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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Aged Care Legislation Amendment (Financial Transparency) Bill 2020

**EXPLANATORY MEMORANDUM
and
STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

Circulated by authority of
Rebekha Sharkie MP

Aged Care Legislation Amendment (Financial Transparency) Bill 2020

OUTLINE

This Bill amends the *Aged Care Act 1997* to require residential aged care providers to give an annual financial transparency report to the Aged Care Quality and Safety Commissioner, who would then make them public. The Bill also amends the *Corporations Act 2001* to ensure residential aged care providers include detailed financial information in their annual financial statements.

The Bill requires aged care providers to disclose their income, their spend on food and medication, the amount spent on staff and staff training, accommodation, administration, and how much they pay out to their parent bodies.

This will enable families of loved ones, stakeholders and the public to have a clear view, for the first time, on the proportion of income that providers actually spend on costs of care and how much is just being pocketed or wasted.

People were shocked by the extent of the abuse and poor care exposed in the interim report by the Royal Commission into Aged Care Quality and Safety. It was a scathing report and an indictment on an industry that is meant to deliver respectful, good-quality care during an aged person's final years.

The interim report showed that the government has deep systemic work to do to fix the aged-care system. It also needs to increase its investment. But it cannot simply pour money into the system without asking for a more accountable and transparent situation from providers. It is the *quid pro quo* aged care providers must deliver, given that they are underpinned by significant federal subsidies. In 2018–19, governments spent over \$20 billion on aged care, with approximately 66 per cent of this funding spent for residential aged care.

The Royal Commission into Aged Care Quality and Safety has got financial transparency squarely on its agenda.

In its "Background Paper 1: Navigating the Maze: An Overview of Australia's Current Aged Care System", the Royal Commission provided an overview of aged care funding models and summarised who pays for what.

Then, in its Interim Report, the Royal Commission criticised the aged care system for failing to publish sufficiently specific financial information, saying "there is *no* public information on the way providers use taxpayers' funds and individuals' contributions to deliver aged care services."

Organisations are transparent when they enable others to see and understand how they operate in an honest way. This must apply to the aged care sector; they should not be exempt in any way. This Bill will ensure that goal is achieved.

The Bill does not require private information (such as client records) and 'commercial in confidence' material (such as tender submissions) to be made public. It is primarily concerned with how monies are spent.

Unlike hospital and child care centres, aged care facilities can employ as few staff as they like because there are no staff-to-resident ratios in nursing homes. We do not know how much they spend on staff, or what categories of staff they spend their money on.

At the moment, there is no clear way to know how much a provider is spending on the provision of care. Currently, providers can spend their taxpayer subsidies pretty much as they choose but, in an environment where our elderly are being subjected to systemic neglect, they very much must be held to account.

The Bill is all about transparency and accountability we expect this of our politicians and we must expect it from our publicly funded services especially in the aged care sector.

The Bill seeks factual information from providers so we will have a clearer picture of how their facilities are resourced. This will be crucial if we are to engage in sustainable reforms to the sector that will improve the experience and treatment of vulnerable elderly people living in residential aged care.

FINANCIAL IMPACT

The bill will have no financial impact.

NOTES ON CLAUSES

Clause 1: Short Title

1. Clause 1 is a formal provision specifying the short title of the Bill.

Clause 2: Commencement

2. The Bill will commence the day after it receives Royal Assent.

Clause 3: Schedules

3. Each Act specified in a Schedule to this Act is amended or repealed as is set out in the applicable items in the Schedule. Any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Aged Care Act 1997

Item 1

4. Item 1 inserts new section 9-2A to Division 9 of the Act which deals with obligations which arise from being an approved provider.

Subsection 9-2A(1)

5. This subsection provides for an obligation on approved providers to furnish the Quality and Safety Commissioner with a written report ('the financial transparency report') as soon as practicable within 6 months after the end of the financial year for every residential care facility operated by the approved provider.

Subsection 9-2A(2)

6. This subsection provides the list of information which must be included in the financial transparency report.

Subsection 9-2A(3)

7. This subsection clarifies the categories of staff, pursuant to paragraph 9-2A(2)(g), for whom the total cost of salaries and wages must be provided in the financial transparency report.

Subsection 9-2A(4)

8. This subsection clarifies the meaning of 'staff member' of an approved provider which has the same meaning as in section 63-1AA of the Aged Care Act which provides that:

"staff member" of an approved provider means an individual who is employed, hired, retained or contracted by the approved provider (whether directly or through an employment or recruiting agency) to provide care or other services.

Item 2

9. Item 2 inserts new section 96-11 providing an obligation on the Quality and Safety Commissioner to make the financial transparency report publicly available.

Item 3

10. Inserts a new definition of the meaning of 'financial transparency report'.

Corporations Act 2001

Item 4

11. Item 4 inserts new subsection 296(1C) in the Corporations Act to specify that aged care providers (who receive over \$10 million in Commonwealth funding) must comply with the Tier 1 accounting standards in preparing their yearly financial reports.
12. The intent of this provision is to prevent certain aged care providers from preparing their financial reports in accordance with the Tier 2 simplified disclosure framework (formerly known as the reduced disclosure regime).

Item 5

13. Item 5 is an application provision which clarifies that the amendments contained in this Bill apply to a financial year which begins on or after the date of commencement.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Aged Care Legislation Amendment (Financial Transparency) Bill 2020

This bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the bill

This Bill amends the *Aged Care Act 1997* to require residential aged care providers to give an annual financial transparency report to the Aged Care Quality and Safety Commissioner, who would then make them public. The Bill also amends the *Corporations Act 2001* to ensure residential aged care providers include detailed financial information in their annual financial statements.

The Bill requires aged care providers to disclose their income, their spend on food and medication, the amount spent on staff and staff training, accommodation, administration, and how much they pay out to their parent bodies.

This will enable families of loved ones, stakeholders and the public to have a clear view, for the first time, on the proportion of income that providers spend on costs of care and how much is just being pocketed or wasted.

Human rights implications

This Bill does not engage any of the applicable rights or freedoms.

Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues.

Rebekha Sharkie MP