

08 March 2024

Department of Health and Aged Care- New Aged Care Act Consultation
GPO Box 9848
Canberra ACT 2601
Australia

Submitted via email: AgedCareLegislativeReform@health.gov.au

Dear Minister

Consultation on the New Aged Care Act (“Exposure Draft”)

Chartered Accountants Australia and New Zealand, CPA Australia, Financial Advice Association of Australia and SMSF Association welcome the opportunity to make a submission to the consultation on the New Aged Care Act (“**Exposure Draft**”). We are the peak professional bodies for the professional accountants, tax sector and financial advice. We make this submission on behalf of our members and in the public interest.

The Exposure Draft seeks to ensure aged care facilities are well run and supervised and clients always receive appropriate care and assistance. We have many members involved in all areas of aged care, including:

- providing accounting expertise to assist the finance and management reporting areas of aged care providers;
- 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 the consumer’s needs; and
- engagement with the aged care system as users and clients of the system themselves (either personally or on behalf of older relatives).

Funding arrangements

We understand the need for the reforms to take place as soon as practicable in the aged care sector. However, there is merit in having guidance and clarity in the funding arrangements for these significant reforms to run smoothly when they commence.

The Department of Health and Aged Care public consultation on the Aged Care Taskforce (“the Taskforce”) and its draft principles (in 2023) have received the feedback that ‘Aged Care programs and funding arrangements are too complex and difficult to understand’ for everyone.¹ The final report is not yet publicly available.

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/>>

The priority of our organisations is the funding arrangements for aged care, including means testing, subsidies, payment and fee arrangements. As stated in Chapter 4 of *A new Aged Care Act: exposure draft – Consultation paper no. 2*, the government *anticipates* “provisions in this chapter are generally expected to mirror the current legislative framework. More significant changes to funding and means testing arrangements will be considered once the Government considers the recommendations of the Aged Care Taskforce”. It is disappointing that the feedback from the Aged Care Taskforce consultation could not be incorporated into the Exposure Draft of the Bill for the New Aged Care Act consultation, given it is a fundamentally important part of the aged care system.

We encourage the Government to give careful consideration to the final report on the review of funding arrangements for aged care as presented by the Taskforce and any options recommended to ensure the system is fair and equitable for all Australians. While Government consideration is critical, the timely public release of the final report would greatly assist stakeholders to provide meaningful feedback to the pending consultation on Chapter 4 of the Bill. Given the important role our members play in assisting their clients with aged care needs, we would welcome the opportunity to be involved in the Department’s ongoing drafting discussions on the funding arrangements for future inclusion in Chapter 4 of the New Aged Care Act.

In line 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.

Financial advisers acting under the Corporations Act and Code of Ethics

Financial advisers assist clients with their aged care needs. It is a requirement in the legislated Financial Adviser Code of Ethics for financial advisers to consider the potential future aged care needs of clients. This can include acting as the client’s representative in relation to aged care matters and when interacting 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 an ‘advocate’, ‘representative’ or ‘supporter’ under the Exposure Draft. The law should clarify how the interaction between the definitions (and the intended role of a person acting under these definitions) in the Exposure Draft applies to the assistance financial advisers provide clients in relation to their aged care needs. Given the provision of financial advice is heavily regulated under the Corporations Act and the Code, with oversight by ASIC, we recommend it be made clear that ‘relevant providers’ operating under Corporations law are not intended to be captured under the definitions or provisions in the New Aged Care Act. This clarification could be included in the Explanatory Memorandum to the final Bill.

Enduring Powers of Attorney

Our organisations offered feedback in response to the recent consultation on Enduring Powers of Attorney (EPOA). This consultation was 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. Initiative 4.1 addresses “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 evident that delivering greater national consistency in EPOA laws continues to be a critical component of all governments’ commitment to addressing financial elder abuse in Australia.

The Exposure Draft introduces the terms ‘supporter’ and ‘representative’ on the back of a recommendation by the Royal Commission into Aged Care Quality and Safety (2021) to promote supported decision making for the elderly within the scope of aged care. According to the Exposure Draft the System Governor has significant powers in the appointment of such a person/s.

It is imperative that any changes made in the Exposure Draft about representatives are aligned and consistent with current and future State/Territory based EPOA laws, including any future changes enacted because of recommendations of the current Commonwealth Attorney-General’s review².

Conclusion

We look forward to providing feedback on funding arrangements when they are released for consultation. Please contact Tony Negline with any queries on this submission on +612 8078 5404 or via email at tony.negline@charteredaccountantsanz.com.

Sincerely,

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² *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>>>



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