



the voice of older Australians

23 February 2007

The Secretary
Senate Community Affairs Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam

Aged Care Amendment (Security and Protection) Bill 2007

COTA Over 50s, a national peak body, represents the interests and concerns of all older Australians, but particularly the vulnerable and disadvantaged.

Over the last twelve months at the invitation of the Minister, our organisation has participated in the Aged Care Advisory Committee's exploration of mechanisms and procedures which could be implemented to ensure the protection of older people from sexual and serious physical assault in government subsidised aged care facilities in Australia

1. Amendments to the Aged Care Act 1997

COTA Over 50s strongly supports the amendments to the Aged Care Act 1997 contained in the Aged Care Amendment (Security and Protection) Bill 2007. They provide a framework within which legislation—along with other measures already introduced—can usefully enable the Government to tackle the pernicious and serious incidents of sexual and physical assaults visited upon vulnerable and frail people in Commonwealth funded residential aged care facilities. They also provide protection for those who, without it, would be unlikely to take the step of reporting an incident for of reprimand.

The amendments include a scheme of compulsory reporting of abuse, protections for those who report, and improved arrangements for investigating complaints. The process is aided by the newly established Office of Quality Care and Complaints (the investigating body) and a new and independent Aged Care Commissioner.

As noted, these amendments are in addition to those reforms already in effect: police checks for all aged care workers and certain volunteers in government funded aged care residential facilities; and more spot checks by the Aged Care and Accreditation Agency, which commenced from 1 July 2006.

2. Further submissions

In this letter, we also provide comments and raise certain issues which need highlighting in the draft of the Bill.

2.1 Investigations (Schedule 1)

(a) The amendments, along with the Investigation Principles, must ensure that, whilst they provide the appropriate mechanisms to achieve thorough and comprehensive investigations of reportable assaults, at all times natural justice is afforded all relevant parties. By the very nature of these offences, often presented as allegations and suspicions, there needs to be ample opportunities for all relevant parties to be able to answer or provide further explanations without fear of reprisal.

COTA Over 50s submits that one such form of natural justice should entail providing avenues of appeal for approved providers and informants against decisions of either the Office or the Commissioner.

(b) Education and awareness programs of the investigation procedures for all the residents and their families—along with the approved providers and staff—should be part of the implementation process. An important point to consider is if a resident who has been assaulted (or their family), does not wish to press charges, should there be a discretion for their wishes to be taken into account and respected? Ultimately it is the responsibility of the approved provider to ensure the safety of the resident (and other residents). In some instances it may not be appropriate or responsible not to report an incident.

COTA Over 50s submits that it should be part of the approved providers responsibility to ensure all the residents (where possible) and their families are fully aware of the changes and the procedures in dealing with these incidents and the options open to them. Also for the approved providers to have an awareness of the traumatic effect the incident may have on other residents and to provide adequate support measures to ameliorate the effect.

2.2 Reporting Assaults (Schedule 2)

On the whole, the procedures for reporting ‘reportable assaults’ has been drafted in a very workable and practical manner. Because of the types of assaults that can be perpetrated by residents in these facilities, provision has been made to allow the approved providers discretion *not* to report some minor assaults in certain

quite specific circumstances. The people involved in these incidents instead, may have their behaviour ‘clinically’ managed. The approved providers are still under the obligation to protect other residents and to keep a record of the management plan and its progress. However, there is a danger that the ‘alternative arrangements’ may not be entirely accurate or appropriate.

COTA Over 50s submits that a close check be kept on the regime of the approved provider’s management of these resident’s ‘alternative arrangements’ to ensure the veracity of the treatment and that adequate protections are in place to ensure the safety of other residents.

2.3 Protection for reporting reportable assaults (‘whistleblower’ protection) Section 96-8

For a scheme set up to report reportable assaults to work, there needs to be (1) effective protection for the informants; and (2) a guard against vexatious or untrue allegations.

The legislation appears to achieve the first criterion by addressing not only the protection of the identity of the informant but also with specific provisions outlawing their victimisation. There are also provisions that ensure their employment contract is protected where there has been a report which qualifies as a reportable assault.

The second is more problematic but the legislation provides for recourse to an action if they occur.. Section (1) (e) notes that the discloser has to make the disclosure in “good faith”. The sanction for not doing so is (1) no right to the protection and (2) a risk of an action of defamation against them.

COTA Over 50s submits that these processes need to be implemented swiftly (but with due process) and not to drag out if the staff and residents are to have confidence in the efficacy of the scheme.

If you have any questions regarding this submission, please contact Patricia Reeve, Executive Director Policy, at our national Policy Secretariat on (02) 6282 3436.

Yours faithfully



Bettine Heathcote
Chair
National Policy Council

What is COTA Over 50s?

COTA Over 50s is a national peak seniors organization, representing 1,500 member organizations with a reach of over 500,000 older Australians. Its National Policy Council, located in Canberra, consists of eight State and Territory-based entities – Councils on the Ageing in NSW, Victoria, Tasmania, Western Australia, South Australia, ACT, Queensland and the Northern Territory – plus the national organization ARPA Over 50s.

COTA Over 50s' prime objective is to promote, improve and protect the circumstances and wellbeing of older Australians, not just its members, and particularly the vulnerable and disadvantaged. Its work draws on views of today's seniors and on concerns for future generations of Australians.

In doing so the COTA Over 50s members adhere to five main principles:

Policy Principle 1 Maximise the economic, social and political participation of older Australians and challenge ageism.

COTA Over 50s supports policies and programs that encourage and facilitate the inclusion of seniors in all aspects of Australian life.

Policy Principle 2 Promote positive views of ageing, reject ageism and challenge negative stereotypes.

COTA Over 50s supports initiatives that recognise the capacities and contributions of seniors and actively combat ageism. COTA Over 50s believes that the impact of ageism, based on negative age stereotypes, restricts the participation of older people in all aspects of Australian life. This has adverse effects on the community and on older people.

Policy Principle 3 Promote interdependence and consciousness across generations

COTA Over 50s promotes policies that meet the specific requirements of seniors whilst taking account of the needs of the entire community for sound economic and social development. Senior Australians share an interest in long-term policies that serve the welfare of all Australians.

Policy Principle 4 Redress disadvantage and discrimination

COTA Over 50s believes that all people have the right to dignity, to security, to access high quality services, and to equality in participation in the community regardless of their income, status, background, location or any other social or economic factor. COTA Over 50s recognises that seniors are a diverse group with differing backgrounds and social, economic and health status and advocates strongly for those who are most vulnerable and disadvantaged.

Policy Principle 5 Protect and extend services and programs that are used and valued by older Australians.

COTA Over 50s develops policies and provides advice on maintaining and improving services and programs that seniors use and value. These include primary health care, hospitals, pharmaceuticals, employment services, utilities, public transport, residential care, housing and community care. It will seek to ensure that there is an adequate "safety net" of services and income support, which all seniors can access according to fair and equitable criteria in order to maintain a reasonable quality of life.

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