

30 September 2024

Ms Apolline Kohen
Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Submitted via Australian Parliament House website online portal

Dear Ms Kohen

Aged Care Bill 2024 [Provisions] (“the Bill”)

Chartered Accountants Australia and New Zealand, CPA Australia, and the Institute of Public Accountants are the peak professional bodies for professional accountants, tax sector and financial advice. We make this submission on the Bill on behalf of our members and in the public interest.

The Bill seeks to ensure aged care facilities are well run and supervised, and that clients always receive appropriate care and assistance including when aged care services are provided in their home. Our members are involved in all areas of aged care, including:

- in finance and management reporting areas of aged care providers;
- in financial advice and support to consumers and their families, to understand how the aged care rules work and how aged care services and costs interact with other services to meet their needs;
- as users and clients of the aged care system themselves, either personally or on behalf of older relatives and friends; and
- the preparation and audit of financial reports of aged care providers.

Funding arrangements

We recognise the urgent need for reforms to take place as soon as practicable in the aged care sector. However, it is crucial to have clear guidance regarding funding arrangements to ensure that these significant reforms run smoothly when they commence.

Feedback received by the Department of Health and Aged Care’s public consultation on the Aged Care Taskforce (“the Taskforce”) and its draft principles (in 2023) indicate that ‘Aged Care programs and funding arrangements are too complex and difficult to understand’.¹

¹ Department of Health and Aged Care 2023, *Aged Care Taskforce Consultation*, accessed 02 February 2024, <<https://agedcareengagement.health.gov.au/blog/aged-care-taskforce-consultation/>>

Our organisations have prioritised the funding arrangements for aged care, including means testing, subsidies, payment and fee arrangements. Some of these funding arrangements are detailed in Chapter 4 of the Bill.

The explanatory memorandum states that, “individuals accessing funded aged care services will have the services funded through Commonwealth contributions and, in some cases, depending on the individual’s means, individual contributions and fees.” We support the means testing of government subsidies for aged care. However, means testing needs to be fair, reasonable and equitable for all. This process should also be easy for individuals to easily determine their eligibility for aged care government assistance.

Chapter 4 provides the framework for aged care funding arrangements with detail to be provided in the Bill’s “rules” and legislative instruments. Initially, the department advised that while the Senate Standing Committees on Community Affairs was examining the Bill, “the department will invite feedback on some of the rules that will sit under the new law”². Unfortunately, we have yet to see any draft rules issued by the department.

We note that the Department of Health and Aged Care has issued some case studies to provide guidance. However, these lack sufficient detail for us to make an assessment as to how the new arrangements will work in practice.

Consistent with our feedback to other government consultations and inquiries, one of our main aims will be to ensure that the aged care funding system works harmoniously with the retirement income system, particularly social security benefits and the superannuation system.

We are of the view that, based on the structure of Chapter 4 and on the departments case studies, the proposed funding arrangements remain too complex and do not appear to have been designed to work harmoniously with other government policy areas.

Financial advisers acting under the Corporations Act and Code of Ethics

Financial advisers are required by the legislated *Financial Planners and Advisers Adviser Code of Ethics 2019* for the potential future aged care needs of clients to be considered³. This may include acting as the client’s representative in relation to aged care matters and interactions with aged care providers. However, it is unclear how the function of financial advisers, defined under the *Corporations Act* as ‘relevant providers’, fits into the role of ‘advocate’, ‘representative’ or ‘supporter’ as described in the Bill. The law must clarify how these definitions interact (and the intended role of a person acting under these definitions) and apply to the assistance financial advisers and others provide clients in relation to their aged care needs. Given the provision of financial advice is heavily regulated under the *Corporations Act 2001* and the Code, with oversight by ASIC, we recommend clarification to ensure that ‘relevant

² <https://www.health.gov.au/news/milestone-reached-for-new-aged-care-law?language=en> (accessed 24 September 2024)

³ Financial Planners and Advisers Code of Ethics 2019, in particular in Standards 2, 5 and 6.
<https://www.legislation.gov.au/F2019L00117/latest/text> (accessed 24 September 2024)

providers' operating under the Corporations Act are not inadvertently captured under the definitions or provisions in the Bill.

We also recommend clarification that public practising members of Australian-based professional accounting bodies are also not intended to be captured under these definitions and provisions of the Bill. These points of clarification could be included in the Bill's Explanatory Memorandum.

We do not support any requirement that would require those providing aged care funding assistance or advice to hold, or be an authorised representative of, an Australian Financial Service License. Feedback from members indicates confusion in the market on this point, which in some cases has added to the cost of seeking advice from a range of professional advisers.

Enduring Powers of Attorney

Our organisations provided feedback in response to the recent consultation on Enduring Powers of Attorney (EPOA), undertaken by the Attorney-General's Department to implement Initiative 4.1 of the Council of Attorneys-General *National Plan to Respond to the Abuse of Older Australians (Elder Abuse) 2019–2023*:

States and territories consider developing options for harmonising enduring powers of attorney, particularly in relation to financial powers of attorney, to achieve greater national consistency.

It is clear that delivering greater national consistency in EPOA laws remains a critical component of all governments' commitment to addressing financial elder abuse in Australia.

The Bill introduces the term 'supporter' based on a recommendation by the Royal Commission into Aged Care Quality and Safety (2021) to promote supported decision-making for the elderly within aged care. The Bill proposes that the System Governor has significant powers in the appointment of such persons.

It is imperative that the provisions made by the Bill about supporters are aligned and consistent with current and future State/Territory-based EPOA laws, including any future changes resulting from the current Commonwealth Attorney-General's review⁴.

Conclusion

Please contact Tony Negline with any queries on this submission on +612 8078 5404 or via email at tony.negline@charteredaccountantsanz.com.

⁴ *Achieving greater consistency in laws for financial enduring powers of attorney consultation*, accessed 02 February 2024, <<https://consultations.ag.gov.au/families-and-marriage/epoa/#:~:text=Benefits%20of%20greater%20consistency%20in%20EPOA%20laws&text=The%20expected%20key%20benefits%20of,on%20enduring%20powers%20of%20attorney>>>

Sincerely,

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