



THE LAW SOCIETY
OF NEW SOUTH WALES

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5 August 2022

Dr James Popple
Chief Executive Officer
Law Council of Australia
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By email: matthew.wood@lawcouncil.asn.au

Dear Dr Popple,

Aged Care Amendment (Implementing Care) Reform Bill

Thank you for the opportunity to contribute to a Law Council submission on the *Aged Care Amendment (Implementing Care) Reform Bill 2022 (Cth) (Bill)*. The Law Society's Elder Law, Capacity & Succession Committee contributed to this submission.

As a general comment, we support the objectives of the Bill insofar as they reflect the recommendation of the Royal Commission into Aged Care Quality and Safety (**Royal Commission**) that "[t]he overall objective of system governance must be to ensure that people receive safe and high quality aged care according to their needs."¹ However, this objective must be achieved in a way that allows for choice and flexibility of care, so that appropriate types and levels of care are available to all aged care consumers. It must also be achieved without creating unsustainable administrative or cost burdens for providers. This consideration is particularly important in relation to providers in regional areas and other areas where the availability, and therefore choice, of aged care is often limited.

We would also support this general approach in relation to a new rights-based Aged Care Act.

Responsibility relating to registered nurses

We have concerns about this provision, noting that it contradicts the Royal Commission's Recommendation 86 regarding exemptions to the minimum number of registered nurses required on site. We note also that, in relation to compliance with the *Aged Care Act 1997*, "whether the non-compliance threatens or would threaten the health, welfare or interests of current and future care recipients is to be the Secretary's paramount consideration".² Accordingly, in our view there should be very limited provision for exemptions to the one registered nurse requirement. A short-term exemption may be appropriate in certain circumstances in which a provider is temporarily incapable of complying with the requirement, such as staffing difficulties due to COVID-19-related illness or restrictions, on the basis that quality and safety of care are not substantially undermined. Conversely, a provider that is frequently or permanently unable to comply should not be exempt.

¹ Royal Commission into Aged Care Quality and Safety, *Final Report: Care, Dignity and Respect* (April 2021) Vol 1, 82.

² *Aged Care Act 1997* (Cth) s 65-2.

The legislation should clearly and prescriptively set out the maximum length of time for which a temporary exemption may be claimed and the proper basis on which it may be claimed.

In addition, we suggest the number of registered nurses on site at any time should be proportional to the number of residents, with one registered nurse on site as a standard minimum in all facilities. Large facilities may, therefore, be required to maintain more than one registered nurse on site. Consideration could also be given to the physical layout and residential density of the facility as a relevant factor in determining the number of required registered nurses. For example, it may be impractical for a single registered nurse to be responsible for ensuring care across a facility which is spread out across several buildings.

For the one registered nurse requirement to succeed, measures would be required to address the widely reported shortage of registered nurses working in aged care. Options include reducing the barriers to entry or re-entry into the nursing profession, and taking steps to encourage the improvement of nurses' remuneration and working conditions.

Capping home care charges

We support mechanisms that cap the cost of home care services, with the objective of reducing the amount of funding directed to administration and management. We also support the abolition of exit fees for home care providers, which would remove a cost disincentive to changing providers, and thereby support the delivery of high quality and appropriate care.

The experience of our members is that home care providers adopt various methodologies and terminology when charging for services. For example, case management fees may or may not cover charges for various administrative services such as phone calls, which may be charged individually. While we support the availability of choice in home care services and in providers, in our view there should be a high degree of consistency in how providers charge for their services, to help consumers compare and choose between providers. Accordingly, we consider the structure and content of charging should be strongly regulated. This may require the use of statutory definitions of the various components of service, differentiating between different types of care and administrative charges. If, as proposed, the charging requirements are set out in the User Rights Principles, the effectiveness of the regulation of charging for home care services will depend on the appropriateness, specificity and comprehensiveness of those Principles.

Transparency of information

While we support the principle of transparency of information about aged care services, care must also be taken to ensure that smaller providers are not burdened with reporting requirements that erode their capacity to provide quality care. The experience of our members is that consumers value the availability of smaller providers, as some consumers prefer the more highly personalised service that may be offered. We support measures that help to sustain a diverse range of providers in the market, including smaller providers.

Consideration could be given to applying different reporting requirements to different categories of provider, or alternatively, to specifically funding support for the reporting function for smaller providers.

If you have any further questions in relation to this letter, please contact Sue Hunt, Principal Policy Lawyer on (02) 9926 0218 or by email: sue.hunt@lawsociety.com.au.

Yours sincerely,



Joanne van der Plaats
President