



Response to Chapter 2 (Aged Care)
of the
Annual Review of
Regulatory Burdens on Business:
Social and Economic Infrastructures Services

August 2009

About NSA

National Seniors Australia (NSA) is the largest organisation representing Australians aged 50 and over with some 280,000 individual members.

Our members are from metropolitan, regional and rural areas across all states and territories, and are broadly representative of the three key ageing cohorts: those aged 50-65; those aged 65-75; and those aged 75 +.

NSA works to provide a voice and address the needs of this diverse membership:

We represent – to governments, business and the community on the issues of concern to the over 50s;

We inform – by providing news and information through our website, forums and meetings, our bi-monthly award winning magazine, a weekly E-newsletter and our Australia-wide branch network;

We provide opportunity – to those who want to use their expertise, skills and life experience to make a difference in indigenous communities and on our environmental legacy;

We support those in need – our Charitable Foundation raises funds to provide comfort and support for our most vulnerable older citizens;

We provide savings – through quality insurance, affordable travel and tours, and discounts on goods and services.

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Introduction

National Seniors Australia (NSA) is of the view that regulation can and does increase quality of care in aged care – to a point. NSA acknowledges that the regulatory framework developed under the *Aged Care Act 1997* (in particular the accreditation process) has been important in driving improvements to the quality of care and delivering quality outcomes to consumers¹.

Notwithstanding this, anecdotal evidence suggests that aged care providers feel compelled to divert resources from clinical care and quality of care in order to ensure compliance with regulatory requirements, such as those relating to having in place certain management systems. NSA is a consumer oriented organisation; while we acknowledge the importance of regulation, we do not wish to see “regulation overload” lead to adverse outcomes for residents. NSA is of the view that the focus of the regulatory framework should instead be targeted to improving quality of life and quality of care for residents.

NSA agrees with the Productivity Commission’s findings that excessive attempts to regulate risk can have unintended adverse consequences and an undue diversion of resources away from core aspects of service delivery². However, NSA is keen to ensure that risk to the consumer is minimised as far as possible, and that changes to regulation do not have further unintended consequences of allowing providers free rein to self-regulate their operations.

This submission does not address every draft recommendation proposed in Chapter 2 of the Productivity Commission’s draft research paper, but focuses on those areas that relate most closely to NSA’s interest in ensuring quality of care of residents is maintained.

Key Points

The following points address the Productivity Commission’s “Key Points” at page 19 of the draft research report.

- Competition should not be stifled, and NSA believes increased competition would allow for a reduction in regulatory burdens, if the consumer was able to shop around and compare different aged care facilities and practices.
- NSA is cautious about endorsing reduced regulation. However NSA believes in a more targeted, efficient regulatory framework, which relieves providers of the burden of regulation while still achieving the goals of regulation. Specifically, price controls could be lifted, thereby allowing bonds as a source of funding in high care facilities, but only where there is evidence of sufficient competition to ensure that prices would not rise beyond consumers’ means.
- NSA agrees with redesigning the announced/unannounced visit program, but not in the manner proposed by the Productivity Commission (for further detail, see the section relating to the announced/unannounced program later in the submission).

¹ Department of Health and Ageing, *Evaluation of the impact of accreditation on the delivery of quality of care and quality of life to residents in Australian Government subsidised residential aged care homes* prepared by Campbell Research and Consulting.

² Productivity Commission, *Annual Review of Regulatory Burdens on Business: Social and Economic Infrastructure Services*, 2009, at XXII

- The statement that “the extensive increase in regulation in recent years does not reflect the high standards of care by the vast majority of providers” is, in NSA’s view, unfounded. The increased standard of care by some providers may be partly due to the regulatory framework. Reducing regulation for the vast majority of providers who provide “high standards” may mean that these standards are not maintained. Further, anecdotal evidence from our members suggests that even those providers who are fully compliant are not meeting the expectations of “high standards” by residents and their families. While there is significant scope for streamlining regulations and removing duplication, regulations relating to standards of care should be maintained, at least until other monitoring systems (such as the Complaints Investigation Scheme) are improved.

NSA’s Response to Draft Recommendations

Draft Recommendation 2.1 (competition)

NSA believes in increased competition in the aged care sector and the removal of restrictions on places and price controls may be an effective means in achieving increased competition. NSA sees no reason why providers should not be able to make available as many places as they can, provided that there remains in place stringent minimum standards for quality of care. Increased competition can drive quality of care improvements, but NSA believes that a regulatory safety net should remain in place.

NSA is supportive of the “voucher” approach proposed by the Hogan Review, but believes such opportunities for increased competition should be complemented by an effective, transparent and available consumer information system to allow the publication of best-practice information and inform consumer choice³.

Further, NSA would like to see evidence that a removal of regulatory burdens to competition would not have the opposite effect, thereby increasing prices and making aged care less affordable. Regulation should not allow for the potential for a monopoly or duopoly of aged care services in certain areas. NSA questions whether current competition regulations alone would be sufficient in the aged care sector, given that aged care is an essential service and must remain affordable by all.

NSA does not oppose the removal of restrictions on bonds as a source of funding for high care facilities, provided that such bonds are appropriately regulated. NSA recognises the need to for providers to access additional capital in order to provide better facilities for residents. However if high care bonds were allowed, NSA submits that the following would be necessary:

- Strengthened prudential arrangements so that capital deposits are not invested for the purposes of high-yields, at the expense of risk. This should be in addition to providers complying with current repayment, annual reporting and insurance requirements;

³ For further information see National Seniors Australia, *Submission to the Review of the Accreditation Process for Residential Aged Care Homes*, 2009

- Approved providers should meet mandatory requirements for investing a defined proportion of capital towards improving staffing expertise and strengthening consumer input; and
- Existing high care residents should continue to be covered by the current accommodation payment arrangements.

Draft Recommendation 2.2 (extra service)

NSA agrees that if Draft Recommendation 2.1 was implemented successfully, resulting in more competition, providers would naturally provide certain 'extra services' to distinguish their facility from others.

NSA believes in the provision of the best possible care for consumers, but also in the ability for consumers to have a choice about the standards of care they receive (provided there is a minimum standard required by law). There is no reason why access to extra services should be restricted. Lifting this restriction would allow providers to better respond to consumers' needs, and benefit consumers by providing them with more choice and a higher standard of care.

Draft Recommendation 2.3 (police check requirements)

NSA maintains that mandatory police checks are essential. However, NSA agrees with Draft Recommendation 2.3 that the system should be evaluated, and believes that the same benefits could be achieved in a less costly and less burdensome way, both for providers and volunteers/staff.

In addition, a review of the police check requirements provides the opportunity to look at enhancing the transferability of staff and volunteers across aged care facilities. NSA submits that volunteers and staff in the aged care industry receive a suitable accreditation that will cover them to work across all aged care facilities. Although a current police check is valid over all facilities for 3 years, volunteers and staff must sometimes undergo additional checks and suitability paperwork, depending on the particular aged care facility. Our members have indicated to us that this remains a disincentive and a barrier to encouraging more volunteers and staff in aged care.

In this regard, NSA supports the introduction of a "Working in Aged Care Card" (or similar) transferable across all regulated aged care facilities. A continually updated database, as proposed, would need to be administered to ensure the viability of such a card. NSA submits that it would be desirable for a card to cover aspects of working in aged care other than police checks (such as suitability or qualifications). In this instance, combining aged care and child care systems would likely not achieve reductions in costs of compliance

Draft Recommendation 2.4 (site visits)

NSA takes the view that unannounced site visits are important in encouraging providers to strive for continuous quality of care⁴. Properly run facilities should be providing a high standard of care at all times. As mentioned above, "compliance" does not necessarily equate with a high

⁴ For example, see NSA, *Submission to the Review of the Accreditation Process in Residential Aged Care Homes*, July 2009

standard of care. Given the amount of complaints raised outside the accreditation process, issues are currently going unidentified during site audits. Proper monitoring of facilities in the form of site visits and audits should continue to occur, notwithstanding that most facilities are compliant. Removing this monitoring may result in a reduction of the quality of care received by residents.

NSA is aware that extensive procedural regulation surrounding the accreditation process may detract from the focus of quality of care. Providers and residents alike note that announced site audits create too much paperwork and place pressure on facilities' resources. However, NSA believes the solution to this problem is not simply reducing site visits, but making a site visit or audit simpler, quicker and more consumer oriented. Unannounced site visits should not require the same preparation as an announced site visit, because quality of care should be consistent and ongoing.

In an environment where the Complaints Investigation Scheme and other monitoring tools are strengthened and more effective, NSA may be inclined to support less frequent site audits or support visits. But until that point, regulation in the form of unannounced visits is especially important in monitoring practices of aged care facilities and should not be reduced.

Draft Recommendation 2.5 (bond reporting)

NSA is concerned that Draft Recommendation 2.5 will further reduce the transparency of providers, resulting in even less information available to the consumer. Although the Accommodation Bond Guarantee Scheme ensures bonds are refunded in the event that a provider becomes insolvent, residents or their families should not have to wait until a provider goes insolvent before becoming aware that their provider was in financial trouble.

However, where such reports are presented in a way that is meaningless and confusing to the consumer, there seems little point in continuing to require reporting to consumers. In addition, NSA is of the view that providers must continue to be required to report to authorities on compliance with prudential standards, to ensure proper monitoring of their performance. Consumers should be able to have access to these reports should they wish to do so.

Draft Recommendations 2.8 and 2.10 (delineation of responsibilities and removing duplication)

NSA supports a clearer delineation of responsibilities between the Department of Health and Ageing and the Agency regarding monitoring of provider compliance with accreditation standards, provided accountability is not compromised. Removing duplication of reporting and monitoring would save costs for providers and Government alike, and should be encouraged.

NSA also supports removing duplication of regulations by the Commonwealth and the states and territories, as long as this did not result in the omission of important regulations.

Draft Recommendation 2.11 (fire safety)

NSA views favourably the removal of unnecessary or duplicate regulation, to allow aged care providers to focus on their core business. Commonwealth fire regulation, while historically important, appears to have been dealt with by providers and no ongoing paperwork need be required. However, NSA would like to see the ongoing continuation of fire safety, and believes

this matter should be periodically revisited to ensure that States and Territories continue to properly monitor compliance by aged care facilities with fire safety regulations.

Draft Recommendation 2.12 (building code)

Privacy and space requirements should be enshrined in the Building Code. This would mean compliance with only one set of regulations for new providers. NSA would like to be assured that existing non-compliant providers will continue to be subject to the privacy and space requirements of the 1999 Certification Assessment Instrument, until all providers are compliant. Draft Recommendation 2.12 appears to provide for this.

NSA is satisfied that the proposed change does not decrease regulatory requirements, but streamlines compliance to one regulatory instrument, thereby saving providers time and money in complying.

Draft Recommendation 2.13 (provider choice of accreditation agency)

While NSA is supportive of increased competition between providers, NSA does not believe there is sufficient evidence to support increased competition between Accreditation Agencies. Given the importance of the accreditation process, one body should be responsible for its implementation. The emphasis on cost-cutting does not adequately take into account the potential for inconsistency of approaches (if not the laws) between agencies.

The potential for consumer input into accreditation, and informed consumer choice would be undermined by providers being able to choose an accreditor from multiple agencies, NSA believes this would create further consumer confusion and further distance consumers from a process in which they already have inadequate involvement.

However, NSA does see the benefits in having an agency with capabilities of regulating providers whose services straddle residential care, community care and retirement villages, if this could be achieved by one agency.

NSA sees a separation of accreditation responsibilities and monitoring/compliance responsibilities as positive, but remains unconvinced that there should be more agencies carrying out the same role.

Conclusion

NSA supports, in principle, the removal of regulatory burdens to enable providers to focus on the core goal of service delivery to residents. However, NSA does not support those recommendations that would jeopardise the transparency, quality and cost of aged care.

In particular, NSA supports increased competition and, broadly, Draft Recommendations 2.1, 2.2, 2.3, 2.5, 2.8, 2.10, 2.11 and 2.12, subject to the comments made above.

NSA has certain concerns with Draft Recommendations 2.4 and 2.13. NSA does not support the reduction of site visits at the current time, but does support reducing the burden on providers of site visits through other means, such as simplifying the process or strengthening other more efficient monitoring regimes.