



Australian Government

Department of Health

Deputy Secretary

Mr Wayne Poels
Executive Director
Office of Best Practice Regulation
Department of the Prime Minister and Cabinet
1 National Circuit
BARTON ACT 2600

Email: helpdesk-OBPR@pmc.gov.au

Dear Mr Poels

Certification of independent reviews in lieu of a Regulatory Impact Statement:

- o *Legislated Review of Aged Care 2017*
- o *Review of National Aged Care Quality Regulatory Processes*

This letter certifies that both the *Legislated Review of Aged Care 2017* (the Tune Review) and the *Review of National Aged Care Quality Regulatory Processes* (the ‘Carnell Review’) have undertaken a similar process and analysis to that required for a Regulation Impact Statement (RIS), as set out in the *Australian Government Guide to Regulation*.

I certify that both the Tune and Carnell reviews have adequately addressed all seven RIS questions, and are submitted to the Office of Best Practice Regulation for the purposes of examining the regulatory impact of the measures announced in response to these reviews. The Government is currently implementing these measures. Further details regarding how the Tune and Carnell Reviews fulfil these requirements are set out in Attachment A (Tune) and Attachment B (Carnell).

Regulatory impact

The total regulatory impact on businesses, community organisations and individuals of measures associated with both of these reviews has been quantified according to the Australian Government’s Regulatory Burden Measurement framework and is provided below. Costings of \$2 million or more per annum have been agreed with your office.

Tune and Carnell Reviews				
Average annual regulatory costs (from business as usual)				
Change in costs	Business	Community organisations	Individuals	Total change in cost
Total, by sector	-\$1,132,808	\$773,000	\$3,000	-\$356,808

Phone: (02) 6289 1479 Email: Lisa.Studdert@health.gov.au

Scarborough House, Level 14, Atlantic Street, Woden ACT 2606 - GPO Box 9848 Canberra ACT 2601 - www.health.gov.au

A breakdown of the total regulatory impacts of measures by individual review is also provided within Attachment A (Tune) and Attachment B (Carnell).

Accordingly, I am satisfied that both the Tune and Carnell Reviews meet best practice, consistent with the *Australian Government Guide to Regulation*.

Yours sincerely



Dr Lisa Studdert
(A/g) Deputy Secretary
Aged Care, Sport & Population Health Group
Department of Health

3 August 2018

Legislated Review of Aged Care 2017 (Tune Review)

As part of the changes to aged care announced in 2012, a comprehensive, independent review was included in the *Aged Care (Living Longer Living Better) Act 2013* (the LLLB Act). On 22 September 2016, the Hon Ken Wyatt AM MP, the then Assistant Minister for Health and Aged Care, announced the appointment of Mr David Tune AO, PSM as the independent reviewer. Mr Tune was supported by a secretariat within the Department of Health (the Department).

Section 4 of the LLLB Act required that the Tune Review address nine key matters. The LLLB Act also required that the review undertake public consultation with a range of stakeholders including aged care providers, aged care workers, consumers, people with special needs, carers, and representatives of consumers. The consultations included a public call for written submissions, targeted consultation workshops, and engagement with key organisations, groups and peak bodies in the aged care sector.

The final report was tabled in both Houses of Parliament on 14 September 2017, and is available on the Department's [website](#).

The Review examined the impact and effectiveness of the changes implemented under the nine matters below and made 38 recommendations for future reform to the aged care system.

Addressing the RIS questions

Questions 1 and 2 consider the policy problem and why government action is needed.

The Tune Review was undertaken as a requirement under the LLLB Act, namely that an independent review be undertaken to analyse the impact and effectiveness of the aged care reforms announced in 2012.

The following matters were reviewed:

1. Whether unmet demand for residential and home care places has been reduced;
2. Whether the number and mix of places for residential and home care should continue to be controlled;
3. Whether further steps could be taken to change key aged care services from a supply driven model to a consumer demand driven model;
4. The effectiveness of means testing arrangements for aged care services, including an assessment of the alignment of charges across residential and home care services;
5. The effectiveness of arrangements for regulating prices for aged care accommodation;
6. The effectiveness of arrangements for protecting equity of access to aged care service for different population groups;
7. The effectiveness of workforce strategies in aged care services, including strategies for the education, recruitment, retention and funding of aged care workers;
8. The effectiveness of arrangements for protecting refundable deposits and accommodation bonds; and
9. The effectiveness of arrangements for facilitating access to aged care services.

Phone: (02) 6289 1479 Email: Lisa.Studdert@health.gov.au

Scarborough House, Level 14, Atlantic Street, Woden ACT 2606 - GPO Box 9848 Canberra ACT 2601 - www.health.gov.au

Through consultation and data analysis, a number of policy issues were identified in relation to these matters. The Review made 38 recommendations, a number of which are addressed through associated measures.

Questions 3, 4 and 6 require consideration of options to best address the policy problem and the need for government action.

The Australian Government has principal responsibility for the regulation, planning and funding of the aged care system.

The Tune Review concluded that the previous reforms have been successful in taking aged care in Australia further along the road towards a consumer-driven and sustainable system that will meet both current and future aged care needs, but that further reforms led by Government are needed in areas such as information, assessment, consumer choice, financial sustainability and equity of access.

Various policy options have been considered to address the issues identified in the Tune Review and its recommendations. Some of these options were tested throughout the consultation process with consumers, providers and peak bodies. Policy options and priorities for implementation have also been informed by the views of key stakeholders following the release of the Tune Review. This has occurred through a range of forums and meetings, including the Minister's Aged Care Sector Committee, the National Aged Care Alliance and an advisory group on future care at home reform.

Further Government action is required so that the aged care system can respond to the changing wishes and expectations of older Australians and their families. The Government recognises this need, and is building an aged care system that supports people's choices, rather than one that makes choices for them.

The reform proposals being considered lay the foundation for a continuum of care – from basic supports (such as meals and transport), through coordinated services in a person's home, to residential aged care. The package delivers reform across the aged care system to make it easier and simpler for people to access care, allow consumers to receive the care they need at the right time and place, and ensure that care is safer and high quality.

Question 5 asks who will be consulted and how they will be consulted.

Extensive public consultation was undertaken to inform the findings and recommendations of the Tune Review. Public consultation was undertaken through a written submission process, which received 145 submissions from a range of stakeholders including individual consumers and carers, workers, aged care providers and peak bodies.

Further, Mr Tune undertook targeted stakeholder workshops with consumers, carers and consumer representatives, aged care workers, and aged care providers. A total of 30 workshops were held with each of these stakeholder groups in all capital cities and three regional centres, from 3 February – 21 March 2017.

The purpose of these workshops was for Mr Tune to hear stakeholders' first-hand experiences with the aged care system. Mr Tune also sought views on ways the system could be improved from the perspective of consumers and carers, workers and providers.

The Minister’s Aged Care Sector Committee and the National Aged Care Alliance, representing a range of peak bodies across the aged care sector, were also used as reference groups to provide targeted feedback to inform the Review, and the subsequent development of policy options.

Question 7 asks how the regulatory option will be implemented and evaluated.

The Department will continue to work closely with aged care stakeholders in the design and implementation of measures, once announced by Government. As with previous reforms, implementation, communication and evaluation of measures will be underpinned by co-design with the sector, in particular, working closely with advisory groups established under the National Aged Care Alliance.

Some of the recommendations are significant in their scale and scope, and further work is required before Government considers broader implementation. An example is the proposal to consider options for allocating residential care places to consumers instead of providers. Future reform in this area will be informed by an impact analysis that will involve further consultation with stakeholders and the development of alternative allocation models.

Some of the proposals involve trials or pilots. An example is the proposal to promote functional independence – a two year trial to support older Australians to live at home more independently, through reablement and wellness approaches. This proposal includes an independent evaluation which will inform future advice to Government on longer-term implementation options. Another proposal (System Navigator) will design more comprehensive system navigator and outreach service models through a process of discovery with stakeholders, including small scale trials. These trials will also be evaluated.

Implementation of all proposals will be closely monitored, within an overarching governance framework within the Department to ensure a cohesive package of measures. There will be ongoing and regular reporting on progress to Ministers, stakeholders and the public.

Implementation of some proposals will involve changes to primary and subordinate legislation, grant arrangements, and changes to ICT systems. The Department will work closely with stakeholders and other government departments/agencies on these elements.

Regulatory impact

The total regulatory impact on businesses, community organisations and individuals of measures associated with the Tune Review has been quantified according to the Australian Government’s Regulatory Burden Measurement framework and is provided below. Costings of \$2 million or more per annum have been agreed with your office.

Tune Review				
Average annual regulatory costs (from business as usual)				
Change in costs	Business	Community organisations	Individuals	Total change in cost
Total, by sector	-\$6,024,808	\$449,000	\$3,000	-\$5,572,808

Review of National Aged Care Quality Regulatory Processes (Carnell Review)

An independent review of Commonwealth aged care regulatory processes was announced in response to the Oakden Report which detailed failures in the quality of care delivered at the Oakden Older Persons Mental Health Service in South Australia. On 11 May 2017, the Hon Ken Wyatt AM MP, Minister for Aged Care, announced the appointment of Ms Kate Carnell AO and Professor Ron Paterson ONZM as the independent reviewers. The reviewers were supported by a secretariat within the Department of Health (the Department).

The Review examined why regulatory processes did not adequately identify the systemic and longstanding failures of care documented in the Oakden Report and whether the current regulatory processes provide assurance that aged care recipients receive appropriate care and that failures of care are rapidly identified and addressed.

The Review included a public call for written submissions and over 40 consultations with consumers and their families, advocates, peak bodies, service providers, health and aged care workers, academics and regulatory experts. Three consumer forums were also held.

In addition, the Review was informed by analysis of peer-reviewed and grey literature that examined how the operation of Australia's aged care regulatory system compares to those in other developed countries facing similar challenges. It also assessed the extent to which Australia's regulatory system conforms with established best-practice regulatory principles.

The Review made 10 recommendations to strengthen Australia's aged care regulatory processes. The final report is available on the Department's [website](#).

Addressing the RIS questions

Questions 1 and 2 consider the policy problem and why government action is needed.

The Government commissioned the Carnell Review to examine the effectiveness of the current Commonwealth quality regulatory process and to determine why the extent of failures at the South Australian Oakden Older Persons Mental Health Service were not identified and responded to earlier through these regulatory processes.

As the Commonwealth's aged care regulation applies to all Commonwealth-subsidised residential aged care facilities, it was critical to identify any deficiencies in the aged care regulatory system that might prevent the early detection, and swift remediation by providers, of failures of care. Community expectation is that the Commonwealth's regulation is able to give assurance to aged care recipients and their families about the quality of care being delivered by providers.

The Carnell Review concluded that, in an international context, the regulatory system governing aged care in Australia performs relatively well. However, the reviewers said current mechanisms do not consistently provide the assurance that the community expects and further changes are necessary.

Questions 3, 4 and 6 required consideration of options to best address the policy problem and the need for government action.

The Australian Government regulates providers who receive Commonwealth subsidy to deliver aged care services through the approval of residential and home care providers, accreditation of residential providers, allocation of residential places, ongoing monitoring against quality standards, and revocation of approved provider status.

In return for Commonwealth subsidy, approved providers of aged care are required to meet certain responsibilities relating to the provision of care and services. These requirements are set out in the *Aged Care Act 1997* (the Act) and the Aged Care Principles (the Principles).

The Carnell Review considered potential options for improving the Commonwealth's accreditation, monitoring, review, investigation, complaints and compliance processes and made 10 recommendations. Proposals to address these recommendations include:

- Establishing an independent Aged Care Quality and Safety Commission to centralise accreditation, compliance and complaints handling (currently the responsibility of three agencies).
- Making existing regulatory ICT systems interoperable to support data sharing across the regulatory arms of the Commission to enhance risk profiling of providers and to determine the frequency and duration of site visits for the ongoing monitoring of providers.
- Developing a differentiated performance ratings of residential service providers.
- Introducing ongoing accreditation, with unannounced visits, to assure safety and quality of residential aged care; and ensuring the assessment against quality standards is consistent, objective and reflective of current expectations of care.

Question 5 asks who will be consulted and how they will be consulted.

A multi-faced consultation approach was undertaken by the reviewers to develop their recommendations and ensure that the review findings were informed by the collective and varied experience of policy-makers, regulators, academics, health and aged care service providers, care recipients and their families and carers.

Public consultation was undertaken through a written submission process (open to the public) and face to face meetings. Written submissions were received from consumers, peak bodies, academics, industry, health professionals and interested individuals. A total of 423 written submissions were received and considered by the reviewers.

Face to face and teleconference meetings were held with consumers and aged care workers, aged care regulators, aged care organisations, academics and technical experts, government officials. In addition, three consumer forums were held in Brisbane and Melbourne.

Subsequent to delivery of the report, the Department has consulted on the recommendations with key stakeholders including the Minister's Aged Care Sector Committee (ACSC), the ACSC quality subgroup, and the National Aged Care Alliance.

Question 7 asks how the regulatory option will be implemented and evaluated.

The Department will continue to work closely with aged care stakeholders in the design and implementation of measures, once announced by Government. As with previous reforms,

Phone: (02) 6289 1479 Email: Lisa.Studdert@health.gov.au

Scarborough House, Level 14, Atlantic Street, Woden ACT 2606 - GPO Box 9848 Canberra ACT 2601 - www.health.gov.au

implementation, communication and evaluation of measures will be underpinned by co-design with the sector, including through technical subgroups.

Some of the proposed regulatory reforms, particularly the establishment of an independent Aged Care Quality and Safety Commission, will require significant changes to legislation, processes and governance arrangements. Existing work being undertaken will respond to some of the recommendations, particularly the work being undertaken in the development of new quality standards as part of the Single Quality Framework.

Implementation of all proposals will be closely monitored, within an overarching governance framework within the Department to ensure a cohesive package of reform measures. There will be ongoing and regular reporting on progress to Ministers, stakeholders and the public.

Regulatory impact

The total regulatory impact on businesses, community organisations and individuals of measures associated with the Carnell Review has been quantified according to the Australian Government’s Regulatory Burden Measurement framework and is provided below. Costings of \$2 million or more per annum have been agreed with your office.

Carnell Review Average annual regulatory costs (from business as usual)				
Change in costs	Business	Community organisations	Individuals	Total change in cost
Total, by sector	\$4,892,000	\$324,000	\$0	\$5,216,000