a combination of these.
3. Many other operators are now following and adopting the LDK Model, which delivers quality care to residents in a retirement village setting, without the financial burden on government that residential aged care brings.
4. Importantly, the Draft Bill is silent on the interrelationship between funding as a residential home care provider in an RV setting and all the practical complexity this brings.

### **Separating Care Funding from Accommodation**

5. Care funding and Accommodation funding need to be separated in the context of retirement villages. Without this separation being clearly articulated in the Draft Bill, there is risk of confusion.
6. It is inconceivable that the delivery of “residential care home” funding could then bring a compliance obligation surrounding the accommodation funding and creation of a different accommodation model (ie RAD) in a retirement village setting. This would trigger breaches of contracts with residents and the state based retirement villages legislation.
7. Attached and marked Annexure A and B are questions posed to the Department detailing concerns on this issue, and the response received. With the greatest of respect to the Department, the response does not answer the questions with any form of clarity or detail.

### **Regulation should follow Funding**

8. Regulation and compliance should follow the funding, irrespective of where it is being delivered. The Draft Bill introduces the concept but falls short on detailing the interrelationship between the federal legislation for funding and state based Retirement Villages legislation.
9. A provider should be able to provide home care funded services and “residential care home” funded services in the one place (obviously with appropriate registrations in place) and have the flexibility to turn the funding on and off within a retirement village depending on what level of care a resident receives funding for.
10. For example, one apartment in a retirement village could:
  - a. today have a completely independent resident receiving no care; and
  - b. tomorrow that resident could suffer a fall and require care through a home care package; and then
  - c. in the future that same residents care needs escalate and they qualify for residential care home funding.
11. The operator should not need to demonstrate “residential care home” compliance in the first 2 examples above, but when the resident qualifies for residential care home funding and the operator commences delivery, then the compliance obligation begins. The Draft Bill is not clear on this, or a situation where in the same apartment, one resident is independent and the partner has high care needs.

12. These examples highlight that compliance should follow the funding.
13. Whilst it is recognised that the Government has introduced this concept, a lack of clarity will create significant risk for future investment as investors will not have the appetite to invest without certainty.

### 3. Risk to Investment into the Sector

---

1. It is broadly publicised that there is a significant undersupply of care and appropriate accommodation for our seniors in Australia.
2. There is a significant risk of much needed investment into the sector if financiers and investors do not get comfort on the following:
  - a. The separation of care funding from accommodation; and
  - b. Importantly, the criminal liability imposed in the legislation. It is difficult enough now to attract independent directors and staff to the sector as well as investors. Introducing this draconian concept is counter to the objectives of the Act and to the recommendations of the Royal Commission (recommendation 101 proposing civil, not criminal penalties).
3. LDK is aware of other operators, including Retirement by Moran in Sydney, who face the reality of losing hundreds of millions of dollars in much needed investment if these issues are not rectified. That would be a very sad outcome for senior Australians.

Dated 8<sup>th</sup> March 2024

Byron Cannon

CEO

## Annexure A – Questions to the Department

Hi,

I have had the opportunity to read through the material provided. On the face of it, it appears to really focus on the consumer which is very encouraging. Your website kindly invites questions on the draft – thank you for the opportunity to ask questions.

S9 of the draft introduces the concept of higher levels of care being provided in a Retirement Village (“RV”) setting and the definition of *Residential Care Home* (“RCH”) includes places in a RV that fit within the definition.

There are large portions of the Bill that remain undrafted, and the absence of this detail raises many questions. I have read nearly everything that you have on your website and can’t find the answers to the below. Forgive me if I have missed them.

As an approved provider for funded aged care that delivers 24/7 care (through home care packages) in a RV setting through to end of life (including secure dementia), I have some threshold questions as follows that relate to our model and the inter-relationship between the Commonwealth legislation for funding aged care, and the State based RV legislation:

1. Is the intent of the Act that the funding for “RCH” is separated from the accommodation. It appears from my readings that the consumer will have the choice on where they access their care (s20). For example, residents living in a RV could access RCH funding for care in that RV (assuming the provider of care is registered), but the property transaction remains with the operator of the RV and within the RV regulation;
2. The draft refers to a “place” within a RV potentially being a RCH. Does this mean that a provider would apply for registration for the places in the RV to provide RCH funded care, and then residents could then choose whether they access funded RCH aged care, or pay privately in that setting?;
3. It seems inconceivable that the draft Bill could deem parts of an RV to be a RCH for both property and funded care. This would trigger a breach of the state-based RV Acts as it would change the RV Scheme and also remove a “service” under the RV Act, both of which require special resolutions of residents. Can you please confirm this is not the intent?;
4. S9(5) allows for circumstances where the rules prescribe “a place is taken to be 2 or more separate places” and vice versa. Does this mean that a RV unit could be a RV unit for the purposes of accommodation, but a RCH for the purposes of funding?;
5. Following the above, if a husband and wife live in a 3-bedroom RV apartment and the wife is assessed for RCH funding but does not want to leave her home, does 9(5) then allow that apartment to be treated as an RCH for funding and an RV for accommodation at the same time, thereby allowing care to be delivered and keeping them both together? We have numerous examples of this situation;
6. We are an approved provider for both home care and residential aged care; however, we have not activated the RAC funding. Would we continue our registration for home care, but have to apply to be registered for RCH funding and go through the audit process, should we choose to become registered for the purpose of accessing higher funding for our residents in our RV?
7. The RCH funding brings higher levels of compliance. Does this compliance only apply to “places” within an RV where RCH funded care is provided?;
8. If a consumer is assessed for RCH funding, but does not wish to go to a RCH, how can they access funding (noting they have choice under s20)? Is it through a lower-level home care package with less funding?;

9. When do you anticipate the undrafted Parts of the Bill, and the rules, to be released? It is very difficult to gain a meaningful understanding, and therefore provide meaningful submissions, without the extra detail around funding, subsidies and financial requirements.

There are numerous more questions, but the above will assist greatly to understand the intent and interpretation of the draft Bill.

Thank you for your time to read through this. I would be more than happy to participate in a Teams meeting, meet in person, or have a phone conversation with a representative. I would also be more than happy to host representatives at our Village in Greenway Views to provide more context and assist you to understand our questions.

Kind regards,

**Byron Cannon**

*CEO*

**A** LDK Seniors' Living,  
Level 10/200 Mary Street,  
Brisbane City QLD 4000

**E** [bcannon@LDK.com.au](mailto:bcannon@LDK.com.au)

**M** 0412 436 600

**P** 1300 535 000

LDK SENIORS'  
LIVING

[LDK.com.au](http://LDK.com.au)    

**LDK Academy**

*LDK is leading change for Senior Australians. Working with us you can expect a 5-star employee experience, industry leading employee engagement scores and growth through our LDK Academy. Our people are passionate, live and breathe the values of love, decency and kindness every day, and have a whole lot of fun doing it!*

# Annexure B Departments Response

Hi Mr Cannon,

Thank you for your correspondence from January 16, 2024. We appreciate the time you've taken to send through your questions on the Exposure Draft of the Bill for the new Aged Care Act and apologise for the delay in response.

As you are aware the new Aged Care Act will regulate Commonwealth funded aged care services delivered in the home or community and in approved residential care homes. The intention of new Act is to improve flexibility in use of accommodation for aged care and to allow for innovation in the aged care sector.

As such, we've ensured the definition of a residential care home can include retirement villages, but only where a part of the retirement village has been converted to meet the definition of a residential care home at subsection 9(2) of the Bill. Additionally, to be an approved residential care home, and as such be eligible for subsidies and subject to relevant regulation, the Commissioner must be satisfied that there are no major concerns with the entity's ability to comply with the Aged Care Quality Standards that are applicable to the residential care provider registration category. This is in line with section 68 of the Exposure Draft.

Currently funded providers of aged care will be transitioned to the new Aged Care Act. Details on transition for providers are intended to be available before the new Aged Care Act is introduced in Parliament.

To address your queries around consumers choice in where they access care, under the new Act for a registered provider to be paid subsidy for an individual, the individual must hold the appropriate approvals. For example, if an individual holds an approval for permanent residential care, but not home care, they will have to undergo an assessment and seek approval for the home care service group before they could access funded aged care services through that service group. If they have approvals for both, the individual could choose between permanent residential care or home care.

As you note in your final point, some aspects of the Bill are not included in the Exposure Draft. These, which include Chapter 4, will reflect existing arrangements under the current aged care legislative framework and are not the focus of the current consultation process. Existing provisions will, however, need to be re-drafted to fit into the new Act. Some parts of the Bill, such as fees, subsidies and means testing, are also under active consideration by the Aged Care Taskforce, so further changes may be included following decisions of Government. We will consult on such matters separately where required, as well as on any policy changes not yet included in the Exposure Draft.

Aspects of what will be included in the Rules have already been consulted on, such as the strengthened Aged Care Quality Standards. We are aiming to release the Rules while the new Act is in Parliament as this will assist the public and Senate Committees to understand the new Act as a whole. Any consultation on the Rules would be concurrent with passage of the new Act through Parliament.

We thank you for the remainder of the queries you have raised, and we will continue to explore the interaction of the new Act with other legislation after the Exposure Draft.

We encourage you to keep engaging with us throughout the consultation for the Bill for the new Aged Care Act.

Kind Regards,

[Redacted]

Legislative Reform Branch



Quality and Assurance Division | Ageing and Aged Care Group

Australian Government Department of Health and Aged Care

[Redacted]