



DEPARTMENT OF HEALTH
AND AGEING
CONSULTATION PAPER

'Proposed Reform of the Regulatory
Framework for Aged Care'

August 2008

About Us

National Seniors is the largest senior's organisation in Australia with over 280,000 individual members in 175 branches across the country. We are a not-for-profit community organisation with the following objectives:

- to provide economic and social benefits for people 50 years and over;
- to represent our members' views to government at all levels; and
- to make donations and provide service and advice to charitable institutions assisting people 50 years and over.

Our members, who are from metropolitan, regional and rural areas across all states and territories are broadly representative of the three key ageing cohorts: those aged 50-65; those aged 65-75; and those aged 75 +.

Policy

National Seniors National Policy Office (NPO), based in Canberra, facilitates the implementation of National Seniors' policy agenda and advocates on behalf of members to government at all levels, to business and to the broader community.

The work of the NPO is further enhanced by National Seniors comprehensive grassroots process, which enables members to contribute to policy development and debate through local branches, regional zone committees, and state, territory and national policy groups.

The NPO is assisted by the Commonwealth Department of Health and Ageing through its Community Sector Support Scheme (CSSS). The funding received under this scheme better positions National Seniors to:

- grow the operational capacity of the NPO;
- expand communications with the seniors' community;
- increase engagement opportunities for disadvantaged seniors; and
- act as a conduit for information flow between government and the community in order to draw together seniors' views on issues of relevance and provide a consultative mechanism for the government.

Research

National Seniors Productive Ageing Centre (NSPAC) was established by National Seniors Australia to advance knowledge and understanding into all aspects of productive ageing to improve the quality of life of people aged 50 and over. NSPAC, based in Canberra, is co-funded by National Seniors and the Commonwealth Department of Health and Ageing.

Key objectives of NSPAC are to: initiate, develop and support innovative and high quality research on issues that impact the ability of seniors to contribute productively to the economy and society; inform Government and community on productive ageing matters; and raise awareness of research findings which would be of use to individuals.

Executive Summary

Consumer Awareness

National Seniors would like to take this opportunity to raise concerns that in its current form the Consultation Paper does not clearly articulate the impact of the proposed changes from a consumer perspective. Assurances are sought that greater consideration will be given in future consultation processes to ensure that consumers are given adequate opportunity to provide input to proposed reforms.

Measured Support

Overall, the proposed reform of the regulatory framework for aged care represents a significant step forward in reducing the complexities and inequities in current arrangements. In particular, National Seniors believes that existing and future care recipients will benefit from greater transparency and awareness, as well as greater financial security.

Further Clarification

At this stage, support for a number of the proposed reforms is measured due to a lack of detailed information. National Seniors also has concerns that there may be adverse impacts for care recipients and their families. In particular, greater clarification is being sought in regard to:

- the assurance that ‘new bond arrangements must not be less advantageous for existing residents’;
- the protections afforded to care recipients within a ‘qualified’ facility compared with those in an ‘approved’ facility, as under current arrangements;
- the impact of the proposed reforms on state based legislation, particularly in regard to the protections under state based legislation afforded to ‘qualified’ providers;
- the apparent lack of increased oversight for existing providers that rely on a management company to provide an aged care service; and
- the impact on existing high care residents within a facility who entered the facility on a low care basis and paid an unregulated lump sum.

Further Reform

The overall package of reforms fails to address the disparate provision of information and advice at the national level for care recipients in non-approved (unfunded) entities.¹

National Seniors members have specifically expressed concern that care recipients in unapproved (unfunded) entities receive no assistance from the Aged Care Complaints Investigation Scheme or the Aged Care Information Line. The current lack of nationally available information poses a serious risk for consumers using these facilities.

Notwithstanding the difficulties for the Australian Government given the responsibilities of the states and territories in respect to unapproved entities, National Seniors believes there is scope for the Government to do more in ensuring that all aged care consumers are fully aware of their rights and responsibilities, and how these might differ for non-approved entities.

National Seniors is also calling for consideration by the Australian Government, in collaboration with the states and territories, as to how the various regulatory frameworks for aged care in Australia can be better harmonised.

¹ By unapproved (unfunded) entity National Seniors is referring to aged care facilities that are businesses, and is not referring to retirement villages or informal care providers.

2 Improved regulation to ensure the legislation applies equally to all providers

2.1 Linking approved provider status to allocations of places

National Seniors supports this proposal, in particular the closer linkage between approved provider status and allocations of places, and the greater transparency resulting from the requirement that providers notify care recipients that they are not fully protected under the provisions of the Act until such time as the approved provider has operational allocations. Notwithstanding, National Seniors is concerned the proposal to introduce a new distinction of provider could reduce the protections for aged care recipients, and is seeking assurances that:

- protections afforded to care recipients will not be reduced in the event that the entity in which they are receiving care changes in status from ‘approved’ to ‘qualified’, in particular protections around lump sum payments and Bonds;
- the proposed reforms will not lead to the removal of state based legislation, particularly in regard to providers changing from ‘approved’ to ‘qualified’; and
- state legislation will be amended within a reasonable timeframe so that the proposed changes can be incorporated.

2.2. Clarifying the range of people who are key personnel

National Seniors supports this proposal and believes it will greatly assist in strengthening the accountability and transparency of the aged care industry.

2.3 Considering the record of related entities that share key personnel

National Seniors supports this proposal and believes it will greatly assist accountability and transparency of the industry. In particular, it is believed that this proposal will speed up the approvals process for businesses which have different approved provider entities for each service, but have the same, or predominantly the same, staff.

Assurances are being sought that scrutiny of applicants will not be jeopardised by the proposal to consider the conduct of related entities, where the application is for a different service.

2.4 Changes relating to ongoing suitability of approved providers

National Seniors supports the aim of this proposal, to strengthen the scrutiny of aged care providers that rely on a management company to provide aged care services. It is however noted that the proposal will only impact on new entities applying for approved provider status and appears to have no effect on existing providers. Accordingly, clarification is sought as to how these proposals will strengthen the oversight of providers who are currently reliant on a management company, particularly when there is a change in management company.

National Seniors also believes that the proposal does not go far enough in ensuring that management companies are subject to ongoing ‘direct’ oversight by the Department, and accordingly is recommending that the proposal be expanded to enable greater and more direct oversight of management companies when a provider is reliant on that company to demonstrate it has skills and experience in aged care. National Seniors is also recommending that in ‘all instances’ where a provider is reliant on a management company, any change in that company should first be approved by the Secretary.

2.5 Transfer of provisionally allocated places under exceptional circumstances

National Seniors supports this proposal and believes it will assist in speeding up the process of aged care places becoming operational. The requirement that the Secretary considers ‘the interest of the aged community in the region’ is also particularly welcome.

3 Enhanced protection for aged care residents’ and their accommodation bonds

3.1 Protection of residents’ accommodation bonds

National Seniors is supportive of the proposals to strengthen financial protections for aged care recipients, in particular proposals aimed at: the lack of protections in relation to accommodation bonds taken by former approved providers; and the impact of claw back by a liquidator.

However, assurances are being sought about possible adverse impacts on care recipients resulting from lump sum refunds and bond payments. In this regard, greater clarification is sought about the assurance that ‘new bond arrangements must not be less advantageous for existing residents’, and that care recipients will not face unnecessary administration costs.

It is also unclear at this stage what the impact will be on care recipients who have paid a lump sum payment upon entering a facility on a low-care needs basis, but have since become high care within the same facility. Currently, the transition from low to high care would not necessarily require a care recipient to have their lump sum payment refunded however, it is unclear how this would work under the proposal. Clarification is sought as to whether a care recipient that has gone from low to high care within the same facility will be able to pay a bond or will pay an accommodation charge after being refunded their lump sum payment.

National Seniors is also seeking assurances that:

- care recipients who are required to pay a bond, after being refunded their lump sum payments, will not be faced with a greater amount owing than the value of the original lump sum payment (for example a care recipient should not be refunded \$50,000 and then required to pay a bond of \$100,000); and
- care recipients will not face administration costs for having their lump sum payments refunded, or for having to pay a bond.

National Seniors would also like to take this opportunity to raise concerns about the disparate rights and protections afforded to care recipients in non-approved entities. While recognising the difficulties for the Australian Government to regulate non-approved providers given its reliance on reducing or withholding subsidy, National Seniors believes the current lack of protections under the Act is not immediately clear to consumers and could pose a serious risk. There is a place for private providers in the aged care industry, however there is equally a role for the Australian Government in ensuring that care recipients in these facilities, or considering entering these facilities, are well aware of their lack of rights under the Act.

4 Other changes to enhance protections for aged care recipients

4.1 Sanctions

National Seniors strongly supports this proposal and recognises that it will assist in removing inequities for future care recipients. In particular, the preferencing under the Act of care recipients' interests over those of business is welcome.

However, clarification is being sought as to how this proposal will impact on existing care recipients who entered a facility during a period of sanction and paid a lump sum. In particular, it is unclear whether existing residents with unregulated lump sums will have these sums refunded in order to pay a bond that will in turn be covered under the Guarantee Scheme.

4.2 Complaints scheme

National Seniors supports the proposal to make the complaints scheme more accessible without imposing additional imposts.

National Seniors members have specifically expressed concern that care recipients in non-approved (unfunded) facilities receive no assistance from the Aged Care Complaints Investigation Scheme or the Aged Care Information Line. This situation is further complicated by the lack of publicly available information and the differing authorities in each state and territory with responsibility for handling complaints of this nature.

The provision of information regarding complaints in non-approved entities, both online and through a free phone service, would greatly assist these care recipients and their families. Accordingly, National Seniors is strongly recommending that the current situation be reviewed.

5 The reduction of unnecessary assessments by ACAT

National Seniors supports the various proposals to remove unnecessary reassessments in order to maximise resources for people in genuine need.

It is however all the more important given these proposals that an adequate proportion of ACFI appraisals are sampled, and that this proportion is regularly reviewed. This will ensure that providers are making accurate and impartial assessments of residents in their care.

6 The reduction of red-tape in the Aged Care Approvals Round process

National Seniors supports these proposals and believes they will speed up the allocation and operation of places.

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