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Submission to the Inquiry into the Aged Care Bill 2024 [Provisions]

Via: community.affairs.sen@aph.gov.au

About Us

Founded in 1978, the Aged Care Industry Association (ACIA) is a member-based, not-for-profit organisation dedicated to advocating for the interests of aged care providers. Our primary goal is to ensure providers remain financially and operationally viable, enabling them to deliver personalised care that meets the needs of Australia's rapidly aging population.

ACIA is governed by a board of experienced aged care providers, elected by their peers, along with industry advisers co-opted for their expertise. Collaboration and advocacy are central to our mission. We are committed to addressing the daily challenges faced by our members, many of whom are small to medium-sized enterprises. Whether through raising public awareness or partnering with other organisations to develop solutions, our focus is always on keeping our members at the heart of everything we do. We support providers so they can continue delivering exceptional care to those who need it most.

Introduction

ACIA welcomes the opportunity to submit to the Community Affairs Legislation Committee Inquiry into the Aged Care Bill 2024 [Provisions] (the Bill). While we appreciate the long-overdue introduction of the Bill, we are disappointed that this has occurred so late in the parliamentary term and still lacks critical detail, much of which, we are informed, will be addressed in subordinate legislation.

We find ourselves conflicted. On one hand, we feel the need to strongly advocate for the swift passage of the new Act, as it offers much-needed certainty for older Australians and the aged care sector. On the other hand, we are deeply concerned that the tight timeframes we now face may not allow for sufficient scrutiny of the Bill and its associated instruments, potentially leading to unintended consequences, which may not easily be corrected once the legislation is settled.

When considering the timeframes, we understand that all stakeholders are committed to achieving the best outcomes for older Australians. While some risks may be mitigated through transitional arrangements and careful drafting of the rules, we recognise parallels with the National Disability Insurance Scheme (NDIS), which was also introduced hastily towards the end of the Gillard Government's term. Over a decade later, the NDIS remains unsettled, as recent reviews and legislative amendments illustrate.

To avoid similar long-term challenges in the aged care sector, it is essential that, moving forward, those responsible for implementing the scheme—providers, advocates, and other key stakeholders—along with older Australians, are fully engaged. This will allow for valuable input, the early identification of potential issues, and the assurance that the legislation and regulations are as

practical and effective as possible. Engagement is the cornerstone of successful policy implementation. It requires more than simply referencing the Aged Care Royal Commission or conducting limited consultations. True engagement fosters genuine two-way dialogue, actively listens, incorporates feedback, and ensures transparency throughout the process.

ACIA acknowledges that, from our perspective, there have been positive changes since the circulation of the exposure draft of the Bill, including the removal of explicit criminal penalties. We thank both the government and the opposition for their bipartisan efforts in facilitating these improvements. We also commend this Senate Committee (the Committee) for its ongoing work to ensure the development of a legislative framework that will support a compassionate and robust aged care system capable of enduring over time.

Where We Believe the Bill Could Be Strengthened

Summary of Recommendations:

- **Allocation**
Implement a needs-based allocation system for aged care services. If not adopted, improve the Bill by requiring multi-year allocation forecasts and provisions for reallocating unused places based on clear criteria. Additionally, mandate the publication of accurate wait times for access to funded aged care services.
- **Prioritization**
Amend the Bill to ensure that all people assessed as eligible for residential care are categorized as high priority.
- **Aged Care Quality and Safety Advisory Council**
Shift the responsibility for managing conflicts of interest from the Minister to Advisory Council members, with the obligation to declare any conflicts throughout their tenure. Encourage the Minister to seek expressions of interest before filling vacancies and consult with the Ministerial Council on appointments.
- **Quality Care Worker Voice Body**
Remove Section 158(5) to reduce unnecessary administrative complexity, as the Quality Care Advisory Body already ensures representation from key stakeholders.
- **Support at Home**
Ensure transparent and adaptable pricing mechanisms for the support-at-home model to avoid challenges like those in the NDIS. Seek input from IHACPA on best pricing practices and ensure the rules for setting fees align with those practices.
- **Subsidy Calculation Process**
Move the subsidy calculation method for home support to the rules for flexibility and introduce discretionary payment options where errors occur. Amend the date-of-death clause to allow the rules to contain exemptions for payments post death in specific circumstances.
- **Section 177 and associated clauses**
Clarify resident rights in the Bill to ensure that regulatory access to residential care homes does not infringe on residents' personal living spaces without consent, unless in exceptional circumstances.

- 358 Complaints functions
We recommend adding a function that allows the Complaints Commissioner to accept and act upon mediation requests from providers.
- Services Australia
ACIA is concerned that Services Australia may not have the capacity to efficiently manage the increased assessments required under the revised subsidy framework. Proposed solutions include increasing resources to accelerate fee notifications, assigning dedicated account managers to support providers, and providing specialized staff training to enhance the accuracy and efficiency of assessments.

Discussion of Key Issues

Allocation

In the 2024 progress report on the implementation of the recommendations of the Royal Commission into Aged Care Quality and Safety, the Inspector General of Aged Care emphasised the importance of revisiting the Royal Commission's recommendations. Specifically, the report highlighted that, in finalizing the new Aged Care Act, the government should work toward implementing a seamless, needs-based aged care system. We strongly support the Inspector General's recommendation.

Under Division 1 of Part 5, the Minister is required to establish a process for determining how many aged care places will be available for each service group in a given financial year. This may include specific rules for allocating places based on type and level of care. The decision must be made before the fiscal year ends, though it can be made earlier. Before finalizing the decision, the Minister must consult with the Finance Minister.

Our concern is that, in the absence of a needs-based system, allocations will be based on government projections with a budgetary overlay, which may not always reflect real-time or regional demand. As a result, some areas may experience shortages of aged care places, while others may have an excess.

While we recognize that this is the current mode of operation for Home Care Package recipients and acknowledge the detrimental impact long wait times have on those in need, we want to stress that in the future, similar waitlists are likely to emerge for residential care, where the acuity of those waiting will be even higher.

Setting aside the personal cost to those on waitlists, annual allocations, which the Bill allows to occur as late as the end of the financial year, are likely to make it difficult for the market to respond effectively. As allocation numbers fluctuate, providers may not have the flexibility to adapt within the required time frames to meet shifts in demand or care requirements.

The uncertainty surrounding yearly allocations may also discourage some providers from investing in infrastructure or staffing, making it difficult to scale operations or plan for growth. This challenge will be particularly pronounced for those providing residential care, where capital-intensive projects like new builds can take three to four years to complete.

A capped system also reduces market incentives for providers to innovate or develop new service offerings, as the scope of what can be delivered will be determined by the number of places and services allocated each year.

We strongly encourage the Committee to explore the merits of implementing a needs-based allocation system for aged care services, including requesting any costing projections the government may have on such a system.

In the absence of adopting a needs-based allocation, we believe the bill could be significantly improved by:

- Requiring multi-year allocation forecasts over the forward estimates.
- Introducing provisions for the reallocation of unused places, governed by a transparent and well-defined set of published criteria.

Additionally, we recommend that the legislation mandate the government to collect and publish accurate wait times—from the moment an individual applies for access to funded aged care services under section 56(1) through to the delivery of those services.

Prioritization

We wish to draw the Committee's attention to section 86(5), which outlines the requirements for classification types—ongoing or short-term—within the service group for residential aged care. Places are allocated based on high, medium, and low priority, a system likely to have significant impacts on individuals assessed as needing ongoing residential care, particularly those classified as lower priority.

As higher-priority residents enter the system, those assessed as a lower-priority may be pushed further down the waiting list. This could result in prolonged delays in accessing care, creating uncertainty for those in medium and low-priority groups who may be unsure when—or if—they will secure a place.

Given that people approved for residential care generally have higher acuity, there is a risk that their health and care needs could escalate while they wait for appropriate support, leading to increased distress, potential health deterioration, or, in some cases, emergency hospital admissions. These outcomes not only affect the person concerned but also place additional strain on the broader healthcare system.

In a system where support-at-home levels have expanded from four to eight levels, we believe that anyone assessed as needing residential care should be categorized as a high priority.

Aged Care Quality and Safety Advisory Council

We propose that Section 386(4), which requires the Minister to consider whether an individual has any pecuniary or other interests that conflict, or could conflict, with the proper performance of an Advisory Council member's duties, may unintentionally disqualify highly capable candidates based on perceived conflicts of interest. While the clause aims to ensure impartiality, it places an undue burden on the Minister to assess potential conflicts at a single point in time, potentially leading to overly cautious decisions. Moreover, the provision lacks flexibility, as it does not account for the possibility that a person's circumstances may change over time, which could render any prior assessments outdated.

To address these concerns, we recommend shifting the responsibility for managing conflicts of interest back to the Advisory Council members. Specifically, members or potential members should

be required to provide written notice to the Minister of any pecuniary or other interests they currently hold or may acquire during their term, which could conflict with their ability to perform their duties. This approach fosters ongoing transparency and ensures that potential conflicts are addressed as they arise.

Additionally, we advocate for a more transparent and consultative appointment process. Before filling any vacancies on the Advisory Council, we suggest the Minister should seek expressions of interest to ensure a diverse pool of candidates is considered. Furthermore, the Minister should be required to consult with the Advisory Council when appointing any member, including the Chair or Deputy Chair, to ensure broader input and mitigate the risk of perceived bias.

Quality Care Worker Voice Body

Section 158(5) establishes the Quality Care Worker Voice Body (QCWVB) as a condition of registration. We believe this provision unnecessarily adds to the regulatory and administrative burden already experienced by aged care providers, as it parallels the existing requirements under Section 158(2), which mandates the formation of a Quality Care Advisory Body (QCAB) to ensure comprehensive representation and feedback from key stakeholders to the governing body.

While Section 158(2) stipulates that membership will be prescribed by the rules, if these reflect current requirements, the governing body will already receive feedback from at least two employees.

As current membership of the QCAB must include at least:

- A member of key personnel with relevant experience in providing aged care;
- A staff member directly involved in the delivery of aged care, or, where applicable, a staff member involved in the delivery of clinical care;
- A representative who advocates for consumers' interests, such as a consumer or their representative.

These requirements already ensure direct representation from both frontline staff and consumer perspectives. Consequently, the introduction of a separate QCWVB duplicates these efforts without adding significant value or offering a unique perspective that will not already be captured under the provisions of the QCAB.

We recommend removing Section 158(5) and associated clauses to streamline operations and reduce unnecessary administrative complexity for aged care providers.

Support at Home

The transition to the new support at home model represents a significant change for existing providers, particularly with the introduction of service lists and capped prices, which resemble the NDIS structure. However, it only takes a straw poll of anyone associated with the NDIS to reveal that the price-setting processes within the NDIS have encountered challenges and are not functioning as effectively as anticipated.

Price caps were initially designed to ensure fair pricing and prevent excessive costs. In practice, however, they have become restrictive, acting more as a "price anchor" than a ceiling. This discourages competition on both price and service quality. Providers have little incentive to offer

better value or improve service outcomes, as the caps limit flexibility and often fail to reflect the true costs of delivering high-quality care, particularly for individuals with complex needs.

Additionally, participants face difficulties negotiating based on price due to a lack of transparency. As a result, the NDIS market's focus has shifted toward the quantity of supports offered, rather than the quality or outcomes. This is partly due to providers having limited access to comparative information about other providers, and we are informed consequently there is little motivation to invest in quality improvements under the current pricing structure.

These concerns suggest that without clear, transparent, and adaptable pricing mechanisms, similar challenges could arise in the Support at Home model. For the system to operate effectively, a more refined approach to pricing—one that encourages competition and incentivizes quality improvements—is essential.

We recommend that the Committee seek further insights from the Independent Hospital and Aged Care Pricing Authority (IHACPA) on best practices for pricing services in the care sector. Additionally, it would be beneficial to assess whether the current draft instructions for support at home subordinate legislation align with these best practices.

Subsidy Calculation Process and Potential Pitfalls

There is a potential issue in Chapter 4, Sections 191 to 193, which concerns the mismatch that can occur between a provider's claim for services and the balance in the individual's home support account. Providers must calculate the cost of services delivered, but they can only receive a subsidy based on the available balance in the individual's account. If the account balance is insufficient due to administrative delays or inaccuracies in crediting funds—which may take up to 61 days to update—the provider risks receiving reduced payments or no payment at all. This presents a significant challenge, as providers may have already delivered services but are not fully compensated because the account balance does not reflect the necessary funds at the time of the claim.

We recommend moving the subsidy calculation method into the subordinate legislation and incorporating provisions for retrospective or discretionary payments when timing or system errors occur.

Issues Arising from the Date of Death Clause

Additionally, under Section 191(2)(h), subsidies cannot be claimed for services provided after the individual's date of death. This restriction can create challenges for providers, particularly when they need to allocate staff time to liaise with family members or manage official processes following the individual's passing. In contrast, the NDIS allows for bereavement payments in certain situations, such as Plan Managed and Supported Independent Living arrangements, where payments can continue for a specified period after death.

We recommend that Section 191(2)(h) be amended to allow exemptions in specific circumstances, as described in the rules. This would provide greater flexibility, helping to future-proof the legislation and better accommodate practical considerations that providers face when handling post-death arrangements

Section 177 and Associated Clauses

Section 177 requires registered providers to cooperate with regulatory bodies by:

- Providing access to any approved residential care home (Subdivision D, Section 177(3)).
- Ensuring inspectors and authorities can perform their duties without obstruction.

While this ensures regulatory oversight and inspections are conducted, without clear protections, there is a risk that the focus on provider obligations could be interpreted in a way that prioritizes regulatory access over residents' rights, particularly if authorities require access to private spaces, such as residents' rooms. It is crucial to clarify in the legislation that, although providers must cooperate with authorities, any authority granted to external regulators or officials to enter a resident's personal living space should be contingent on obtaining the resident's consent, except in exceptional circumstances (e.g., emergencies) where acting without consent is necessary.

358 Complaints functions

Under section 358, Complaints Functions, we recommend that an additional function be included to allow the Complaints Commissioner to receive and act upon requests for mediation from providers. This function would benefit consumers by encouraging early and impartial resolution of conflicts between them and providers, which can otherwise negatively impact the care environment if left unresolved. Involving a neutral mediator from the Commission could help de-escalate tensions and ensure that the focus remains on the well-being of the consumer. By granting providers the ability to approach the Commission proactively, smaller concerns that are proving difficult to resolve through internal complaints processes could be addressed before they evolve into more serious disputes. The Commission's involvement would also give consumers and their families confidence that their concerns are being acknowledged by an independent body, fostering trust and promoting more collaborative discussions.

Services Australia

ACIA is concerned that Services Australia may lack the capacity to efficiently handle the increased assessments required under the revised subsidy framework. On September 5, 2024, ACIA wrote to the CEO of Services Australia and is still awaiting a response regarding ongoing fee-related issues affecting aged care residents and providers. These issues include significant delays in fee notifications from Centrelink, resulting in large, unexpected charges that some residents cannot afford, leaving providers to cover the costs. The slow resolution process and communication delays from Services Australia further compound these problems. ACIA has proposed solutions, including increasing resources to speed up fee notifications, assigning dedicated account managers to support providers, and providing specialized training for staff to improve the accuracy and efficiency of assessments.

We trust that this submission is helpful and would be pleased to provide further clarification if required.

Peter Hoppo, CEO, ACIA