



7 March 2024

Department of Health and Aged Care - New Aged Care Act Consultation
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Email: AgedCareLegislativeReform@health.gov.au

Re: Exposure Draft review

About Ryman Healthcare

Ryman Healthcare is a New Zealand-based business that owns and operates 40 retirement villages in that country, and eight in Victoria. All Ryman's villages integrate independent retirement living with a full suite of residential aged care services, including home care to village residents. Our villages are home to 14,200 residents, and the company employs 7,600 staff.

General Feedback

Ryman Healthcare generally supports the reforms proposed in the exposure draft of the new Aged Care Bill 2023, which aims to address findings from the Royal Commission into Aged Care Quality & Safety (the Royal Commission). Introducing a rights-based legal framework and strengthened quality standards, while placing older people at the centre of decision making, is supported

Implementation timeframe

The proposed deadline of 1 July 2024 for commencement of the new Aged Care Act does not provide sufficient time for consultation, completion of the Bill and supporting legislation, or the parliamentary process.

The Government's aim to meet the Royal Commission's recommendation for the new Bill to become law no later than 1 July 2024 is noted, but this should be

secondary to ensuring a full, thorough and transparent consultation process leads to the best outcome for older Australians.

Sections of the new Aged Care Bill have yet to be drafted and will require supporting legislation. Some of these have financial and operational impacts on providers that require consultation.

Currently, “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”.

The full implications of the Bill are therefore unknown, significantly limiting the extent to which Ryman – or the sector at large – can provide meaningful feedback.

Recommendation: That the consultation and implementation timeline be lengthened in order for the recommendations of the Aged Care Taskforce to be handed down, and any resulting responses by Government to be fully understood.

New Statutory Duties

The Bill imposes new statutory duties that providers must meet and mandates compensation for breaches of duties leading to injury or illness.

The Aged Care Quality and Safety Commission encourages supporting a resident’s choice to accept risks to help them to live the life they choose. The Aged Care Charter of Rights states that residents must be enabled to make choices, including where those choices involve personal risk. The provider should not be penalised for an injury or illness resulting from a resident’s informed choice to take risks. This should be considered in legislation to be drafted.

Ryman does not support the proposed responsible person duty in section 121 of the Bill. Ryman believes the proposed statutory duties are disproportionate given these duties are not in force in other similar sectors, such as health and disability.

These provisions could also adversely impact recruitment within the aged care sector, which is already experience serious workforce shortages.

The new statutory duties of a responsible person can be applied to a broad cross section of aged care staff, many of whom have little influence or control over the strategic direction or governance of a provider. Under the proposed framework, staff may face fines and penalties beyond the remit of their role.

In particular, the sector is in dire need of nursing staff, who will be exposed to risk under the proposed penalties. The increased workplace risk will pose a deterrent to leadership staff considering aged care as a career, as has been seen recently in the reluctance of senior advisors to join aged care boards.

Recommendation: The size of the penalties outlined should be reduced and the strict liability components of sections 120 and 121 should be removed.

Ryman is also concerned that the prospect of compensation may drive vexatious claims.

Proposed civil and criminal penalties will impact insurance premiums for public liability and personal indemnity insurances. This is an unreasonable burden on registered providers.

Work Health and Safety legislation already holds a registered provider liable for their actions.

Recommendation: Remove the statutory compensation pathway under section 127.

Registration

The exposure draft proposes a requirement for providers to reregister every three years. When combined with the suggested new civil, criminal and compensation pathways, this will give investors pause before funding residential aged care at a time when the build rate needs to increase. The value of a business that is licenced for such a short tenure is likely to impact lending decisions and the cost of capital.

There is already a regime of unannounced spot audits to test a provider's quality of care, with results posted in the public domain for transparency.

Recommendation: The requirement for providers to re-register every three years should be removed.

Interactions with state and territory legislation

Ryman shares industry concern that existing state RV Acts expressly distinguish themselves from aged care facilities under the Aged Care Act 1997. Additionally, there are a number of separate rights and responsibilities for operators and residents alike which differentiate retirement living units from aged care "places". An immediate example is dispute resolution mechanisms and how these would change after an existing resident has converted between acts.

From a land tenure perspective, we would like further clarification about the impact a conversion would have on the ingoing contribution a resident makes to a retirement village versus the refundable deposit schemes which operate under the existing Aged Care Act.

Currently, for operators like Ryman who have co-located retirement villages and residential aged care, this is catered for through a variation in contract; however, we seek further clarity to understand how the government sees this working at scale.

Recommendation: Further analysis is conducted to understand the interaction between the Bill and the relevant state and territory Retirement Villages Acts

Comments on specific provisions of the Bill

Inclusion of Retirement Villages in Section 9 - where funded aged care services are delivered

Ryman notes the inclusion of 'retirement villages' in the definitions of a residential care home per s9(2) and s9(3)(b):

9 (3) To avoid doubt, a residential care home includes any of the following places:

(a) a place within a hospital or other health service that is covered by an agreement with the Commonwealth to deliver aged care services alongside existing health services as a part of an integrated service arrangement;

(b) a place within a retirement village that has been converted to a place described by subsection (2);

(c) a place which is a complex of buildings.

While the addition of retirement villages in the Bill can be viewed as recognition of the increasing role the retirement living sector plays in providing government-funded care, support and wellness services, serious questions arise regarding the practical interpretation and implementation of s9(3)(b).

However, the consultation that occurred prior to the release of the exposure draft did not include the possibility of retirement villages being captured in the new Aged Care Act.

As there is no definition of 'retirement village' in the Bill, Ryman reads that a retirement village is understood to be defined per the applicable *Retirement Villages Act* for the state or territory where the village is located. Should references to retirement villages remain in future iterations of the Bill, this should be clearly defined.

Recommendation: A definition should be included for retirement villages within the meaning of the applicable Retirement Villages Act for the state or territory in which the village is located.

Thank you for the opportunity to provide our feedback on the proposed new framework, which presents a once-in-a-lifetime opportunity to design a structure that delivers older Australians the quality of care and the voice they deserve.

Yours Sincerely,

Cameron Holland

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