



# **Australian Government**

## **Response to the Senate Community Affairs Legislation Committee Report on the:**

### ***Aged Care (Living Longer Living Better) Bill 2013 [Provisions] and related bills***

## **Introduction**

On 14 March 2013, the Senate referred the *Living Longer Living Better* reform bills to the Senate Community Affairs Legislation Committee (the Committee). The Committee sought submissions from and undertook hearings with stakeholders.

Some 112 submissions were received by the Committee and published on its website from a wide range of stakeholders. The Committee published its report on the Aged Care (Living Longer Living Better) Bill 2013 [Provisions] and related bills on its website on 31 May 2013, making 13 recommendations.

The Australian Government welcomes the Committee's report and thanks the Committee for its considered approach to the recommendations made in the report. In developing this response the Government has also considered the comments and recommendations from the Australian Greens' and Coalition Senators who were members of the Committee.

Currently, over one million older Australians receive aged care services subsidised by the Australian Government. By 2050, over 3.5 million Australians are expected to use aged care services each year.

Australia's ageing population is placing significant pressures on the aged care sector. With an increase in demand for aged care services, older Australians are also seeking greater flexibility in aged care, including independent living arrangements and increased choice. Additionally, there is a greater expectation regarding the quality of services being provided.

The *Living Longer Living Better* aged care reform package was announced on 20 April 2012. It provides \$3.7 billion over five years to build a better, fairer and more nationally consistent aged care system. The *Living Longer Living Better* reform package was developed based on the work of the Productivity Commission and the National Aged Care Alliance's Blueprint. It represents a 10 year plan, with a major five year review point to ensure Australia's aged care system meets the changing needs of an ageing population. The reforms being pursued in the first five years deliver important benefits for older people and the aged care sector, while also laying the foundation for longer term, sustainable reform of the system.

## Government Response to Recommendations

### Recommendation 1

**3.55** The committee recommends that, as part of the arrangements for ACFA monitoring of the reforms that are recommended by the committee in chapter 4, evidence be sought on any impacts of the design of the fee scales on care recipient welfare.

### Recommendation 3

**4.65** The committee recommends that the Minister direct the ACFA to report regularly to the Minister on the impact of the reforms on providers (for example, the number and distribution of care recipients choosing DAPs and RADs). ACFA's brief should include specific consideration of the impacts on different types of providers (e.g. current low-care-only providers, small providers, and rural providers).

### Response:

The Australian Government accepts the above recommendations.

The *Living Longer Living Better* aged care reforms represent a significant change to the aged care sector and can be expected to bring substantial benefits to industry over the long term. As with any significant change, it is important the transition to the new system is managed efficiently and effectively. The Government acknowledges the need for mechanisms to support the sector in transition and to monitor the impacts of the reforms as identified by the Committee.

The Aged Care Financing Authority (ACFA) was established on 1 August 2012 to provide independent advice to the Government on pricing and financing issues in aged care. The ACFA has already provided advice to inform the Minister's decisions on the definition of significant refurbishment, and the framework for accommodation payments.

The ACFA's Operating Framework currently requires the ACFA to provide advice to the Minister for Mental Health and Ageing on:

- the impact of the aged care financing arrangements on access to care, sustainability and industry viability, including an analysis of revenue, cost and productivity movements in the aged care sector, to inform the Minister's annual review of pricing policy across the sector;
- the level, and impact on access to care, sustainability and industry viability, of any Accommodation Payments that are levied by Approved Providers for entry to residential aged care; and
- the level and impact on access to care, sustainability and industry viability, of any additional amenity fees for additional services that are levied by Approved Providers for aged care services.

In response to the above recommendations, the Minister for Mental Health and Ageing has referred the following matters to the ACFA.

1. As part of considering the impact of the aged care financing arrangements on access to care, the ACFA should consider any impacts of the design of the means testing fee scales on care recipient welfare, for both residential care and home care. This will include considering whether there is any evidence that the fee scales are creating barriers to access for some client groups (such as self-rationing), and if so, how these could be addressed.
2. As part of considering the impacts of new Accommodation Payment arrangements, the ACFA should specifically examine the number and distribution of care recipients choosing Daily Accommodation Payments (DAPs) and Refundable Accommodation Deposits (RADs). ACFA has been asked to give specific consideration to the impacts on different types of providers (e.g. current low-care-only providers, small providers, and rural providers).
3. Monitoring the take up of measures to provide support to the sector during the transition, particularly among smaller and regional services. This will include ensuring the early detection of any transitional problems. See response to recommendation 4 for further information on the support and monitoring measures to be introduced.
4. Specifically considering the viability of rural, regional and remote services and providers when monitoring the impact of the range of reforms. This will include contributing to reviewing and reporting on the operation of the viability supplement.

The Government notes stakeholder calls for further consideration of Government-backed measures to enable older people to draw upon the equity in their homes as a means of contributing to the costs of aged care. The *Consumer Credit Legislation Amendment (Enhancements) Act 2012* introduced new requirements, effective from 1 March 2013, to provide consumers with greater protection in relation to existing private sector home equity release schemes (including the introduction of a no negative equity guarantee).

In addition, in the 2013 Budget, the Government announced that it would be investing \$112.4 million over four years in a trial program to support Aged Pensioners choosing to downsize their home, without immediately affecting their pension. Seniors who downsize their family home will be able to have up to \$200,000 of the sale proceeds quarantined from the means test for the age pension.

The outcomes of the trial as well as ongoing monitoring of the impacts of the new fee arrangements by the ACFA will feed into the five year review of the aged care reforms included in the Aged Care (Living Longer Living Better) Bill 2013. The review includes specific consideration of the effectiveness of means testing arrangements for aged care services. Any further consideration of Government-backed equity release options would be best considered in this context.

Stakeholders and the Australian Greens also raised concerns regarding the effect on household budgets of taper rates for income tested fees and charges in home care, and recommended that these taper rates be revised. The Government notes these concerns, also noting that to fund such changes to the taper rates would result in a significant

drop in the number of home care packages made available over the next decade. ACFA has been tasked by the Minister with considering the effect of fee scales on recipient welfare and take up rates of home care packages.

**Recommendation 2**

**3.64 The committee recommends that the government closely monitor the take up of home care packages and any signs of changes to demand for HACC-type packages.**

**Response:**

The Australian Government accepts this recommendation.

Over the first two years of the new Home Care Packages program, the arrangements will be closely monitored and evaluated. This will be undertaken in partnership with key stakeholders to monitor implementation and understand the challenges. The evaluation activities will focus on the impact of the new home care arrangements, including the new supplements, on:

- consumer experience and outcomes;
- provider operations;
- Aged Care Assessment Team processes;
- the interface between the Home Care Packages Program and other programs, such as the Home and Community Care Program and the National Disability Insurance Scheme (NDIS); and
- the effectiveness of the new arrangements in delivering a graduated continuum of care.

The evaluation will also consider whether Consumer Directed Care (CDC) has supported increased access to digital technology by consumers and providers.

Any lessons learned during this time will be used to refine the Home Care Packages program (including the CDC arrangements) prior to all existing Home Care Packages being provided on a CDC basis from 1 July 2015. The evaluation will also contribute to the establishment of the Commonwealth Home Support Program from 1 July 2015. The Commonwealth Home Support Program will deliver basic home support services on a more consistent and equitable basis, including more national consistency in what people contribute to the costs of these services.

**Recommendation 4**

**4.66 The committee recommends that the Government immediately put in place arrangements to monitor the impact on low care providers, and prepare to make available transitional support along the lines recommended by the Productivity Commission, including support services for providers seeking assistance in transitioning to the new system.**

**Response:**

The Australian Government accepts this recommendation in part.

To support the sector in transition the Government will make available \$6.9 million over three years for:

- Government subsidised business advisory services for residential aged care providers to assist providers to prepare for and manage the transition to the new accommodation payments system in residential aged care; and
- independent monitoring and advice to Government, through the Aged Care Financing Authority, on the impacts of the reforms to the accommodation payments system and the changes to means testing in home and residential care on providers and care recipients.

Approved providers will also be encouraged to access assistance through existing mechanisms such as the Aged Care Workforce Innovation Network (WIN). The Aged Care WIN has been developed to support the sector in its reform preparations and implementation, at both regional and individual-enterprise level, by providing an opportunity to redesign their business models and skills mix. It is funded through the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education (DIICCSRTE) and undertaken in partnership with Aged and Community Services Australia (ACSA) and Leading Aged Services Australia (LASA).

The Government's view is that these mechanisms provide appropriate support to the sector during this period of change. The Government does not consider further strategies to be warranted ahead of evidence of negative sector impacts.

**Recommendation 5**

**5.21 The committee recommends that the government consider amending the legislation to create a statutory timeline to make a decision regarding whether industry will be subject to a levy to recoup a loss.**

**Response:**

The Australian Government does not support this recommendation.

The Accommodation Bond Guarantee Scheme (Guarantee Scheme), which included levy arrangements, was supported by industry when introduced in 2006. The arrangements benefit all approved providers by maintaining the public confidence in

the aged care sector and the security of more than \$13 billion in residents' savings which is essential to maintaining this source of funding.

The Government did propose in the original reform package to require aged care providers to privately insure bonds (and refundable deposits) from 1 July 2014. However, after further consideration of the matter, including industry and consumer feedback, the Government decided that neither the sector nor the insurance market were ready for an insurance-based solution at this time. Instead the existing Guarantee Scheme is being continued and expanded to ensure that the lump sums paid by consumers now and in the future continue to be protected, providing certainty for providers and consumers.

This decision reflects a number of considerations, including the lack of a private insurance market which could provide cover in the time and of the type required to insure lump sum accommodation payments and potential cost impacts on industry and consumers.

Consultation will continue with the industry and consumers in coming years to assess the capacity to move to a privately provided insurance model in the future, with this issue given explicit attention in the five year review of the aged care reforms. The legislation currently provides that the Minister may decide to levy the industry to recover costs incurred by the Commonwealth in refunding accommodation bonds to consumers in the event of a provider default. To date, while the Guarantee Scheme has been triggered on five occasions and the Commonwealth has paid out approximately \$24 million, the levy arrangements have not been used.

The decision on whether to levy approved providers to recoup the costs of the Guarantee Scheme is a decision for the Government. It is important to note that a liability is only created if a levy is imposed.

It would not be appropriate to impose a time limit as this may constrain the Government's capacity to pursue defaulting providers to recover costs of the Guarantee Scheme. It is essential to seek to take action against these approved providers as this reduces the moral hazard impact of the Guarantee Scheme and holds the defaulting provider accountable for their failure to refund bonds. However, this can take time. A time limit would also increase the risk of there being a shortfall which might then be met by the imposition of a levy. Should the Government decide to levy the industry in the future, the legislation provides for flexibility in how and to what extent the levy would be applied.

#### **Recommendation 6**

**6.24 The committee recommends that the dementia supplement be renamed as the *Dementia and Behavioural Supplement*, in both residential and home care.**

#### **Response:**

The Australian Government accepts this recommendation in principle.

The Government will move an amendment to change the names of the two dementia supplements to:

- the *Dementia and Cognition Supplement* (for home care); and
- the *Dementia and Severe Behaviours Supplement* (for residential care).

These names better reflect the purpose and targeting of the two supplements as suggested by the Committee.

While it is expected that some consumers with a mental health condition will be eligible for these supplements, it is important to note that these supplements are not intended to fund the provision of mental health services. Older people living with mental health issues continue to be eligible for mental health services like anybody else in the community. The Government notes that whether older people in residential aged care have adequate access to mental health services was raised as part of the Inquiry. These issues will be considered further in the review of the reforms provided for in the Aged Care (Living Longer Living Better) Bill 2013.

#### **Recommendation 7**

**6.28 The committee recommends that the bill be amended to include parents separated from their children by former adoption practices.**

#### **Response:**

The Australian Government accepts this recommendation.

The Government supports the inclusion as a special needs group in the *Aged Care Act 1997* of parents separated from their children by forced adoption or removal.

Inclusion of this group would recognise the traumatic experiences, health issues and socio-economic disadvantage that parents affected by those adoption practices are disproportionately likely to face.

#### **Recommendation 8**

**6.40 The committee recommends that the government create a Homeless Supplement.**

#### **Response:**

The Australian Government supports this recommendation.

In the 2011-12 Budget, the Australian Government introduced changes to the Viability Supplement. This change included additional funding for providers that specialise in homelessness following a finding from the Aged Care Funding Instrument (ACFI) review. Recent monitoring of the changes suggests that additional assistance above that already provided is required to support the ongoing viability of these services.



In recognition of the additional costs of caring for people with a history of, or at risk of, homelessness, the Australian Government supports the introduction of a new supplement that provides additional funding for those providers who specialise in caring for people with a history of, or at risk of, homelessness.

**Recommendation 9**

**6.53 The committee recommends that the Senate amend the bill in the terms described in the government's tabled amendment.**

**Response:**

The Australian Government accepts this recommendation.

From 1 July 2012 lesbian, gay, bisexual, transgender and intersex people were specified as people with special needs for the purposes of the *Aged Care Act 1997* by amendments to subordinate legislation. The Aged Care (Living Longer Living Better) Bill 2013 incorporates these amendments in the Act from 1 July 2013. In December 2012, the Government launched the National Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Ageing and Aged Care Strategy. The Strategy will help inform the way Government responds to the needs of older LGBTI people and better support the aged care sector to deliver care that is sensitive and appropriate.

The Australian Government accepts the committee's recommendation that the Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013 be amended in the terms described in the Government's tabled amendment AG264. The amendment provides that the exemption for bodies established for religious purposes from the prohibition of discrimination on the basis of protected attributes, including sexual orientation and gender identity, will not apply to an act or practice connected with the provision of Commonwealth-funded aged care unless the act or practice is connected with the employment of persons to provide that aged care. The amendment strikes an appropriate balance between the rights to freedom of religion and freedom from discrimination.

The amendment will reinforce the rights of care recipients as set out in the Charters of Rights and Responsibilities under the *Aged Care Act 1997*. In accordance with the Charters, approved providers are required to treat each care recipient with dignity and respect and to accept each person as an individual, with the right to select and maintain social and personal relationships with anyone else without fear, criticism or restriction.

**Recommendation 10**

**6.67 The committee recommends that the ministers responsible for Disability Care Australia and the aged care reforms acknowledge the issue identified in the both Senate committee inquiries into these reforms, and urges ministers to continue their work to ensure that the two systems meet the needs of all people ageing with disability.**

**Response:**

The Australian Government accepts this recommendation.

Both the Minister for Mental Health and Ageing and Minister for Disability Reform have made a commitment to stakeholders that they will continue to consult and work with their colleagues to monitor the implementation and interface of the aged care reforms and disability systems.

Both Ministers agreed to closely monitor the DisabilityCare Australia launch sites in Barwon and the Hunter, including the impact of aged care reforms such as new CDC Home Care Packages, to ensure interface issues are understood.

The Government is ensuring that relevant departments are also working closely with DisabilityCare Australia, particularly on the issues relating to the interfaces between the scheme and health, mental health and aged care systems to ensure that people's care needs are supported in the most appropriate care setting, regardless of their age. People aged over 65 years will be able to access existing supports through the health and aged care system. For example, existing services for older Australians such as hearing and vision services will continue to provide supports to people who develop a disability after age 65.

The *NDIS Act 2013* is also scheduled for an independent review after two years of operation. It would be appropriate for the interface of the Aged Care (Living Longer Living Better) Bill 2013 and the *NDIS Act 2013* to be considered as part of this review. It will be important that the interface between these two systems be reviewed as they evolve to reflect reforms occurring in both systems.

**Recommendation 11**

**7.31 The committee recommends that the government examine whether it may be appropriate to revise the Supplement Guidelines to permit in some circumstances the use of the workforce supplement in meeting employee entitlements.**

**Response:**

The Australian Government accepts this recommendation.

The Government will amend the Workforce Supplement Guidelines to provide that excess supplement funding after the provider pays a 1 per cent wage increase to their

employees must be used to provide further wage increases, or to support the additional workforce commitments of the Addressing Workforce Pressures Initiative. This may include contributing towards the costs to the employer of implementing the supplement.

**Recommendation 12**

**7.55 The committee recommends that references to the workforce supplement be retained as they appear in the proposed legislation.**

**Response:**

The Australian Government accepts this recommendation.

**Recommendation 13**

**8.25 It is recommended that ACFA be established by the Minister for Mental Health and Ageing as a committee under section 96-3 of the *Aged Care Act 1997*.**

**Response:**

The Australian Government supports this recommendation.

The *Aged Care Act 1997* provides for the creation of statutory committees via subordinate legislation. The Aged Care Financing Authority will be established as a statutory committee utilising these provisions.