

31 July 2009

Regulatory Burdens: Social and Economic  
Infrastructure Services  
Productivity Commission  
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To Whom It May Concern,

RE: Annual Review of Regulatory Burdens 2009

Aged Care Association Australia (ACAA) welcomes the release of the Productivity Commission's Annual Review of Regulatory Burdens 2009 and specifically would like to take the opportunity to comment on the section regarding aged care, Chapter 2.

#### Allocating Aged Care Places

ACAA is concerned regarding the Commissioner's comments in respect of the freeing up of supply of aged care beds and in particular, the supply of aged care places given that it is in our opinion, fundamental economics that you cannot release supply in a market constrained sector such as aged care without a similar removal of the constraints on demand and price.

ACAA is concerned that the Commission in both the 2008 and 2009 reports appears to take the approach that the supply to the industry can be readily relaxed while not recommending a similar relaxation in respect of demand and price. Given the very heavy regulatory burden that already applies in this industry, ACAA considers that it is financially dangerous territory for an industry such as this to be faced with the deregulation of supply without a similar deregulation in the other two pillars of government policy, namely; demand and price.

ACAA is also questioning of the contention in this report that one of the 'unintended consequences of these quantity and price restrictions is that they impede the ability of regulators to improve the quality of aged care.....'

ACAA would contend that there has been a significant improvement in the quality of the standards in both service and accommodation within aged care over the last decade that have occurred within the constraints of the existing three pillars policy. We do not deny that there could have been even greater improvement in these standards in a different

framework, however, question the claim that quantity and price have led to an inferior product.

In addition, ACAA questions the accuracy of Table 2.1 'Occupancy Rates for permanent residents' in that the AIHW report covering the same period, clearly indicates that the average occupancy across the industry at 30 June 2008, at 93.5% not the claimed 95.25% as set out in Table 2.1.

ACAA would contend that a 93.5% occupancy rate delivers approximately 12,000 vacant beds across the residential care program and that a program with this level of vacancy, admittedly not equally spread across the country, nonetheless, substantially creates significant opportunities for consumer choice in most of the major market segments and that the contention that there is little consumer choice is a major overstatement of the market realities within a large component of the aged care program.

ACAA is similarly concerned at the approach the Commission takes to the allocation of aged care places with little regard to the financial impact that the removal of such a program would have on the capacity on the aged care system to support it's future capital requirements.

It is our contention that a removal of the aged care allocation process would immediately lead to a significant raising of the criteria imposed by financial institutions in respect of the raising of capital to support future growth of the industry. Given that the industry is already struggling to raise sufficient capital to continue to develop high care beds throughout the industry, a further tightening of capital criteria could lead to a collapse of future development in the industry and a significant devaluing of the balance sheets of all providers.

It is concerning to ACAA that the report makes the simplistic contention that the aged care approvals rounds could be removed without any apparent consideration of the significant impact this would have on the industry's financial capacity for the future.

The expansion of aged care places from 100 to 113 in the period between 2004 to 2007 without, in our opinion any scientific foundation other than it was an easy avenue to achieve additional community care places without sacrificing residential places, there is concern that the oversupply mentioned above is being generated in an artificial manner without any preconception or consideration of the impact upon the viability of either community or residential subsectors.

ACAA is concerned that in the Commission's consideration of this component of the current scheme, there is no criticism of the universal application of a 40% concessional resident target which in many parts of the country is actually unachievable. It is doubly

disappointing that the Government imposes a financial burden on aged care providers for failing to reach this 40% target without, in many cases, the client base with which to achieve the official target. It would, in our opinion, make a great deal more sense if Government wishes to persist with this artificial policy target, to in fact impose a financial penalty at the margin not on the overall concessional resident population being accommodated by an aged care provider.

#### Care Fees

ACAA is concerned at the overly complex nature of the aged care programs fee system and believes that if there is one issue that could achieve significant improvement in the regulatory burden sustained by this industry is to move to a simplified fee structure which would benefit not only aged care providers but more importantly the residents and relatives who interface with aged care and who in many cases struggle to understand the complexities of the aged care funding scheme.

At the same time, ACAA would support the Commission's contention which supported the Hogan review recommendation that high care residents should have the option of paying a lump sum contribution.

#### Extra Service Places - Draft Recommendation 2.1

ACAA does not believe that it would make sense to abolish the 'extra service' residential care category until there is a significant freeing up of supply and demand. The extra service category is currently providing limited choice for the industry to continue to provide high care places. If extra service were to be abolished, there would simply be no high care construction within the industry especially if extra service were then removed from low care where it is cross subsidising both lower socio economic clients within the low care environment as well as almost all of the high care provision for non extra service bond paying clients.

It is in the opinion of ACAA, an erroneous view to ignore the interconnectivity between extra service and standard low and high care. It is also short sighted in our opinion, to assume that extra service is failing to meet a market segment that its abolition would simply not overcome. To assume that a market would evolve while still applying the same constraints as operates within the current system and that somehow that would generate a marketable outcome is failing to recognize the interlinked and intricacies under which this industry operates.

#### Police checks – Draft Recommendation 2.3

ACAA would strongly support this recommendation as the industry estimate of the annual cost of police checks is now in excess of \$30M per annum of which there was no

contribution from Government and the whole of this cost is being met by the industry through achieving great efficiencies and reduction in care costs.

ACAA would certainly support and indeed our state affiliate, ACCV, has submitted to Government a proposal for the implementation of a national police check regime for the whole of aged care which would allow staff to migrate their police check across the whole of Australia.

#### Aged Care Standards and Accreditation Agency – Draft Recommendation 2.4

ACAA would strongly support Draft Recommendation 2.4 and endorse the recommendation of the Commission that the Agency should redesign the unannounced visit program to use a risk management approach and that the compulsory unannounced visit per home per year, be abolished.

#### The Accommodation Bond Guarantee Scheme – Recommendation 2.5

ACAA would strongly support the Commission's recommendation in respect of the Accommodation Bond Guarantee Scheme and in particular:

- support the requirement that the aged care provider disclosed to the care recipient or prospective care recipient, a statement about whether the provider complied with the Prudential Standards in the financial year be removed
- support the requirement that the aged care provider disclosed to the care recipient or prospective care recipient, an audit note on whether the provider has complied with the Prudential Standards in the financial year be removed
- support the requirement that the aged care provider disclosed to the care recipient or prospective care recipient, the most recent statement of the aged care services audited accounts be removed

ACAA would recommend that in addition to these recommendations, the Commission also supports the contention that the requirement for the retention of the conditional adjustment payment that a provider undertake general purpose financial reports is inefficient and ineffective and that this requirement should no longer be required of providers. ACAA would contend that the requirement for the retention of CAP to produce audited general purpose financial reports to be replaced by an annual financial benchmark document which entails the submission of an agreed set of financial details which would allow a comprehensive analysis of the industry's viability by a reputable third party organisation.

#### Conditional Adjustment Payment Reporting – Draft Recommendation 2.6

ACAA would support Recommendation 2.6 with a reiteration of our recommendation at 2.5 regarding the removal of the requirement for aged care providers to undertake audited general purpose financial reports.

In addition, ACAA would contend that much of the information the Department seeks in respect of the industry's performance is substantially being provided in the annual survey of the aged care industry which is then aggregated into a report to Parliament each year. It would be the preferred position of ACAA that greater use is made of the annual survey of the industry to capture much of the data now being demanded by the Department from providers in a variety of different formats and on a variety of different occasions.

#### Proposed Community Care Reporting Standards – Draft Recommendation 2.7

ACAA would support this recommendation.

#### Duplicate reporting requirements – Draft Recommendation 2.8

ACAA would strongly support the Commission's recommendations in respect of the lack of clarity of the delineation responsibilities between the Department of Health and Ageing and the Aged Care Standards and Accreditation Agency as the industry is struggling to differentiate between compliance and accreditation. The gradual blurring of the lines between quality and compliance has in the opinion of the industry started to dilute the standing and recognition that the Agency and the quality improvement system had achieved and is creating a perception of conflict between the compliance regime and the quality improvement regime.

#### Missing Persons – Draft Recommendation 2.9

ACAA would strongly support this recommendation as we consider that the existing requirement that providers notify the Department within 24 hours of an event occurring, including a missing person, is an onerous and often wasteful use of resources when the staff in a facility are focused on overcoming an event which needs their full attention. This is particularly onerous when a facility that may be a matter of minutes or hours late in this requirement, are then considered to be noncompliant and receive a notice of noncompliance which then becomes a public rebuke for the aged care provider as it gets placed on the Department's website and remains there for 2 years.

#### Duplicate Regulation between the Commonwealth and State Territory Governments – Draft Recommendation 2.10

ACAA would strongly support this recommendation as we consider the double jeopardy of aged care providers and their staff is an onerous burden which need not apply especially when aged care facility staff are endeavoring to comply with all of the regulatory

requirements and yet having done their best work to achieve a satisfactory outcome, they receive compliance oversight of not only state/territory jurisdictions but then the Department of Health and Ageing's compliance personnel often followed by the Aged Care Standard and Accreditation Agency personnel.

Annual Fire Safety Declaration – Draft Recommendation 2.11

ACAA would strongly support this recommendation as the fire safety declaration no longer serves any practical purpose in respect of the supposed objective.

Building Certification – Draft Recommendation 2.12

ACAA would strongly support the recommendation as the agreement struck between the Department of Health and Ageing and the industry in respect of the ten year building improvement program expired at Dec 31, 2008 and should no longer have any relevance to the ongoing building quality of the industry as this can be readily achieved through the Building Code of Australia process.

Providing Choice in aged care accreditation – Draft Recommendation 2.13

ACAA would strongly support the contention that residential aged care providers have choice of accreditation agencies to introduce a degree of competition and to streamline processes for providers who are engaged in multiple aged care activities.

Thank you for your consideration in this matter.

Yours sincerely

Rod Young  
CEO