

8 March 2024

Department of Health and Aged Care - New Aged Care Act Consultation
GPO Box 9848
Canberra ACT 2601
Australia
By email only: AgedCareLegislativeReform@health.gov.au

To Whom this May Concern,

RE: Endorsement of Autonomy First Lawyers Submission on Aged Care Bill 2023

We the Society of Trust & Estate Practitioners Australia Pty Limited (STEP Australia) represent professionals from across Australia who are specialists in trusts, estate planning and in supporting the needs of families (young and old, wealthy and modest). The objective of a STEP Professional is to advance the interests of families across generations. This often involves us in identifying issues of relative importance to families and bringing these to the attention of those who can make a positive difference. This is the purpose of this submission.

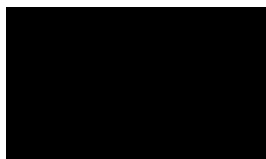
STEP Australia's membership includes lawyers, accountants, financial wealth advisors and trustee company professionals from across Australia; our members bring a multi-disciplinary approach to the benefit of their clients. It is this unique multi-disciplinary approach that supports this submission.

STEP Australia endorses the submission prepared by Autonomy First Lawyers dated 7 March 2024 concerning the "Age Care Bill 2023".

More detailed information is contained in the Submission attached.

If you would like to discuss any of the above, please contact myself, Ian Raspin TEP, STEP Australia Board Chair, on email [REDACTED], and/or Jennifer Sheean TEP, STEP Australia Policy Chair, on email [REDACTED]

Yours sincerely



Ian Raspin TEP
Chair of STEP Australia



Jennifer Sheean TEP
Chair of the STEP Australia Policy Committee

Aged Care Bill 2023 Consultation Submission

Autonomy First Lawyers Pty Ltd (AFL)



About Autonomy First Lawyers

Autonomy First Lawyers (AFL) was formed in March 2020 by Michael Perkins, an experienced trusts and estate lawyer, and Dr. Jane Lonie, a specialist clinical neuropsychologist. Their vision was a professional practice blending law and clinical neuropsychology to help people with impaired decision-making ability exercise their decision-making rights.

Building on the extensive experience of Michael, Jane and the rest of the firm, AFL has become a successful advisor for clients with impaired decision-making ability, as well as for the appointed carers and family members of these potentially vulnerable clients.

Today, the firm has evolved into being a private client-focused law firm with strong collaborative working links with allied professions, including clinical neuropsychology, accounting, tax, financial services, financial planning and dispute resolution.

The firm uses this knowledge and practice to build on the decades of experience of its founders to help its clients, their families and supporters to plan and respond to the demands of ageing. This includes dealing with the impact of ageing and/or disability on clients' ability to make crucial decisions about their future care and about their estates.

This practice approach is particularly appropriate in supporting the efficacy of the Aged Care service landscape being addressed by the current Aged Care Bill. AFL is already using the frameworks and processes set out in ISO 44001 to guide the evolution of its multi-disciplinary practice pilot projects. These projects are underway with the Institute for Collaborative Working Australia and Elysium EPL, a leading consultancy in the deployment of ISO 44001 in Australia.

As a result, we at AFL are well-placed to comment on the features of the proposed Aged Care Bill. This submission reflects not only our reading of the proposed Bill and its supporting materials, but also the experience of Michael Perkins and Amber Geake from the firm, who attended a consultation workshop about the Bill in Parramatta, NSW, on 5th February 2024.

Aged Care Bill Consultation Submission

Introduction

We have reviewed the joint submission of COTA and OPAN titled Unpacking the exposure draft of the new Aged Care Act and published at <https://opan.org.au/about-us/news-and-events/consultations-2024/>.

We are broadly in agreement with this submission and have adopted its 23 submission headlines as a framing for our submissions about the Bill.

We remain concerned that, without the publication of the funding mechanism proposals for the Aged Care Act and its supporting regulations, we can only deal with high level issues and not the detailed day to day impact of the legislation on our profession and the communities we serve.

We would be pleased to speak further to these submissions at any time.

1. The new Aged Care Act must commence on 1 July 2024 and be reviewed every three years

Whilst this is a laudable aim, we observe that the Bill as currently published is incomplete and without its supporting Regulations which will give a more detailed account of how the Act would be implemented at the 'coal face', it is difficult to consider the efficacy of the day to day operations of the Act on the basis of currently published information.

We commend the proposal that, in addition to the proposed three-year global review period, there is also to be an extended period for transition to the new system and an expectation of further amendments to the Act being made responsively in the short term, as the experience of the transition is accumulated.

We note the operation of the Act is constrained to facilitate the provision of Commonwealth Funded Aged Care services in a way consistent with the human rights of care recipients. It is not intended, at least on our reading, to interact with other legislation that deals with the human rights of citizens.

This lack of interface to other key legislative regimes at a State and Federal level is noted. Resolution of these issues is outside the remit of this consultation. In our opinion these issues will have a significant impact on the deployment of the Act in the community.

2. The Act must take a human rights-based approach with a focus on wellbeing, reablement and quality of life.

Whilst agreeing with this objective, we propose this focus be qualified to read: focus on wellbeing, reablement and quality of life consistent with the values, wishes, objectives and cognitive limitations of the care recipient.

3. Providers must have a positive duty to uphold rights, with pathways for older people to complain if they do not.

Aged Care recipients under this Act should have similar pathways for redress as those which exist under the retirement villages legislation in each state.

4. Ensure principles of choice and control, consumer directed care and self-management are embedded in the Act.

This is a positive objective, but it does not respond to the risk of a person's decision-making being subject to abuse or coercion. There is no indication how this objective interacts with state legislation for personal representation or the functions of a supporter or representative under the Act to facilitate the protection of the human rights of a care recipient.

Methods of making service provision responsive to the situational risk of the care recipient are not included in the legislation.

Furthermore, we are unsure whether this Act is the right place to deal with responding to the situational risks of a person which may endanger the exercise of their rights and accessing benefits. For example, the Law Society of NSW has identified the following risk situations for particular attention:

1. a client's attorney is acting beyond their authority, particularly where it does not benefit the client;
2. a client is transferring property for little or no consideration (including by way of a gift);
3. a client is due to receive a large sum of money and wishes to have it paid to another person, such as a relative;
4. a relative or friend insists on being present at appointments with you, especially where the client might need an interpreter;
5. although the client has assets, their expenses are not being paid, or they report losing money/valuables or being charged for services/overcharged in circumstances where this would be unexpected, such as a relative shopping on behalf of a client;
6. a client presents with bruises, or displays fear or anxiety;
7. a vulnerable client suddenly changes to a new solicitor;
8. a client asks you to be their attorney or guardian because they do not trust anyone else;
9. the matter involves financial transactions that cannot be readily explained; or
10. the client is experiencing social isolation and dependence, usually dependence on an adult child.

We commend that risk responsiveness be brought into the objectives for delivery of services and that that rules 4 and 8 of the Solicitors Conduct Rules apply to all professional dealing with the Aged Care rights of a person including any advocate, supporter or representative recognised under the Aged Care Act.

We also propose that the introduction of an incidental advice exemption patterned on that dealing with financial advice under the Corporations Act be included in the Aged Care Act for any person in the ordinary course of business of being a professional of any discipline rather than only an Aged Care service provider, be exempted from the definition of Aged Care Worker, Aged Care Provider or Responsible Person^[1].

5. Recipients need to be able to draw on independent advice that is not aligned to Aged Care providers when making informed choices about the Aged Care services for which they are contracting. Older people can make decisions and receive the support they require to make decisions when they need it.

We commend the objective, however, we ask what is the safety net for dealing with protecting the vulnerable as defined by Competition and Consumer Law, as well as current state-based legislation.

Moreover, we remain concerned that the limited focus of the Act makes it a difficult context in which to deal with these issues.

Aged Care Providers and services providers as defined in the Act need to have a global obligation to deliver their services in ways that respond to and respect as far as practical the cognitive limitations of a client. This should likely include requiring the interaction of supporters and representatives in their various forms to assure the efficacy of delivery of the services being requested.

There is currently no way we can observe that the Aged Care System can be made responsive to an order of a State Court or Tribunal when dealing with provisions of services to a person. This needs to be corrected.

6. The Complaints Commissioner should have direct independent statutory authority and functions.

Agreed.

7. The Complaints Framework must be in the Act.

Agreed.

8. Equitable and timely access to Aged Care services must be guaranteed within 30 days of application

Agreed.

[1] These are defined terms under the Aged Care Bill.

9. Eligibility for early access to Aged Care must be expanded.

We find there is an insufficient interface between the operation of funding between Aged Care, Health, Disability Services (including NDIS) Veterans Services and State based programs for home and community care delivery.

While it is necessary to make sure appropriate funding is used for all care delivery contexts, the potential for harmonisation of delivery of care across all funding sources should be readily apparent.

10. Aged Care Residents must have an absolute right to visitors in all situations.

Yes, but whilst the existence of the right may be a fact, guidance on the appropriate exercise of the right needs further elaboration.

11. The role of independent professional advocates must be recognised in this Act.

Yes, but this needs to be extended to all professional advisers engaged by a person to assist them to manage the delivery of their care and Aged Care services. These workers also need the protection of an incidental advice exemption when dealing with the Aged Care rights of a client as defined by the Act.

These protections also need to be extended also to volunteers and advisory board members supporting the operation of all forms of Aged Care Service providers.

12. Diversity must be further strengthened within the Act.

Agreed.

13. Disability Supports must be explicitly referred to in the Act.

This should be resolved by the action under objective 11 above.

14. Carers must be included within the Act.

We agree with this objective, but believe carers need to be defined in all delivery settings including:

- Home – informal carers
- Home – formal employed carers.

These definitions should be similar to those operating in residential Aged Care, Aged Care villages, retirement villages and community care settings.

Care must be taken to limit the criminalisation of activity of informal carers and volunteers who interact with the Aged Care System. We believe only civil liability for their actions should apply to these workers.

15. Providers that state their services are 'high quality care' must comply and opt-in to an audit against that definition.

We commend and support this objective provided it applies both to Aged Care providers as well as the services offered through digital platforms.

16. Providers need to demonstrate an ongoing commitment to service improvement.

Agreed, provided it applies both to Aged Care providers as well as the services offered through digital platforms.

17. Act protections should apply to all Aged Care services – government funded and private.

We support this objective and suggest it be extended to services offered through digital platforms.

18. The Act must ensure consistent transparency of information.

Agreed.

19. Fees, contributions and government funding must be fully transparent, fair, equitable and provide quality services.

Agreed.

20. Language needs to be consistent and easy to understand.

Yes, and the language has to be appropriate to the cognition and other conditions of vulnerability of the Aged Care recipient which are clearly recognised in this Bill.

Communication needs to respond to the vulnerability of a person accessing the system and be understood by them or their representatives.

21. Better protections for older people on the use of restrictive practices

Agreed.

22. New security of tenure provisions must be included in the legislation.

We believe these should be aligned to the retirement village provisions under State law.

23. Clearer consultation timelines for the Support at Home amendments for the new Act.

Agreed.



Michael Perkins

Michael Perkins is a lawyer, author and educator with over 30 years of experience in trusts, estates and private client practice. He is co-author of the book "Estate Planning: A Practical Guide for Estate and Financial Services Professionals", published by LexisNexis. [Read more...](#)

Amber Geake

Amber Geake is a passionate advocate who has been working in the legal sector since 2016. Amber's focus is on all matters dealing with estates, including succession planning, estate administration and estate litigation. [Read more...](#)



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