Patron: The Hon Michael Kirby AC CMG

ACSA
AGED & COMMUNITY SERVICES AUSTRALIA
ABN 65 070 261 871

22 April, 2013

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Attention: Dr Ian Holland

By email: community.affairs.sen@aph.gov.au

Dear Dr Holland,

Submission to the Senate Community Affairs Legislation Committee for Inquiry

Please find attached our submission regarding the above inquiry.

ACSA welcomes an appearance before the Committee and therefore requests an opportunity to make oral presentations.

If you require anything further, please feel free to contact this office.

Yours sincerely,
Aged & Community Services Australia

Adj Prof John G Kelly AM
Chief Executive Officer

Encl.

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AGED & COMMUNITY SERVICES AUSTRALIA

ACSA Submission

Senate Standing Committee on Community Affairs

APRIL 2013

Aged Care (Living Longer Living Better) Bill 2013
Aged Care Quality Agency Bill 2013
Aged Care Quality Agency (Transitional Provisions) Bill 2013
Aged Care (Bond Security) Amendment Bill 2013
Aged Care (Bond Security) Levy Amendment Bill 2013

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ABOUT THE ACSA FEDERATION

Aged and Community Services Australia (ACSA) is the leading national peak body for aged and community care providers which represents church, charitable and community-based organisations providing housing, residential and community care services to older people, younger people with a disability and their carers.

ACSA operates within a federated structure of state associations which are independently incorporated and to whom mission-based providers belong as members.
The state associations are members of the ACSA national body.

The ACSA Federation is made up of the following members:

- Aged and Community Services Association of NSW & ACT (ACS NSW&ACT)
- Aged and Community Services SA & NT (ACS SA&NT)
- Aged and Community Services Tasmania (ACS Tas)
- Aged and Community Services Western Australia (ACS WA)
- Aged and Community Services Australia Victoria (ACSA Vic)
- Aged and Community Services Australia Queensland (ACSA Qld)

INTRODUCTION

Mission-based and not-for-profit (NFP) aged care organisations, that deliver about 70 per cent of aged care services in Australia, are charged with responsibility for providing services to those most in need. These organisations are visible and highly accessible in the community resulting in the public relying on NFPs for service, support and care. The public has an expectation that NFPs will provide for them.

As a result NFPs have the confidence of the community at large and trust derived from that accessibility. There is also an ever increasing expectation by Governments that the NFP sector will deliver programs and services on their behalf as a means of maximising efficiencies.

As the population continues to age, ACSA recognises the need to make the aged care system more responsive, flexible and affordable by creating a balance between individual responsibility for aged care services, affordability for taxpayers and a safety net for those who require such services.

While ACSA welcomes the Federal Government making aged care reform a priority through *Living Longer Living Better* (LLLB), in order to ensure quality aged care services are sustainable into the future there are a number of concerns that still need to be addressed.

The Productivity Commission's (PC) 2011 report 'Caring for Older Australians' presented a comprehensive blueprint for aged care reform designed to improve access for older Australians and their family and carers for better quality, more responsive and affordable aged care provision.

Unfortunately, the LLLB package fell short of the PC's recommendations and required reform of Australia's aged care system. The LLLB package has selectively chosen aspects of the PC recommendations that, in effect, create a distorted reform agenda that is likely to be inefficient at best, or possibly ineffective in its cost effective deliverables. This must be addressed or the aged care reform agenda as recommended by the PC will not reach the desired objectives determined by the ageing demographic.

Productivity Commission 2011 inquiry into Aged Care

In undertaking the 'Caring for Older Australians' inquiry, the Productivity Commission (PC) developed options for further structural reform of the aged care system so it can meet the challenges facing it in coming decades.

In particular, the PC:

- examined the social, clinical and institutional aspects of aged care in Australia, building on the substantial base of existing reviews into this sector;
- addressed the interests of special needs groups;
- developed regulatory and funding options for residential and community aged care (including the Home and Community Care (HACC) program);
- examined the future workforce requirements of the aged care sector;
- recommended a path for transitioning from the current regulatory arrangements to a new system that ensures continuity of care and allows the sector time to adjust;
- examined whether the regulation of retirement specific living options should be aligned more closely with the rest of the aged care sector; and
- assessed the fiscal implications of any change in aged care roles and responsibilities.

In the course of the inquiry, the PC consulted widely with older Australians, their carers, aged care providers, government agencies and other interested parties.

Key findings of the PC inquiry were:

- Over one million older Australians receive aged care services.
- The range and quality of these services have improved over past decades, but more needs to be done.
- Future challenges include the increasing numbers and expectations of older people, a fall in the number of informal carers, and the need for more workers.
- By 2050, over 3.5 million Australians are expected to use aged care services each year.
- The aged care system suffers key weaknesses - it is difficult to navigate, services are limited as is consumer choice and quality is variable.
- Coverage of needs, pricing, subsidies and user co-contributions are inconsistent or inequitable. Workforce shortages are exacerbated by low wages.

The PC's proposals address these weaknesses and challenges and aim to deliver higher quality care. The focus is on the wellbeing of older Australians promoting their independence, giving them choice and retaining their community engagement.

Under an integrated package of reforms, older Australians would:

- be able to contact a simplified 'gateway' for: easily understood information; an assessment of their care needs and their financial capacity to contribute to the cost of their care; an entitlement to approved aged care services; and for care coordination (all in their region); receive aged care services that address their individual needs (with an emphasis on reablement where feasible); choose whether to receive care at home, and choose their approved provider; contribute, in part, to their costs of care (with a maximum lifetime limit) and meet their accommodation and living expenses (with safety nets for those of limited means).

- have access to a Government-sponsored line of credit (the Australian Aged Care Home Credit Scheme), to help meet their care and accommodation expenses without having to sell their home.

- have a person's spouse or other 'protected person' entitled to continue living in that home when an older person moved into residential care; choose to pay either a periodic charge or a bond for residential care accommodation; or, if they wish to sell their home, retain their Age Pension by investing the sale proceeds in an Australian Age Pensioners Savings Account; have direct access to low intensity community support services; be able to choose whether to purchase additional services and higher quality accommodation.

- Limits on the number of residential places and care packages would be phased out, while distinctions between residential low and high care and between usual and extra service status would be removed.

- Safety and quality standards would be retained.

- An Australian Aged Care Commission would be responsible for quality and accreditation; and would transparently recommend efficient prices to the Government.

Government's response to the PC report through '*Living Longer Living Better*' (LLLB) reforms

The Government's response to the PC recommendations, 'Caring for Older Australians' (August 2011) through *Living Longer Living Better* (April 2012) involved a package of reform measures with an estimated cost of $3.7 billion[1] over five years. Much of this funding was through the redirection and reprioritisation of funds that were already in the Budget forward estimates. LLLB contemplates increases in user contributions and savings through providing more care through home care.

New Budget funding contributed approximately $500 million to the cost of the package, 72 per cent of it in 2015-17.

The package comprises:

- Increased user contributions but excluded the family home from the means test for home care;
- Increased supply of age care services but stopped short of entitlement based on assessed needs;
- Increased opportunity for people to receive care at home through more Home Care Packages;
- A continuation of the balance of care ratios, Age Care Approval Round (ACAR) processes and licences;
- Consumer directed care (CDC) principles in all home care packages, with the intention of trialling CDC in residential care;
- A Home Support Program by combining HACC and existing Commonwealth community programs such as respite and day therapy programs, with the intention of putting a greater emphasis on prevention and reablement and a consistent fees policy after 2015;
- An Aged Care Gateway with the aim of improving access to care;
- Choice of fully refundable lump sum deposit or periodic payment for all residents;
- Increased accommodation payment for supported residents in new or redeveloped homes to $50/day (2012 prices);
- Recalibrated scores and/or payment levels within the ADL and Complex Health Care domains of the ACFI to reduce the rate of growth in care subsidies;

[1] References to costs in this document are over five years, unless otherwise stated.

- A redirection of $1.6 billion of the ACFI 'blow out', with $1.2 billion of it to be used to improve terms and conditions for the aged care workforce under a 'Workforce Compact';

- An 'independent' Pricing Commissioner to make recommendations to Government on subsidies and payments and to approve prices for accommodation and optional extra services;

- A number of measures to improve care for people with dementia, increase support for carers and improve palliative care;

- A number of measures to improve services for people from diverse and marginalised backgrounds, including rural and remote communities;

- A new statutory authority (the Aged Care Quality Agency) to accredit and monitor residential and home care providers, while retaining DoHA's role with the Complaints Scheme and compliance and sanctions;

- A Data Clearing House in the AIHW to support research and policy development; and,

- An external Implementation Reform Council to guide the implementation and further development of the reforms.

The various elements of the package will be phased in over a ten year period (by 2022), with many measures starting or ramping up significantly after 2014 and 2015.

ACSA's view of the significant deficiencies in the LLLB reforms compared to the PCs recommendations

The main departures from the PC's recommendations are as follows:

- The Government vetoed entitlement based on assessed care needs. While increasing the overall provision ratio, the Government has retained rationing and balance of care ratios and the associated regulations such as the licensing of places and the ACAR, and has increased price regulation. Consumer choice of provider and whether care is received at home or in an aged care home will continue to be constrained, but less so as supply increases and unmet need is reduced.

- While there is a commitment to establish a Gateway, its scope is unclear, including whether it will be as broad as that envisaged by the Commission and NACA. Only $75 million of new funding was allocated and significant emphasis has been placed on web site development.

- Care subsidies and fees across residential and home care will not be aligned. The ACFI will continue to apply only to residential care (though further work to develop a comprehensive ACFI for residential and home care is foreshadowed).

- The renamed HACC program (Home Support Program) will remain block funded and will incorporate existing Commonwealth community care programs such as the National Respite for Carers Program and Day Therapy Centres. Review and development work will be undertaken in the period prior to July 2015 on issues such as including a preventative care and reablement emphasis and developing a consistent fees policy.

- A comprehensive wealth test will not apply in home care, ie. the family home has been excluded.

- Means testing arrangements for care in residential care and home care are not aligned. An income test will apply in home care whereas a combined income and assets test will apply in residential care. Means testing arrangements have not been simplified.

- The Government did not include a Government-backed Home Equity Scheme and the Pensioners Savings Account on the basis that it did not want to create 'Australia's biggest bank' and their need is reduced because care at home will only be income tested. The Government instead has put its faith in the private equity release market for which it has recently legislated to strengthen consumer protections. If people do not make greater use of private equity release schemes, an implication of the increased user contribution regime is that a greater number of consumers will be likely to have to sell the family home to meet their payments.

- There is no refinancing facility for bond-dependent providers to cope with any significant consumer switch to rent (Daily Accommodation Payments (DAP)), especially in the absence of a low cost (CPI) home equity release scheme.

- The PC's recommendation for a single regulatory agency separate from DoHA (an Australian Aged Care Commission) was rejected. Instead a new statutory authority, the Aged Care Quality Agency, will be created to accredit and monitor both residential and community age care providers. It will subsume the Aged Care Standards and Accreditation Agency. The Complaints Scheme and regulation around compliance and sanctions will remain with DoHA.

ACSA makes this Submission to the Senate Standing Committee on Community Affairs on the Aged Care Bills before the Parliament in order to ensure comprehensive reform and ensure a quality aged care system that is sustainable into the future.

AGED CARE BILLS: OVERVIEW

The Minister for Mental Health and Ageing Mark Butler introduced five Bills into Parliament in March 2013 which will enable the measures in the LLLB reform package that require legislative change, including by providing the authority for amendments through delegated legislation.

The five Bills are:

- Aged Care (Living Longer Living Better) Bill 2013
- Australian Aged Care Quality Agency Bill 2013
- Australian Aged Care Quality Agency (Transitional Provisions) Bill 2013
- Aged Care (Bond Security) Amendment Bill 2013
- Aged Care (Bond Security) Levy Amendment Bill 2013

ACSA understands there are aspects of the reform program that do not require legislative change yet a larger number of reforms are dependent on the Bills passing through Parliament.

Amendments to the **delegated** legislation in the form of the Aged Care Principles and Ministerial Determinations are expected to occur after the passage of the primary Bills. These will be introduced in three tranches to reflect the commencement date of the individual reforms:

- 1 July 2013;
- 1 January 2014; and,
- 1 July 2014.

The changes take effect from the date specified however the instruments must be presented to both Houses of Parliament for 15 sitting days prior to the specified date, during which they may be disallowed.

It appears that it is the intention of the Government to move as much of the operational detail of aged care from the Act itself to the delegated legislation of the Principles and Determinations. In fact it might be said that the bulk of the concerns raised by ACSA members about the changes will appear in the delegated legislation. The details of the Principles and Determinations are not yet known as they have not been released for comment. This is of concern to ACSA's members. Of equal concern is that the delegated legislation is not subject to the same level of scrutiny as the primary legislation. Delegated legislation is by its very nature more readily amended to reflect changes to costings and frequencies etc. which is why it is used. A number of the existing Principles will be amended, replaced or repealed, just as there will be new Principles introduced according to relevance to the primary and substantive Act.

ACSA members are concerned that as the bulk of the current reform process sits in delegated legislation and are subjected to less scrutiny than the substantive legislation which is, historically, rarely disallowed once it has been presented to the Parliament that

further changes will be made without the opportunity for ACSA and its provider members to comment.

Therefore ACSA in this submission to the Senate Committee on Community Affairs focuses on a small yet highly significant number of issues that will have the most impact on its members.

Significant issues for ACSA

Aged Care (Living Longer Living Better) Bill 2013

Issue 1: ACFI appraisal:

Schedule 1 Items 35-38 – Suspending an Approved Provider (AP) from ACFI Appraisals.

This relates to amendments whereby the Secretary can suspend an AP from making ACFI appraisals and reappraisals, based on one perceived false, misleading or inaccurate information event which may have been made inadvertently on **one or more** occasions but only if after the reclassification of the appraisal/reappraisal another appraisal/reappraisal is also judged to be false, misleading or inaccurate. That is, a repeat offence occurs.

Existing legislation states that a '**substantial** number of appraisals must be involved before suspension will occur'. The proposed reform removes the word substantial from the legislation.

Of concern to ACSA is the change in relation to the current need for substantial non-compliance in the assessment and reappraisal of residents to 'merely being an incident' which could see an AP's ability to make claims suspended. The reforms allow any suspension to apply to a particular service, or services, rather than the entire AP portfolio.

ACSA believes that 'procedural fairness' is not maintained via the suggested amendments. Our members are concerned that on previous experience, DoHA takes an inconsistent approach in how its Officers undertake their assessments. This amendment would only make worse the situation that our members already have to deal with in respect of appraisals and reappraisals.

Also this clause appears to give additional weight to the power of DoHA in what may be inadvertent circumstances. If the intended purpose of the proposed changes is to deal with potential rorting by APs, DoHA already has the authority to investigate such claims but has not had reason to activate those current powers.

Requested Action:

- **That the Senate committee's report concludes that the current wording and intent of the existing legislation be retained.**

Issue 2: Pricing Commissioner:

The PC's 2011 report 'Caring for Older Australians' recommended that an independent pricing authority be established.

ACSA strongly supports the PCs recommendation to reduce price and supply regulations in aged care.

Under the Aged Care (LLLB) Bill 2013 it is proposed that a Pricing Commissioner be established from July 2014. The role of the Commissioner will be to make decisions on pricing issues including accommodation payments and extra service fees and to carry out other functions as specified by the Minister, including 'additional regulations over pricing'.

ACSA supports the notion of an independent price setting mechanism however sees a situation where confusion will result from the roles of the existing ACFA and a new Pricing Commissioner. ACSA believes that there will be overlap of roles and responsibilities creating extra burdens on consumers and providers. Having said that, ACSA suggests that the proposed changes to the legislation in creating a Pricing Commissioner are limited and therefore inconsistent with the PC's recommendations. Based on the current amendments the role of the Pricing Commissioner will be constrained to approving only Level 3 accommodation payments and extra service fees (through Ministerial Determination) rather than the full raft of applicable charges.

This restricted role is inconsistent with the concept of an independent pricing commission as recommended by the PC. The core of the role of the commission recommended by the PC was determining the cost of care and input cost increases to ensure provision of care commensurate with quality standards and the sustainability of the sector.

Further to the function of the Pricing Commissioner, ACSA suggests that it is not desirable that the delegation of the Pricing Commissioners functions be transferred to an officer of DoHA. The role of the Pricing Commissioner in approving extra service fees and accommodation payments is for fees that are higher than the maximum amount determined by the Minister which may in fact result in a conflict of interest between the functions of DoHA in its recommendations and advice to the Minister and the role of the Pricing Commissioner.

DoHA has stated that the Commissioner reports directly to the Minister however remains an employee of DoHA, governed by the Public Service Act. This requires clarification about the independence of the Commissioner and how this will be guaranteed. Again this is not consistent with the independence arrangements recommended by the PC.

Requested Actions:

- **That the Senate committee's report recommends that the scope of the Pricing Commissioner be widened to include the core determinations of the costs of home and residential care and input cost increases and pricing matters as envisaged by the PC.**

- **That the Senate committee's report concludes that there is no delegation to DoHA of the Pricing Commissioner's functions and that the Pricing Commissioner is independent of DoHA.**

- **That the Senate committee's report concludes that the Pricing Commissioner's role not be simply advisory but be a decision making role in the nature of the Australian Parliament's Remuneration Tribunal which determines parliamentary remuneration in a binding manner and the NSW Government's Independent Pricing and Regulatory Tribunal (IPaRT).**

Issue 3: The Three Supplements:

There are three supplements enshrined in the *primary legislation* at Section 44-5 (Primary Supplements) which provide for transparency of process. It is however the *delegated legislation* in the Principles that will specify the circumstances by which the Primary Supplements apply including the level of supplement and how it will be determined.

ACSA understands that the details of the Principles and Determinations are not available for scrutiny or review at this time.

ACSA looks forward to the opportunity to observe the impact of the delegated legislation and to provide relevant comment prior to implementation.

1. **Workforce Supplement** Section 44-5(1)(a)(vi)

ACSA fully supports and encourages legitimate measures for improving the working conditions and career paths of employees in the aged care sector. ACSA argues that such processes lead to employee job satisfaction and as a result facilitates long term retention in that employment.

However ACSA argues that the Government's proposed mechanism that determines provider eligibility for the Workforce Supplement is flawed and is in fact poor public policy. ACSA argues that the mechanism needs to be reviewed and significantly revised, or removed completely.

The mechanisms suggested in the Bill cut across established and respected industrial relations practises between the employee and the employer. Under the proposed legislation emphasis is placed on the workforce however it is not truly manifested through increased wages.

a. In striving to establish a simplified system as the basis for this supplement it appears, inadvertently or otherwise, that the emphasis has been given to large providers covered by enterprise agreements in large population centres and in some States only. This results in inequity which is to the detriment of the 65 per cent of the aged care sector that are small and stand-alone providers particularly those in regional, rural and remote (RRR) locations.

   There can be no 'one size fits all' mechanism across home care, community care and residential care because of the variations in workforce aspects especially for those that are impacted on by location. For instance there are requirements in the eligibility guidelines that state that the employer must provide training to the employee. However, this is a very large financial impost on providers, particularly those in RRR locations, as they must either pay for staff to travel to large centres to receive the training (travel and accommodation costs) or they must pay surcharges for trainers to travel out to RRR locations, with the similarly high cost imposts. The alternative of course is for the Government to invest in reliable and consistent technology based solutions.

By way of example, a member who is a small 31 bed RRR facility would be eligible to receive $17,000 under the Workforce Supplement principles but in order to receive this, would have to commit to an additional $30,000 in wage supplementation support (that is, $47,000 in total). This amount additionally, does not include on-costs for the provider which must also be absorbed.

b. There is concern that the Workforce Supplement runs the risk of creating two classes of employees across the single aged care sector. This potential risk must be identified, acknowledged and addressed to be rectified.

c. There is no separation of wages and 'other' issues – that is the non-wage conditions associated with eligibility to the Workforce Supplement. For example, an arbitrary delineation of 50 beds has been set as a determining condition. This has not created any platform by which the majority of RRR and many stand-alone small and medium urban providers can participate.

ACSA rejects the notion of a Workforce Supplement as proposed in Section 44-5(1)(a)(vi).

The funding arrangements as proposed place wage determination mechanisms in a national industrial framework to the exclusion of allowing the continuation of negotiations in the 'local' context. This compromises individual negotiation within workplaces, informed by local circumstances.

Requested Action:

- **ACSA requests that the Senate Standing Committee concludes that Parliament deletes the Workforce Supplement (Section 44-5(1)(a)(vi)) from the Bill.**

2. **Dementia Supplement** Section 44-5(1)(a)(iv)

The second of the proposed supplements is currently called the 'Dementia Supplement'. It is suggested that this supplement be renamed as the **Behavioural Supplement** or **Complex Care Supplement** to more accurately reflect the targeted older Australians that may be eligible for such a supplement, as the Act indicates that the supplements is in 'recognition of the additional costs involved in caring for people with dementia and *other mental health issue'*. Many consumers may have symptoms of a cognitive impairment that is negatively impacting on their life and wellbeing, as well as their family, carers and fellow residents, without a specific medical diagnosis of dementia or Alzheimer's being established.

It must be clarified if the level of the supplement is determined by the level of cognitive impairment and who will be charged with determining that level, what assessment tool will be used (eg. PAS) and how it will be translated into a dollar value.

ACSA members argue that the supplement must be sufficient to cover the costs of providing appropriate care to the consumer. Any cognitive impairment results in additional case management, coordination, direct care services and carer support and this must be acknowledged in the Principles. Such care also requires higher staff ratios in specific high care units. Typically a secure high care unit will accommodate 10-16 beds which requires 2 staff across 3 shifts over seven days, whereas a non-dementia unit generally requires 1 – 1.5 staff per shift.

ACSA also requests that the 2 per cent reduction in home care packages (for those not eligible for the Dementia Supplement) not be actioned as it removes direct care subsidy for those requiring this support.

Requested Action:

- **That the Senate committee's report recommends that that the mechanisms for determining the Dementia Supplement be made transparent and that the name more accurately reflect the broader aspects of the issues that impact on the eligibility.**

3. **Veterans' (Mental Health) Supplement** Section 44-5(1)(a)(v)

This supplement is designed to support veterans with mental health conditions. ACSA supports the implementation of this supplement but requests that the eligibility criteria be transparent and consistent.

ACSA would like clarity as to which department will make the assessment and have responsibility for delivering the supplement – the Department of Veterans' Affairs or the Department of Health and Ageing?

Requested Action:

- **That the mechanisms for determining the Veterans' Mental Health Supplement be made transparent and consistent.**

Issue 4: Refundable Accommodation Deposit (RAD) and Daily Accommodation Payment (DAP):

The LLLB introduces common **accommodation payment** and **contribution** arrangements across all residential care.

LLLB includes the requirement for a prospective resident to be informed about prices before entry to a residential aged care facility (RACF) and to have choice of payment method. The choices are for either a daily accommodation payment (DAP) or a refundable accommodation deposit (RAD) or combination of both, determined by the consumer.

Before entry to an RACF the consumer and AP must agree on the maximum accommodation price and develop an understanding of the methods of payment, either as a RAD, or a DAP or a combination of the two. If the payment method is not agreed on at entry the consumer has 28 days to identify the preferred method. In that 28 day period the consumer is charged a DAP.

A number of aspects of the proposed RAD/DAP arrangement and relationship are a cause for concern for ACSA membership.

28 days period to decide payment option - Schedule 3 Section 52-F – The legislation states that if a person does not decide how to pay within 28 days, a daily payment (DAP) regime will apply (52F-3(f)).

This implies that that DAP is the default method and the Government's preferred option.

The difficulty for ACSA members is that the Government has indicated that both payment options are of equal value. That being said ACSA members understand and agree that there needs to be a default position in place when agreement cannot be reached. However ACSA member's preference is for the RAD to be identified as the default position because the RAD is clearly more beneficial to the consumer and to the AP as it is the source of financial investment for the AP from which improvements and refurbishment to the RACF can be made to improve the quality of service to the consumer.

Under the present arrangements, greater than 90 per cent of residents agree to pay a bond. This has provided a stable base for both lenders and borrowers to structure the APs capital expenditures. By setting the DAP as the preferred payment option it takes the focus away from the PCs recommendation for a sustainable and strategic aged care system derived from the investment of the RAD, in favour of a 'hand to mouth' process of daily 'rental' charges. ACSA members argue that the latter is commercially irresponsible. Banks will not finance major refurbishments on the basis of daily rental transactions. They will however provide finance when it is underpinned by a reasonable RAD held for a predictable period of time.

In October 2012 the Aged Care Financing Authority (ACFA) recommended to the Minister the RAD as the primary price point and the periodic payment equivalent, the DAP, was the derived outcome based on the Maximum Permissible Interest Rate (MPIR) applied to the RAD.

The rules about resident payments and the introduction of a 28 day cooling off period to decide payment options together with the six month period to actually pay a RAD further creates an unstable platform for planning capital expenditure and debt/equity decisions within the sector.

If DAPs are the preferred baseline, APs most likely will be more exposed to debt/defaults without adequate protections derived through stronger **security of tenure** provisions which means the obligation remains with the AP to find alternative accommodation for the debtor (while still accruing debt). Similar arrangements will exist for home care providers who will have to call in debt recovery processes. There is a requirement for the AP and resident to enter into an agreement within 28 days of entry. ACSA members argue that this is not always achievable if the person has not been able to decide on the payment method because of delays with Centrelink and/or ACAT appraisals. Therefore this section of the Bill requires adjustment to ensure the preferred baseline becomes the RAD.

The proposed legislation also allows for the **drawdown of daily payments** from the RAD. An approved provider must agree to any drawdown from the RAD if a resident makes the request in writing. The amendment sets out the arrangements that apply, including having the details included in the Accommodation Agreement.

If the care recipient has chosen the drawdown option, the care recipient must continue to maintain the previously agreed RAD, either by topping up the RAD (from other sources) or by paying higher daily payments.

Amendments also allow that, when the consumer leaves the RACF, the AP can deduct from the RAD other amounts agreed to in writing and specified in the Fees and Payments Principles, and any other amounts agreed to in writing between the care recipient and the AP. This will mean that a care recipient may have their care fees deducted from their RAD if both the care recipient and AP agree. This is a major departure from the concept of a fully refundable accommodation deposit.

Requested Action:

That the Senate committee's report recommends to Parliament that:

- **the RAD be identified as the default payment method.**
- **a DAP, if in place, be determined from the baseline RAD.**
- **the Security of Tenure guidelines within the Principles be revisited to create a more equitable approach that protects both the consumer and the provider.**

Issue 5: MPIR v's WACC in determining equivalence:

The PC recommended 'limiting accommodation bonds to no more than the equivalent of periodic accommodation charges but uncap such periodic accommodation charges to reflect differing standards of accommodation'. ACSA notes that the PC's intent was that consumers be offered a periodic payment (rent) equivalent in value to a bond.

The Minister for Health and Ageing has stated that the Maximum Permissible Interest Rate (MPIR) is to be used in determining this equivalence. This method was recommended by the ACFA because the interest rate referred to in the MPIR appeared significantly less than the rate that appears using the alternative measure. However the MPIR approach fails to recognise that in the absence of a stable lump sum (RAD), an AP may need to commit capital (both equity and debt) to fund investment in residential aged care as a result of any RAD movement, via the MPIR but utilising DAP as the baseline.

The risks an AP must consider in determining the cost of business include: factors such as the relative quality of the offering, management expertise, care risk management, marketing expertise and competition. The underlying business risk is reflected by the cost of invested capital. The measure of that cost of capital is the Weighted Average Cost of Capital (WACC) not MPIR.

The effect of using the MPIR will be to lower the equivalent periodic payment relative to one determined by pre-tax WACC thus resulting in market distortion by increasing the attractiveness to consumers of (low impact) periodic payments relative to a RAD. RAD pools will fall (all other things being equal) as a consequence. This is not a desirable outcome from a provider's perspective or from the perspective of increasing essential investment in residential aged care or for stability in a sector that requires careful policy planning in the area of capital investment and expenditure.

Finally, the MPIR is volatile, changing quarterly which will result in erratic price movements in RADs and equivalent charges for beds in residential aged care which may not serve consumers interests and impose compliance burdens on APs.

Requested Action:

- **That the Senate committee's report recommends that the MPIR/ WACC issue be referred to the ACFA for consideration. For this ACFA should consult with acknowledged experts in the determination of cost of capital (as is the case in other sectors, such as electricity pricing).**

Issue 6: Bond Price Controls:

On 21 December 2012, the Minister for Mental Health and Ageing outlined the regulatory framework that will apply for accommodation payments for residents entering residential care on or after 1 July 2014. The key aspects of the announcement were the classification of accommodation prices into 3 levels:

- Level 1 – up to the level of the maximum Government accommodation supplement ($50 per day (2012 prices))
- Level 2 – Prices between Level 1 and an upper threshold of $85 per day (2012 prices)
- Level 3 – Prices above the Level 2 threshold

There is a requirement for all APs to publish prices in advance in the form of a daily accommodation payment (DAP), refundable accommodation deposit (RAD) and examples of combination payments.

The PC did not recommend the implementation of price controls. Indeed it recommended 'limiting accommodation bonds to no more than the equivalent of periodic accommodation charges but uncap such periodic accommodation charges to reflect differing standards of accommodation'. ACSA notes that the PC was proposing uncapped accommodation charges, not explicit price controls as proposed under LLLB.

In Recommendation 7.2, the PC said the Government should mandate that residential aged care providers offer and publish periodic accommodation charges and any combination thereof.

The clear intent was that offering choice of payment mode and publishing of prices would serve the interests of consumers.

The Government's response has been to impose additional price controls when the evidence indicates that RADs are negotiated.

ACSA members consider that this response is the Governments reaction to so-called 'super bonds'. It is however evident from the data that the incidence of these bonds is very low and there is no widespread problem. Presently, there are in the order of 21,127 accommodation bonds in Australia. The incidence of so-called 'super' bonds is very low with 124 bonds between $750,000 and $1million and 33 in excess of $1 million which represents approximately 0.7 per cent of all residential aged care accommodation bonds[2].

ACSA considers that the implementation of price controls of bonds under LLLB will introduce compliance complexity and constrain the supply of new residential aged care facilities. ACSA shares the view of the PC that publishing of prices for accommodation and choice of mode of payment will provide a significant boost to price transparency, increase competition and serve the interests of consumers.

[2] 2010-11 Survey of Aged Care Homes, bonds paid by new entrants 2010-11, sourced from Department of Health and Ageing

To further highlight why the LLLB could be considered questionable public policy, for providers in regional, rural and remote (RRR) locations, sustainability issues are further compromised by low RAD values.

Bond values in RRR locations are significantly lower (about half on average) than the national average bond. This is because of lower real estate values, often lower wages (and the compromised opportunity to save and/or invest) and higher overheads in RRR locations. Many RRR providers are forced to use the interest derived from the RAD to maintain service delivery, which does not leave a great deal to be spent on facility improvements and capital expenditure.

Despite assurances that the AP can charge higher RAD (and DAP) to offset the lost retentions, many consumers cannot pay the current advertised bonds. Through negotiation, bonds are then reduced by the AP in order to ensure service is provided in the community. This is reflected in the average bond being much lower in RRR locations. The reforms provide the option to increase costs to consumers, either in RAD/DAP combinations or as community co-payments, however if the market is not financially able to bear those costs the mechanism must be revised. Additionally, community cohesiveness in RRR often limits decisions that might be commercially viable, but in terms of community service by mission based providers, an outcome that may not be commercially viable is often implemented in the public interest.

Requested Action:

- **That the Senate committee's report concludes that the Minister's powers under the legislation to impose price controls be removed.**

Issue 7: Community care co-payments:

The marked increase in community co-payments is detrimental to the objective of supporting and enabling people to stay independently in their homes for as long as possible.

ACSA finds the level of co-contribution to be excessive and the scaling of fees for part pensioners too uncompromising which will result in consumers being unable or unwilling to access community care and therefore refuse services. According to the budget papers it will only generate $183 million over five years. If consumers refuse services they will often require greater assistance via the acute health care services (at an average cost of $1500 per day) or require admission to an RACF sooner. This is a false economy and therefore very poor public policy made at the expense of Australia's ageing community.

Requested Action:

- **That the Senate committee's report recommends that Co-payments for Community Care be removed from the current reform process and re-introduced over a much slower phasing in period, as part of the prescribed review processes for the legislation. As a minimum, partially supported pensioners in the community should not be asked to pay any more than 17.5 per cent of the pension towards their community care costs.**

Issue 8: Delays with means testing especially in RRR:

ACSA is aware that consumers are experiencing considerable delays in receiving Centrelink assessments of income and assets. This delay is negatively impacting on the APs cash flow especially in RRR locations where such assessments are slower than in metropolitan locations.

Requested Action:

- **That the Senate committee's report recommends that Means tests via Centrelink need to be timely and accurate with reportable timelines and accountability.**

Issue 9: Aged care bond security:

ACSA argues that the $24million Bond default accumulation currently on the books should be written off and the current insurance levy grandfathered to those bonds and not apply to the new RAD (no change). The levy should be a permitted use of the bonds already collected. If the option of a levy is retained, there should be a 5 year repayment program.

Requested Action:
That the Senate committee's report recommends that:

- **the $24 million Bond default accumulation currently on the books be written off and the current insurance levy grandfathered to those bonds and not apply to the new RAD (no change).**
- **the levy be a Permitted Use of the bonds already collected. If the option of a levy is retained, there should be a 5 year repayment program.**
- **the Permitted Uses of the RAD should include payment of the insurance levy.**
- **The Payment of any levy for RAD security should be a Permitted Use of the RAD.**

Issue 10: Specified Care and Services:

With the removal of the high/ low care differentiation the schedule of specified care is under review. Overall, APs consider the changes to be positive.

However as services must be provided to all residents, DoHA must ensure that such reforms will be cost neutral to the AP. If however additional costs are incurred, they are to be fully compensated through ACFI based subsidies. The differentiation between what is covered by the consumers' fees and what is covered by subsidies must be very clear and what services and resources are considered to be Inclusions and what is excluded, in both residential and community, must be clearly articulated including the situation with allied health services.

ACSA believes that the provision of the following services and amenities have the potential to generate cost implications for the provider which must be allowed for. These are: furnishings, bedding, toiletries, meals and refreshments, assistance with daily activities, clinical care, emergency care and support for residents with impaired cognition. The differentiation between initial and on-going assessment must be clearly articulated and the minimum qualification (RN, EN, NP) of the person who will carry out the assessments be clearly defined.

Requested Action:

- **That the Senate committee's report recommends that that any differentiation between what is covered by the consumers' fees and what is covered by subsidies must be very clear and compensated for through the ACFI.**

Aged Care Quality Agency Bill 2013

Issue 11: Aged Care Quality Council:

While the Quality Agency Bill outlines the role of the Council it does not definitively establish the make up of the Council and how members are appointed. Additionally, governance issues such as to whom the CEO reports needs to be clarified.

Requested Action:

- **That the Senate committee's report recommends that that it is recommended the Bill include further detail on governance, including skill set and membership method for the Aged Care Quality Council.**

Issue 12: Lifetime contribution caps:

The proposed amendments authorise the Minister to set annual and lifetime caps on aged care contributions. As this will be done through the Determinations the process will not be scrutinised adequately and is at risk of being at the recommendation of DoHA alone. The lifetime caps on contributions should be increased from the current $60,000 to $80,000 to make allowance for increased costs and longer life spans and projected longer periods in home and residential aged care.

Requested Action:

- **That the Senate committee's report recommends that that the lifetime cap be increased to $80,000.**

ACSA makes one final recommendation:

ACSA requests that the Senate Committee strongly recommends to the Government that it commits to a comprehensive nationwide communication program for the community and consumers to fully explain the policy changes and how they impact on the consumer. This undertaking must be done to safeguard the integrity of the aged care provider who is too often blamed for price increases and changes to processes outside their control.