

## Letter to the shadow minister for aged care

The Hon Senator Jan McLucas  
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PO Box 2733  
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24<sup>th</sup> October 2007

Dear Senator McLucas,

### **Plugging loopholes in aged care regulations**

I am writing to ask you, as shadow minister for aged care, what the labour party will do, if elected, about the serious problem that exists in the aged care approved provider regulations. I had assurances from both current ministers that they would address the problems but to the best of my knowledge nothing has been done and they may soon be out of office.

The assurances they gave seem to be little more than fiddling with the edges of the process and did not specify exactly what the changes would be. Nevertheless the context was an assurance in response to the issues I had raised. In this context the letters clearly indicated to me that the loophole that allowed unsuitable purchasers to escape all scrutiny would be closed. I now have reason to believe that this may not have happened and these ministers may not be re-elected.

Both of these letters are now on a web site I write  
[http://www.corpmedinfo.com/dca\\_min\\_coresp\\_7\\_07.html](http://www.corpmedinfo.com/dca_min_coresp_7_07.html).

I would dearly like to include on the site, a letter from you, as shadow minister for aged care, setting out in simple terms what labour would do about this problem if elected. I will then draw this to the attention of those groups interested in aged care.

### **Background**

The background, the issues and correspondence about deficiencies in the approval processes going back to 1999, (in regard to this and related issues) are addressed in detail on the web page below and in links from it. Your staff can brief you.  
<[http://www.corpmedinfo.com/dca\\_sale.html](http://www.corpmedinfo.com/dca_sale.html)>

I give a brief summary here.

### **Citigroup's purchase of Mayne hospitals**

CVC Asia Pacific and CVC Capital Partners, both for practical purposes venture capital (private equity) arms of Citigroup bought Mayne Health's hospitals in 2002. Citigroup <[http://www.corpmedinfo.com/access\\_citi.html](http://www.corpmedinfo.com/access_citi.html)> has a dreadful track record for integrity in dealing with those it serves. Objections were lodged in NSW on probity grounds. The department were sufficiently concerned that they mounted an 18 month probity review and then only granted licenses in 2005 subject to conditions. Such licenses were in any event required at that time to permit the planned sale of the hospitals.

### **Citigroup's purchase of DCA nursing homes**

In September 2006 the same group purchased DCA's nursing home empire, the largest in Australia and New Zealand. An objection was lodged with federal authorities assessing companies for approved provider status. This asked for acknowledgement. In spite of further letters and a phone call it took almost 5 months for the authorities to

respond and indicate that these venture capitalists were not required to seek approved provider status.

### **The department of aged care's response**

I quote "An application for approved provider status is currently not required - - - - when an organization acquires all or part of another company which has been granted Approved Provider status.

This directly contradicts assurances I was given by the same person in 1999. I cannot believe that any government department, however inefficient could take so long to answer a simple question. The delay allowed the issue to blow over and it is difficult to accept that there was no inappropriate political or marketplace interference.

### **The alarming implications**

What is also clear is that approval status came with the purchase – in other words the possession of approval was a commercial commodity for which the purchaser paid when acquiring nursing homes. In the light of the groups experience in NSW and the certainty that a similar objection would be lodged, this approval status was a very valuable commodity for the Citigroup entities. The conclusion must be that "suitability" and approval can be bought and sold attached to nursing home premises when the owners sell. They add value to the sale.

**Owners:-** As you are well aware there have been major problems in the regulations relating to the owners of nursing homes. Because they control the purse strings they can effectively appoint directors and managers as well as control staffing and supplies. While they may be barred from actual management positions there is no means of stopping them from pulling the purse strings or of detecting what they are actually doing. There has been no effective restraint on the worst sort of criminals and other aberrant individuals who can have a major impact on care. The Riverside and the Kenilworth/Belvedere Park debacles are representative red flags and not exceptions.

**Managers:-** We had all assumed that at least those who managed the operations were properly assessed. We now know that this is not so. Citigroup's CVC Asia Pacific is a turnaround specialist and makes no secret of its intention to supply management advice and supervision. It is hands on and its intervention is illustrated by the vastly increased sum for which it has just sold the nursing homes. The consequences of these commercial "efficiencies" for the care of residents are not yet known.

**Implications:-** Much worse it is now clear that very few if any of the vast number of commercial entities including private equity, banks, trusts and rich individuals that have come to control and dominate this marketplace would have been required to seek approval. These groups have grown rapidly by buying smaller nursing home operators in the last few years.

They have been free to impose their cost cutting to staff and supplies and introduce "efficiencies" that dehumanize and destroy the quality of the lives of residents and staff alike. If they concentrate on the paperwork and specific items measured in the infrequent 3 yearly assessments they can get away with it. In addition they usually have the opportunity to fix any problems quickly and have another assessment before there is publicity.

It would be interesting to know whether a company which acquires approval status by buying it as part of a nursing home package retains that approval status when it builds a new nursing home. It seems likely that this is so.

It is little wonder that our nursing home sector has become such a disaster zone. It is too early to assess the full consequences of the unscreened private equity invasion. The

recent investigation of private equity investment in the USA (where there are no probity requirements either) illustrates what this is likely to be.

### **Eliciting undertakings**

After the department's response was received this issue was taken up with groups interested in aged care and with politicians. I have letters in which both ministers gave assurances which I understand to be a commitment to close these glaring loopholes and protect our senior citizens. You can examine them yourself to decide whether this was all smoke and mirrors.

### **BUPA buys DCA's nursing homes**

On the 4<sup>th</sup> of October it was announced that the giant UK and Australian not for profit insurer BUPA had purchased DCA's nursing homes from the Citigroup consortium. Not only was this an opportunity to see if the ministers' undertakings were real but BUPA itself had been involved in a brutal dispute in 2003.

In this dispute sick citizens had not only been mentally traumatized and their care compromised, but the entire health system had been thrown into disarray. This was, most would agree, unconscionable conduct in the health care context by the two commercial entities. BUPA's suitability needs to be assessed by an authority able to demand negotiating documents and records.

### **Contacting the department**

On the same day (4<sup>th</sup> October) I faxed and then posted an urgent request to the department asking whether BUPA would be required to undergo an assessment of its suitability.

A week later I had received no reply so I put in a formal objection based on BUPA's conduct in Australia.

Another week later I phoned the department and spoke to someone who was clearly familiar with my correspondence. He refused to give me any information or to tell me whether BUPA had been required to seek approved provider status. He indicated the matter was receiving urgent attention.

It is now three weeks since I faxed the department and I no longer expect to get a response before the election. This seems to be a replay of the DCA sale to Citigroup.

### **A closer examination of BUPA**

I have now done a more extensive review of BUPA's operations in other countries and have found the same pattern of aggressive commercial behaviour. There is dissonance between the claims made as BUPA promotes its not for profit mission on the one hand and its marketplace activity on the other. This goes to its integrity and requires scrutiny.

The prime objective has been to find out what changes if any have been made to the regulations and whether purchasers are now adequately vetted. I suspect that nothing has been done.

BUPA is certainly preferable to Citigroup but fairness indicates that its suitability should still be assessed, any reservations documented, and the company cautioned about them. My assessment is that the company simply does not confront the disconnection between its actions and the image it promotes and then embraces – nor the consequences for citizens. They should be confronted with this.

### **Questions**

There are clearly two issues here that should be important for labour's policy. You are I am sure well aware of them and have already thought about them. I ask you to address them in a letter which can be set beside the present ministers undertakings.

1. a. Assessment of the suitability of potentially influential owners of nursing homes before they purchase and  
b. what action is taken when an existing owner is shown to be a criminal or otherwise unsuitable. This has been a serious problem in Australia.
2. The bundling of nursing home approval status with the sale of nursing home companies. What steps will be taken to ensure that all those who play or might play an influential role behind the scenes are assessed as suitable in their own right.

I find the term “suitable” used by the minister and the department rather vague and imprecise. This glib phrase was used when I challenged them about the abolishment of probity requirements in the 1997 legislation. The term probity is more specific as it implies an assessment of whether those in the sector, where the person or company will provide services, would, if in possession of all the information, trust them to provide that service. Clearly greater trust is required in nursing homes than in any other sector and the standards would be higher. We all have a good idea of what level of probity (trustworthiness) we expect in different sectors.

This letter summarizes the issues. I plan to put it on the web site in a weeks time and will then alert those community groups interested in aged care so that they can pursue the issues constructively.

This letter should not be seen as an endorsement of the current marketisation of nursing homes – the lucrative trade in decrepitude and the misfortune of others. Plugging holes in this rusty bucket will simply buy some time. If our elderly are to receive decent care then far more fundamental changes are required, commencing with the frames of understanding within which the issues are debated and the service structured.

I hope that you can find the time to respond.

Yours sincerely,

J Michael Wynne