Aged Care Amendment (Red Tape Reduction in Places Management) Bill 2015

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House: House of Representatives
Portfolio: Health
Commencement: The day after Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website.

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Purpose of the Bill

The purpose of the Aged Care Amendment (Red Tape Reduction in Places Management) Bill 2015 (the Bill)\(^1\) is to amend the *Aged Care Act 1997* (the Act)\(^2\) to:

- change the process for transferring places between aged care providers from an approvals process to one where the transfer will be deemed as approved unless it is vetoed and
- increase the timeframe for providers to make provisionally allocated places operational from two to four years, while also limiting the number of extensions to this period.

Background

The Australian Government subsidises aged care services for older people who cannot live independently in their own homes.\(^3\) The Act and associated Principles provide the regulatory, funding and quality framework for residential aged care, home care and flexible care services.\(^4\)

As at 30 June 2015, under the Act there were:

- 72,702 operational home care packages providing tailored personal care, support and clinical services to older individuals in their homes\(^5\)
- 192,370 operational residential care places providing permanent and respite care for older people in aged care homes\(^6\) and
- 7,629 operational flexible care places.\(^7\)

The majority of Australian Government expenditure under the Act in 2014–15 was for residential care ($10.6 billion), with $1.28 billion spent on home care packages and $407.5 million on flexible care programmes.\(^8\)

Responsibility for the operation of the Act was transferred to the Department of Health (DoH) from the Department of Social Services (DSS) in September 2015 as a result of Machinery of Government changes.\(^9\)

Planning and allocation of aged care places

The Australian Government controls the supply of subsidised aged care places. The Government planning framework aims to grow the number of aged care places in line with the ageing population, and to balance provision of places across metropolitan, regional, rural and remote areas, including for people with special needs.\(^10\) The Government is aiming for an aged care provision ratio of 125 aged care places per 1,000 people aged 70 years or over by 2021–22.\(^11\) As at 30 June 2015 there were 111.5 operational aged care places (composed of 81.1 residential and 30.4 home care) per 1,000 people aged 70 years or over.\(^12\)

Aged care places are allocated to providers of aged care who are approved under the Act, rather than directly to consumers (although the Government has announced its intention to allocate home care packages directly to consumers from February 2017).\(^13\) Existing places held by providers generally continue from year to year. For

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5. Ibid., pp. 36–37.
6. Ibid., p. 49.
7. Ibid., p. 70. Flexible care includes transitional care (to assist people to return home after a hospital stay), aged care provided by a Multi-Purpose Service (a service in a rural or remote area that also provides health and community services), and innovative care (a small number of grandfathered places left over from a previous home care pilot).
8. Ibid., p. xiii.
9. Ibid., p. xii.
13. Ibid., p. 42.
new places, the Minister determines the number of additional residential, home care and flexible care places to be made available in each Aged Care Planning Region each year, in accordance with the planning framework. Prospective and existing approved providers then compete for the majority of these places (with the exception of some flexible care places) through the open Aged Care Approvals Round (ACAR). The 2014 ACAR was very competitive for home care (with approximately 17 new places sought by providers for every place available), and moderately competitive for residential care (approximately two new places sought for every place available).14

Aged care places can be provisionally allocated, for example if they require the building of a new aged care facility or the extension of an existing facility, but the provider will not receive a subsidy for the place until it has become operational and there is a care recipient in place.15

**Red tape reduction**

Prior to the 2013 federal election, the Coalition announced its aged care policy, which included a commitment to cut red tape and streamline the administrative burden for service providers:

> The complex regulations that plague the sector are not only costly and onerous but inhibit providers from delivering even higher levels of quality care. It has been reported that nursing staff spend at least a third of their time simply doing paperwork. Reducing compliance burdens will also drive greater efficiencies which will allow better flexibility to enhance quality of care provided.16

As part of this commitment, the Coalition pledged to ‘reduce the complexity for providers seeking aged care places’, noting that at that time a ‘provider who transfers approved places to another approved provider’ had to fill out a 39 page form.17

Following its election win, the Coalition Government established the Aged Care Sector Committee (ACSC) to provide advice to Government on aged care policy and reform. The Committee includes representatives from across the aged care sector, including peak bodies, large for-profit and not-for-profit providers, consumers, workforce, the National Aged Care Alliance and the Department.18 The ACSC worked with the Government to develop a Red Tape Reduction action plan, which was approved by former Prime Minister Tony Abbott in 2014.19

The Red Tape Reduction action plan ‘sets out a range of actions that can be taken to reduce unnecessary red tape for aged care providers and consumers’.20 Item 11 of the plan proposes a review of places management, including:

- reviewing and revising all places management forms so that they only seek information that is legislatively required;
- reviewing and revising the requirements in relation to the transfer of places to ensure that the requirements are fit for purpose; and
- reviewing and revising the requirements in relation to managing provisionally allocated places to ensure that the requirements are fit for purpose.21

The intent of these proposed changes to places management is to ‘lessen the red tape burden on providers and ensure that the Department is able to more efficiently and effectively manage aged care places.’22 The first change, the streamlining of places management forms, has already been made with new forms released in

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17. Ibid.
21. Ibid., p. 5.
22. Ibid.
This Bill implements the next two changes by revising the legislative requirements for transferring places and managing provisionally allocated places.

Committee consideration

**Senate Standing Committee for the Scrutiny of Bills**
The Senate Standing Committee for the Scrutiny of Bills had no comment on the Bill.  

Policy position of non-government parties/independents

Shayne Neumann, the Shadow Minister for Ageing, has indicated that the Australian Labor Party will support the Bill because Labor is in favour of red tape reduction, and because approved providers of residential care should not be able to retain provisionally allocated places for an indefinite period.  

No statements by other non-government parties and independents specifically relating to the Bill have been identified.

Position of major interest groups

No statements by major interest groups specifically relating to the Bill have been identified. However, given that the Bill implements elements of the Red Tape Reduction action plan developed by the Government and the ACSC (including representation from peak bodies, aged care providers and consumer groups), the changes are likely to be supported by the aged care sector.

The Minister has also stated that the proposed changes to the transfer of places between providers were provided to the ACSC and selected providers for feedback, and that ‘the response to this measure from the aged-care sector was positive’.

Financial implications

The Explanatory Memorandum states that the Bill has no financial implications.

Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible ‘as it does not raise any human rights issues’.

Parliamentary Joint Committee on Human Rights

The Parliamentary Joint Committee on Human Rights concluded that the Bill does not raise human rights concerns.

Key issues and provisions

Transferring places between aged care providers

Aged care providers may make a business decision that they are no longer in a position to deliver care for some or all of their allocated places, and therefore seek to transfer these places to another aged care provider. Currently, a proposed transfer of places must be approved by the Secretary in order to take effect. Applications
for transfers are routinely approved in around 80 per cent of cases. The Bill replaces this application process with a veto process, under which transfers will be deemed to be approved unless vetoed by the Secretary.

Item 1 in Schedule 1 repeals Division 16 of the Act, which sets out the application and approval process for transferring places between providers, and replaces it with new Division 16 which outlines the veto process for transfers. The new Division has two subdivisions: proposed Subdivision 16-A deals with the transfer of places that are not provisionally allocated, and proposed Subdivision 16-B deals with the transfer of places that are provisionally allocated.

Proposed sections 16-2 and 16-13 provide that an approved provider wishing to transfer a place may give a transfer notice to the Secretary advising of this intent, and set out the information to be included in the transfer notice. The information required is similar to that currently required in the application for approval to transfer places.

Proposed sections 16-3 and 16-14 set out the requirements that the Secretary must be satisfied of when considering the transfer notice. This includes:

- whether the proposed transfer would meet the objectives of the planning process
- whether the proposed transfer would meet the needs of people with special needs (where the places have been allocated on this basis)
- the suitability, financial viability and adequacy of care of the provider receiving the places (the transferee)
- the history of satisfactory conduct of the transferee and their staff and
- that the location of the place will not change as a result of the transfer (for provisionally allocated places).

Whilst these considerations are very similar to those currently prescribed in the Act, the Secretary would no longer need to be satisfied that the transfer was justified in the circumstances (for non-provisionally allocated places), nor that there were exceptional circumstances justifying the transfer and that the needs of the aged care community in the region would best be met by the transfer (for provisionally allocated places). Thus, the Secretary would still be concerned with the distribution of the places under the planning process and the quality of the transferee, but not with the justification for the transfer. This appears consistent with the Government’s stated intention to limit its involvement in a ‘business decision between two already approved providers of residential care’ while still ensuring ‘that a high-standard and quality aged-care service can be delivered’.

The Secretary may currently make a request for further information in order to decide whether to approve a transfer. This is replaced in the Bill by proposed sections 16-4 and 16-15 which provide for the Secretary to issue a notice to resolve any issues relating to the transfer which are of concern to the Secretary. The notice to resolve must specify the issue of concern and the action to be taken by the specified person to resolve the issue. Both parties to the transfer may make submissions to the Secretary addressing the concerns.

The Secretary must currently either approve or reject a transfer application. Under proposed sections 16-6 and 16-17, the Secretary may give a veto notice rejecting the proposed transfer if they are not satisfied that the transfer meets the requirements set out in proposed sections 16-3 and 16-14, if issues raised in a notice to resolve remain of concern, or if the transfer would result in the places being transferred to a different State or Territory. Other circumstances in which the Secretary may veto a transfer may be set out in the Allocation Principles. If no veto notice is issued, under proposed sections 16-8 and 16-19 the transfer takes effect, generally on the day specified in the transfer notice (so long as the transferee is an approved provider on that day).

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34. Aged Care Act 1997, sections 16-1, 16-4, 16-13 and 16-16.
The replacement of an approval process with a veto process does not appear to greatly alter the transfer requirements for providers, nor does it materially lessen the powers of the Secretary. The removal of the requirement for providers to justify the case for the transfer is perhaps the most significant change.

**Timeframes for provisionally allocated places**

Aged care places, especially for residential care, may be provisionally allocated to providers, for example if they require the building or extension of an aged care facility. The Act currently provides for such places to become operational within two years after allocation.\(^{39}\) In practice, the time taken can be longer as the provider may be reliant on ‘acquisition of land, finance, planning and construction approvals, and the availability of builders’.\(^{40}\) The median time for providers to make such places operational is around four years, with 80 per cent operational within six years.\(^{41}\) As at 30 June 2014, there were reportedly more than 7,000 provisionally allocated places that have still not become operational six or more years after allocation.\(^{42}\) The Act does not currently specify an upper limit on the number or duration of extensions that can be granted to the provisional allocation period.\(^{43}\)

**Item 1 in Schedule 2** changes the *provisional allocation period* from two to four years.

**Item 3 in Schedule 2** provides that the Secretary must approve two applications for an extension of the *provisional allocation period* if justified, but that the Secretary only has to approve a third or subsequent application for extension in exceptional circumstances.

**Item 4 in Schedule 2** allows the Minister to specify by way of the Allocation Principles\(^{44}\) matters which the Secretary must consider when determining what constitutes exceptional circumstances.

**Item 8 in Schedule 2** has the effect of fixing the period of each extension at 12 months.

The increase in the provisional allocation period from two to four years would appear to align the Act with the average time taken to build or extend an aged care home and start providing care. The changes to the extension rules are intended to ensure that after six years ‘an extension to the provisionally allocated residential aged-care place will only be made in exceptional circumstances’ so that providers are not holding on to places indefinitely without providing care.\(^{45}\) However, it appears that the Secretary still retains a more general power to make extensions in other circumstances.\(^{46}\)

**Concluding comments**

This Bill makes changes to the way in which aged care providers manage their allocated places. The changes appear to reduce red tape and increase certainty for providers, without significantly lessening the powers of the Secretary. Any effect on the supply of new residential aged care places is not as simple to predict, as the Bill doubles the default time to make a provisional place operational, but tightens restrictions on extensions. The Bill has been developed in consultation with the aged care sector and is supported by the Opposition. The proposed changes are relatively minor in nature and unlikely to be controversial.

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