



LEADING AGE SERVICES

AUSTRALIA

Helping older Australians to live well

LEADING AGE SERVICES AUSTRALIA

SUBMISSION TO THE SENATE COMMUNITY AFFAIRS LEGISLATION COMMITTEE

INQUIRY INTO THE LIVING LONGER, LIVING BETTER LEGISLATION

SUPPLEMENTARY SUBMISSION

10 May 2013

Report contact:

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Chief Executive Officer

1. Introduction

- 1.1 During the course of its appearance before the Committee, LASA was asked to consider a number of matters raised during the inquiry.

2. Request 1 (page 48) – timetable and summary of principles to be produced by the Department ('the timetable document')

2.1 The Committee requested LASA to identify the principles that should be contained in the timetable document.

2.2 This observation from page 50 of the *Hansard* of 2 May 2013¹ illustrates why this is important:

Senator SIEWERT: Could I interrupt you for two secs. The point that ANZ made this morning was that it was only when the EM came out with this package of bills—which was last month—that they realised in terms of the comments around the instrument that that was how those assets were going to be calculated and the impact it had on the RADs and the DAP. Was that the same situation with you or did you have an understanding earlier?

2.3 This element of surprise to industry must be avoided at all costs.

2.4 The starting point is a review of the Aged Care Principles Navigation Overview prepared by the Department which was reproduced in Attachment 3 of the original LASA submission to the Committee.

2.5 Those instruments that are significantly altered (or created) to give effect to the Living Longer Living Better package should be discussed in the timetable document.

2.6 That is because these are the principles that will establish the legal structure growing from the Living Longer Living Better Package, which as the Department indicated on page 79 of the Committee *Hansard* constitutes a 'complex change agenda'.

2.7 LASA believes those principles called 'new' or 'amended' in the Overview, scheduled to be commenced on either 1 January 2014 or 1 July 2014, will need to be discussed in the timetable document.

¹ Unless otherwise specified reference to *Hansard* refers to the transcript of the Committee's hearing conducted 2 May 2013

- 2.8 The standard of document LASA anticipates being produced is similar to that contained in the Department of Health's Regulatory Plan.
- 2.9 The Department, like other Australian Government agencies which have responsibility for business regulation, is required to publish a regulatory plan on its web site each financial year.
- 2.10 This is can be found under this hyperlink:
- <http://www.health.gov.au/internet/main/publishing.nsf/Content/Regulatory-Plan-2012-2013>
- 2.11 An extract, illustrating the level of detail LASA would expect in a timetable document is contained in **Attachment 1**.
- 2.12 LASA is concerned that although there are a range of 'guidelines / consultation papers' circulating for comment, such as the *Accommodation Pricing Guidelines* and the *Dementia and Veterans' Supplements in Aged Care Consultation Paper* as referred to by Ms Balmanno and Ms Huxtable on page 69 of the *Hansard*, there is no guarantee that once consultation and or agreement has occurred, that what has transpired will end up in the principles or the determinates. For instance, the Minister rejected not only industry advice but also ACFA advice in relation to accommodation payments (referred to at page 16 LASA Submission) for reasons that remain unclear.
- 2.13 LASA is asking for nothing more than what is a best practice document of a nature already prepared by the Department, except that given the extremely short timetable, a particular month should be nominated as to when documentation can be expected, rather than 'mid 2014'.
- 2.14 If a document of this nature cannot be produced at this stage, then LASA would suggest the Committee not recommend passage of the Bill as the Parliament cannot be certain what changes are to be made as a consequence of passage of the Bill and industry will be concerned that the issues may not be fully thought through, leading to the design of documents that will lead to regulatory error.

3. Request 2 (page 50) – the LASA submission on the accommodation pricing guidelines

3.1 LASA's *Comments on the Proposed Accommodation Pricing Guidelines* forms **Attachment 2** to this supplementary submission.

3.2 As LASA said on page 1 of its comments:

LASA is of the firm view that the proposed Accommodation Pricing Guidelines provide insufficient detail to enable a robust and meaningful assessment of implications for the industry. LASA remains highly critical of the process undertaken by Government thus far whereby the relevant and important detail regarding Accommodation Pricing will only become known via amendments to the Principles with little or no industry accommodation.

3.3 LASA notes this exchange on page 69 of the *Hansard*:

Ms Balmanno: Absolutely, but most stakeholders cannot engage with legislative instruments. For most stakeholders it is very challenging, particularly amending instruments.

Senator FIERRAVANTI-WELLS: I appreciate that, but we are the ones that have to consider it.

Ms Balmanno: But for consultation purposes, in terms of developing the policy and the arrangements in collaboration with the sector, we thought it was important that the consultation documents—

Senator FIERRAVANTI-WELLS: Why didn't you release them as drafts?

Ms Balmanno: Consultation documents are being released.

Ms Huxtable: They have been released, in fact—the dementia and veterans supplement in aged care guidelines and the home care packages guidelines. The reality is that some of the material in here will end up in principles; some will be in

ministerial determination. As we have discussed before, there is the tiering of the aged care legislation. It would be unintelligible if we went ahead of this process and released the amending principles. So the intention is to work with the sector on developing these, in the first instance, and circulating them, and enabling a period for comment. And that is exactly what we have done

- 3.4 Whilst some stakeholders would find legislative language 'challenging', consultation documents must still have sufficient substance so that providers can make commercial decisions about how changes to rules will impact its business.
- 3.5 LASA therefore does not accept that it is 'unintelligible' if proposed instruments accompanied the 'guideline' document.
- 3.6 Rather, feedback would be improved if the legal documents giving effect to the policy discussed in 'guidelines' can be considered simultaneously.
- 3.7 As a matter of course, the Treasury publishes proposed legislation for public consultation.
- 3.8 An example can be found under this hyperlink:

<http://www.treasury.gov.au/ConsultationsandReviews/Submissions/2013/Designated-infrastructure-projects>
- 3.9 For the reasons set out in the LASA submission, it is vital that the professionals supporting LASA members have as much time to consider the precise terms establishing rights and obligations so that informed comments and decisions can be made.
- 3.10 This is particularly the case if a 'complex change agenda' is to be implemented by 1 July 2014.

4. Request 3 (page 51) – correspondence received (and sent) relating to the Workplace Compact correspondence ‘accidentally’ released.

4.1 The relevant document is contained in **Attachment 3**.

5. Request 4 (page 51) – Letter from LASA to the Department on the development of instruments (together with any responses)

5.1 The letter sent by LASA is contained in **Attachment 4**.

5.2 Whilst the Committee was told, on page 62 of the *Hansard*:

Senator FIERRAVANTI-WELLS: There has been some evidence given by both Mr Kelly and Mr Riley from LASA this morning, in relation to some of the issues pertaining to correspondence between them and the department about the distribution of some material to workers, and also some correspondence from LASA to you, Ms Huxtable. Can I start with the correspondence dated 5 April to you from LASA, where they talk about the new principal instruments? I will not go into the detail of the correspondence; it was copied to me. Has that correspondence been responded to?

Ms Huxtable: Not yet. I received that on 11 April. I sought a response from my team by today. I have not had a chance today to review the draft that has been provided to me but I expect that I will be in a position to sign that tomorrow. I am sure that you would appreciate that this team has an enormous amount on their plate at the moment. So we just try and stagger some of my expectation of them

5.3 A response from the Department of Health and Ageing signed by Ms Huxtable (received on 10th May 2013) is at **Attachment 5**.

6. Request 5 (page 52) – inclusion about the inclusion of workplace supplement in the primary supplement provisions

- 6.1 LASA has discussed the issue in its original submission under the heading ‘workforce compact’ – see paragraphs 4.20 – 4.24 of the LASA submission and recommendation 12.
- 6.2 After reviewing Committee *Hansards*, LASA is even more firmly of the view that the principles mechanism should not be used to circumvent industrial agreements made between providers and employees.
- 6.3 As explained to the Committee in evidence and in its original submission, the level of funds already clawed back by the Government from the sector will make it difficult for many providers to comply with the anticipated requirements of the workforce supplement and retain commercial sustainability.

7. Request 6 (page 53) – view on Guild and Australian Unity evidence.

- 7.1 The Aged Care Guild and Australian Unity Retirement Living gave evidence in Melbourne on 1 May.
- 7.2 LASA has extracted the most important parts of the evidence in **Attachment 6**
- 7.3 LASA agrees with the extracted observations and believes they reinforce the observations made by LASA in its original submission as well as in its *Comments on the Proposed Accommodation Pricing Guidelines* **Attachment 2**.
- 7.4 More generally, LASA is concerned that the Committee may have discovered that the decisions to changes to means testing that may alter consumer preferences between refundable accommodation deposits and daily accommodation payments was made with little if any evidence.
- 7.5 LASA agrees with the ANZ Bank when it said at page 14 of the *Hansard*:

So what do we want? We want the new means test to be neutralised to avoid the apparent skew to daily payment bonds. We want proper modelling of resident profiles to provide this neutrality so as to avoid a material shift from refundable bonds to daily bonds. We want the refundable bonds to be the primary reference point for pricing and daily charges to move up and down with interest rates, as is working currently. And we want consideration of transitional backstop financing if there is an unintended shift from refundable bonds to daily charge and a liquidity shortfall occurs to disrupt the market. Thank you.

and notes the Committee was told:

CHAIR: Have you asked about modelling?

Mr Gates: Yes.

CHAIR: What was the answer?

Mr Gates: We have just seen some vague high-level assumptions, statements.

CHAIR: I am really keen to know, if you asked about something, what the answer was. We will be asking as well.

Mr Gates: Centrelink have all the detail on residents. DOHA have a lot of detail.

and that the Department said (from 72):

Senator FIERRAVANTI-WELLS: The ANZ Bank this morning referred to modelling and perhaps how it could have been useful to present some modelling based on data that probably you have got through Centrelink and other areas. It might be worthwhile to have a look at what the ANZ said about that. Also, Mr Curley made reference to some early modelling through his discussions either through NACA or obviously in consultations that he has had with the department. For any of this financial stuff associated with this package and these changes has there been any modelling undertaken by the government?

Ms Huxtable: Modelling of what? It is an enormous package and I am not just sure whether you are talking about modelling of individual contacts or something else.

Senator FIERRAVANTI-WELLS: ANZ were talking about the issue of RAD and DAP and about modelling in relation to that and potentially how that could be rolled out. Also, assertions have been made about the fact that now that people will be able to claim bonds in high care that somehow that is going to give providers a whole lot more revenue. Has any modelling been done that may lead to the sort of assertion? There have been certain assertions made about financial viability and how these changes are going to lead to financial viability. I just wonder whether—

Senator BOYCE: Or destroy it.

Senator FIERRAVANTI-WELLS: those assertions have been underpinned by modelling by you or Treasury or some other entity or whether these are just assertions. What have you based them on?

Ms Smith: There have certainly been a lot of claims flying around from various quarters and the Aged Care Financing Authority was really keen to understand all these issues. It has commissioned some modelling. That modelling is not yet complete—

Ms Huxtable: That was with regard to the bond—

Ms Smith: That was with regard to understanding what might be the impact of the changes to the accommodation payment regime and what options individuals might choose in terms of a lump sum or—

Senator BOYCE: This is specifically about whether investment is going to flow out of that area or—

Ms Huxtable: No.

Ms Smith: No. I think one of the issues that has caused some concern is that people are focused on the loss of one particular thing without considering the overall impact of all the financing reforms. I think that it is important to understand not just what might happen in relation to consumer choice between a lump sum and a daily payment in terms of the people who are currently eligible to pay a lump sum, but also understand the fact that should be legislation be passed a much greater pool of people would be eligible to pay a lump sum than is currently the case. Those people currently receiving high care are not able to pay a lump sum and in the new world, should the legislation be passed, that would be an option available to them. So ACFA is keen to understand the impact of all those issues and has commissioned some modelling.

Senator SIEWERT: When is that going to be available? We are being asked to vote on this in the very near future. Is that modelling—which seems to me pretty fundamental—going to be available?

Senator SMITH: I think that that particular point that you make that there might be an influx of investment as a result of these other changes is understood, and that is

made very, very clearly in the ANZ submission. But even with that understanding, they are still not convinced because they have not seen any modelling.

Mr Murray: On that whole issue, there are a number of factors which are going to influence a person's decision as to whether to pay by a lump sum or in a periodic payment form. We have heard some people say they are concerned there may be a shift away from lump sums to periodic payments. I have had people talk to me. Financial advisers have said that they would be surprised if there were a shift away. There are still things that will encourage people to pay by a lump sum. Certainly, it is not always just a financial consideration—

and from page 73:

Senator BOYCE: My question was probably similar to Senator Smith's, which was the service providers and the ANZ, one of our major banks, have not split this up into little segments. They have modelled it. Surely, the service providers in this sector know their sector and have taken into consideration the same questions that you have. When is this modelling going to be available?

Mr Murray: The modelling is being done through the Aged Care Financing Authority. In terms of modelling, I should also point out that what they are looking at is more sensitivity analysis. As I mentioned before, it is very difficult for anyone to say that—

Senator BOYCE: On how many service providers will fall over at point X?

Mr Murray: No, not at all. It is: if there were a 10 per cent move in payments from one form to the other, what would that mean? If, of the new people in high care paying bonds, 50 per cent of them paid, how would that counterbalance the movement in the other?

Senator BOYCE: So when is it available?

Mr Murray: It is a sensitivity analysis. It is in the process of being prepared. ACFA are considering this in the context of reporting to government towards the end of May on these issues.

Ms Huxtable: That is a report that is provided to the minister, so you would really have to ask him.

- 7.6 The only way to view this evidence is to conclude that decisions have been made to change the way in which aged care in Australia is funded without full and proper modelling, with 'sensitivity analysis' being performed only now.
- 7.7 It would be most disappointing if this was in fact the case.

8. Recommendations

- 8.1 LASA urges the Committee to endorse the recommendations made by LASA in its original submission.
- 8.2 However, more specifically as to process, LASA requests the Committee to recommend:
- (a) the Bill not proceed unless the Department can present the Committee with a timetable document of a standard equivalent to the Department's 2012-2013 Regulatory Plan, setting out the general contents of new or amended Principles documents to commence on 1 January and 1 July 2014 and when it is proposed to publish draft instruments for industry comment; and
 - (b) that any 'guidelines' documentation produced by the Department be accompanied by a draft version of the Principles document giving effect to the policy contained in the policy guideline.
- 8.3 As to changes to legislation, LASA requests the Committee recommend the changes to the legislation set out in recommendations 4,7,8,9,10, 11 and 12 of LASA's original submission.
- 8.4 In addition, any legislation that facilitates the removal of retention amounts from accommodation amounts should also be removed from the Bill.
- 8.5 LASA also reflects on the evidence that may (or may not) have been present when the policy with respect to changes to the assets tests were made, as discussed during the testimony of officers from the ANZ Bank.
- 8.6 LASA therefore requests the Committee write to the Minister seeking the release of all relevant documents that led the Government to alter the asset test as it applies to the new care co-contribution to be paid by residents in residential care as well as the decision to abolish bond retention amounts.

- 8.7 This concern about the quality of information relied upon by government when making decisions also applies when making subordinate instruments.
- 8.8 Therefore, LASA believes an amendment should be made in Schedule 1 of the Bill to ensure that as from 1 July 2013, when the Minister:
- (a) makes a legislative instrument determining:
 - (i) a supplement amount for one of the supplements listed in section 44-5 of the *Aged Care Act*; or
 - (ii) an amount pursuant to one of the new provisions added by the Aged Care (Live Longer Live Better) Bill²
 - (b) makes a legislative instrument for the purposes of one of the principles documents listed in the table contained in section 96-1 of the Act (as proposed to be amended by the Aged Care (Living Longer Living Better) Bill.

the Minister must also publish:

- (c) a statement setting out the reasons for the making of the instrument;
- (d) the facts relied upon when making the decision; and
- (e) the documents considered when making the decision

in a much the same way as a decision maker must prepare a statement of reasons for the purposes of section 37 of the *Administrative Appeals Act 1975*.

- 8.9 In the longer term, it is clear that a suitable Senate Committee should consider the manner by which subordinate instruments are made for the *Aged Care Act*, as recommended by LASA in its original submission.

² Such as for example the basic daily care fee to be made under proposed section 52D-3 of the *Aged Care Act* to be added by item 149 of Schedule 3 to the Aged Care (Living Longer Living Better) Bill. The commencement date for these measures could be 1 July 2014.

- 8.10 Finally, the Committee process confirms the LASA view that the statutory committee designed to consider the aged care financing structure must report much earlier than the timetable established in the proposed legislation. The Committee should report by 31 December 2015 and be given the additional terms of reference suggested by LASA in recommendation 14 of its original submission.

Leading Age Services Australia

10 May 2013

ATTACHMENT 1- Extract from Department of Health Regulatory Plan

Tobacco Advertising Prohibition Amendment Act 2012

Description of issue

The *Tobacco Advertising Prohibition Amendment Act 2012* (the Amendment Act) amends the *Tobacco Advertising Prohibition Act 1992* to extend existing restrictions on tobacco advertising to the internet and other electronic media (e.g. mobile phones).

The Amendment Act also provides an exception for internet point-of-sale tobacco advertising that complies with state/territory legislation or, in the absence of such legislation, Commonwealth regulations.

The *Tobacco Advertising Prohibition Amendment Regulation 2012* (the Amendment Regulation) amended the *Tobacco Advertising Prohibition Regulations 1993* to prescribe internet point-of-sale tobacco advertising requirements, and remove some redundant provisions.

Date of effect

Both the Amendment Act and the Amendment Regulation commenced on 6 September 2012.

Contact details

Sharon Appleyard
Assistant Secretary
Tobacco Control Taskforce
Population Health Division
Department of Health and Ageing

Tobacco Advertising Prohibition Amendment Regulation 2012

Description of issue

The *Tobacco Advertising Prohibition Amendment Act 2012* (the Amendment Act) extends restrictions on tobacco advertising to the internet and other electronic media. It also provides an exception for internet point-of-sale tobacco advertising that complies with state/territory legislation or advertising that complies with state/territory legislation or, in the absence of such legislation, Commonwealth regulations.

The *Tobacco Advertising Prohibition Amendment Regulation 2012* (the Amendment Regulation) will amend the *Tobacco Advertising Prohibition Regulations 1993* to prescribe internet point-of-sale tobacco advertising requirements, and remove some redundant provisions.

Consultation Opportunities

A public consultation process on the draft regulations was held from 3 to 30 April 2012, after the Amendment Act received Royal Assent on 6 March 2012.

Date of effect

The Amendment Regulation was made on 16 August 2012 and commenced on 6 September 2012, when the Amendment Act commenced.

Contact details

Sharon Appleyard
Assistant Secretary
Tobacco Control Taskforce
Population Health Division

Amendment to the Therapeutic Goods Regulations 1990, the Therapeutic Goods (Charges) Regulations 1990 and the Therapeutic Goods (Medical Devices) Regulations 2002

Description of issue

These changes relate to a small number of separate matters, as follows:

Therapeutic Goods (Medical Devices) Regulations 2002:

- reclassifying implantable medical devices that are total or partial hip, knee or shoulder joint replacements from Class IIb medical devices to Class III medical devices; and
- providing for certain transitional arrangements to apply in relation to such products that are already included in the Australian Register of Therapeutic Goods (the Register) as Class IIb devices as at the commencement of the amendments on 1 July 2012 or that are the subject of an ongoing application for inclusion in the Register as a Class IIb device at that time.

Therapeutic Goods Regulations 1990:

- enabling the Complaints Resolution Panel to deal with a complaint about an advertisement for a therapeutic good if court proceedings begin, or have begun, in relation to the subject matter of the complaint; and
- enabling sponsors of therapeutic goods granted an exemption from paying an annual charge for financial years 2009-10 or 2010-11 in respect of a new entry in the Register because their turnover of the relevant goods was of low value, but who did not provide the Secretary with the information required under the regulations to substantiate the low value of their turnover, to provide that information within a further timeframe.

Therapeutic Goods (Charges) Regulations 1990:

- removing the current liability for manufacturers who manufacture only biologicals to pay an annual charge in relation to their manufacturing licence. This amendment was inadvertently left out of amendments to the Therapeutic Goods (Charges) Regulations 1990 that commenced on 31 May 2011.

Date of effect

Amendments to the:

- Therapeutic Goods (Medical Devices) Regulations 2002 commenced on 1 July 2012;
- Therapeutic Goods Regulations 1990 commenced on 30 June 2012; and
- Therapeutic Goods (Charges) Regulations 1990 commenced on 31 May 2011.

Contact details

Will Freebairn
Legal Officer
Office of Legal Services
Therapeutic Goods Administration

Amendment to the Therapeutic Goods Regulations 1990, the Therapeutic Goods (Charges) Regulations 1990 and the Therapeutic Goods (Medical Devices) Regulations 2002 to increase TGA fees and charges for financial year 2012-13

Description of issue

Amendments to the Therapeutic Goods Regulations 1990, the Therapeutic Goods (Charges) Regulations 1990 and the Therapeutic Goods (Medical Devices) Regulations 2002 relate to the increase of TGA fees and charges for financial year 2012-13 by 5.6 per cent.

This increase reflects an increase of 3.6 per cent based on the indexation model agreed with industry, and a further increase of 2 per cent in order to fund the implementing of reforms set out in the document '*TGA Reforms: A blueprint for TGA's future*', and to improve the TGA's post market surveillance capacity.

Date of effect

1 July 2012

Contact details

Nicole McLay
Chief Financial Officer
Office of Corporate Service
Therapeutic Goods Administration

ATTACHMENT 2 – LASA comments on proposed accommodation pricing guidelines



Leading Age Services Australia (LASA) Comments on the Proposed Accommodation Pricing Guidelines

Guideline Section and Page	LASA Response
Page 1 1. Introduction	
It is intended that the guidelines would be given legislative authority through amendments to relevant Aged Care Principles	<p>The majority of the elements important to the continuing economic viability of the aged care sector, including the Guidelines to Accommodation Pricing, are contained in subordinate instruments (the Principles).</p> <p>As the industry is yet to see the proposed changes to the Principles, and has not had an opportunity to consult and review, it is difficult to comment specifically on the unknown.</p> <p>LASA is of the firm view that the proposed Accommodation Pricing Guidelines provide insufficient detail to enable a robust and meaningful assessment of implications for the industry. LASA remains highly critical of the process undertaken by Government thus far whereby the relevant and important detail regarding Accommodation Pricing will only become known via amendments to the Principles with little or no industry consultation.</p>

	<p>Additionally, there is no mention in the Guidelines as to the life of the Guidelines or when they would be reviewed. As it is intended that the guidelines would be given legislative authority, there must be a review process articulated and defined.</p> <p>The following comments therefore, represent the Guidelines as they appear without the benefit of knowing the detail they refer to.</p>
Page 2 3. Background	
<p>The classification of accommodation prices into 3 levels</p>	<p>In the submission to the Senate Review LASA commented:</p> <p><i>“An additional provision should be added requiring the Minister to provide a statement of material facts and reasons for decision where the Minister varies from the advice provided by the Authority.....</i></p> <p><i>Yet the Authority’s recommendations for level 2 accommodation payments was rejected by the Minister, who said in part his decision will ‘offer greater consumer protection whilst still allowing industry sufficient flexibility in pricing’. There was no publication of the facts that led him to come to his asserted conclusion.</i></p> <p><i>More generally, the Committee should note that industry members were also disappointed that this mechanism failed to recognise that for aged care investment to be worthwhile, a fair rate of return on investment required is represented by the weighted average cost of capital (WACC). That accommodation payments are not structured to reflect this will, in time, lead to less willingness to invest (or remain in) the aged care sector. This issue remains a significant concern to aged care providers.”</i></p> <p>LASA continues to argue that the prices set for the three levels should be taken from the recommendations of ACFA and that the WACC should be used as the method to convert the refundable accommodation deposit into a daily accommodation payment, rather than the MPIR.</p>

	<p>With regard to the method of conversion, LASA remains of the firm view that the existing process should be maintained whereby the refundable accommodation deposit forms the basis of the conversion to a daily accommodation payment and not the other way around. To invert the process could lead to catastrophic cash-flow issues for the industry in a market where interest rates are rising.</p> <p>As simply described below a Provider is at serious risk:</p> <ul style="list-style-type: none"> • Resident 1 admitted today agrees to pay 100% lump sum RAD of \$406,037. • After 2 years the resident leaves. • Resident 2 is admitted. • The provider hasn't changed pricing of \$85 per day but it is now during a higher 10% MPIR period. • Resident agrees to pay 100% RAD of \$309,400. • The provider hasn't changed the pricing but now has to find approximately \$100,000 just to repay the outgoing resident. <p>Another example, as Appendix 1, distinctly describes the above.</p> <p>This has added significantly more liquidity risks and banks funding aged care will take notice. Providers potentially will have to put a contingent liability on its balance sheet for resident turnover.</p>
<p>That residents will have up to 28 days after entering care to decide how to pay for their accommodation</p>	<p>The industry has consistently commented that the choice of payment period could inadvertently cause cash-flow issues or cost increases for providers. Investment in aged care development will be in jeopardy as providers will be unable to estimate the level of funding required for new developments relative to the capital inflow from residents.</p> <p>As stated in the Grant Thornton submission to the Senate Review:</p> <p><i>Because accommodation bonds represent the primary means of financing new aged care developments, the proposed arrangements make new investment in aged care untenable for both investors and their financiers. Providers would be unable to estimate the level of funding</i></p>

	<p><i>required for new developments relative to the capital inflows from residents that would traditionally be used to pay down debt.</i></p> <p><i>“We can think of no other circumstance where it is considered commercial or equitable to allow a person to take possession of property without agreeing the terms of payment.”</i></p> <p><i>Julie McStay, Partner, Hynes Lawyers</i></p>
Page 3 4. Factors to be considered in setting and proposing prices	
Other factors relevant to price	<p>LASA assumes that this is the section in which a Provider would articulate issues that are difficult to quantify and are seen as intangibles, such as reputation, history of an organisation, core values etc.</p> <p>If so, the Guidelines should be enhanced to introduce such concepts to guide a Provider.</p> <p>This area should also take account of the varying designs of facilities and the consequential vary costs to deliver services. For example, multi-storey, single room facilities have significantly higher overheads (staffing, electricity) than do older style single level multi-bed rooms.</p>
Pages 3 & 4 5. Information disclosure requirements	
5.1 Prices must be published	<p>The Guidelines are silent on the process of how this will be achieved:</p> <ul style="list-style-type: none"> • how will the information be provided to the My Aged Care Website, • how will the DoH&A ensure the accuracy of information, • what timeframes are required, • how long will the prices need to be set for, • how often can the prices be changed? <p>The answers to these questions should be included in the Guidelines to support Providers and to ensure they meet their requirements.</p>

	The intention to publish in two distinct areas (My Aged Care Website and individual Provider site is duplication, and could cause errors in the accuracy of information.
5.2 Key Features Statement must be published	<p>What arrangements have been considered where an Approved Provider does not have a Website, and as above:</p> <ul style="list-style-type: none"> • what timeframes are required, • how long will the prices need to be set for, • how often can the prices be changed? <p>As stated above, the answers to these questions should be included in the Guidelines to support Providers and to ensure they meet their requirements.</p> <p>It is noted that Attachment A provided to the Guidelines is useful.</p>
5.3 Self assessment certification must be published	<p>LASA questions why certification is required. This is yet another piece of “red tape” and increased documentation that does not add value to the process. LASA questions:</p> <ul style="list-style-type: none"> • What legal status does this <i>certification</i> hold? • In what circumstances (<i>on request</i>) would the supporting documentation (that is required to be kept) be requested to be seen, and by whom, i.e. define <i>relevant Government authorities</i>? <p>The Guidelines are silent on how often a Provider will need to publish their self assessment.</p> <p>If the certification requirements remain (LASA advocates their removal) then at least the answers to the above questions should be included in the Guidelines.</p>
Page 4 6. Prices charged not to exceed published prices	
Prices charged must not exceed the published prices, though providers could agree to a price	Older persons should be given a choice as to how they pay for their care and accommodation. There may be situations where paying a higher accommodation payment could advantage the older person. LASA believes that the older person should have a right to negotiate, in agreement with the Approved Provider,

lower than the published price	<p>whatever accommodation payment best suits their specific financial circumstances, whether this be lower or higher than the published price.</p> <p>To deny the Consumer the right to negotiate price goes against the recommendations of the Productivity Commission. Market forces should have an impact on price setting and the consumer should be able to negotiate under or over a published price.</p>
Pages 5 & 6 7. Approval of Level 3 Prices	
<p>7.1 Process of application</p> <p>Application forms and processes will be settled in principle some months before the 1 January 2014 date</p>	<p>How can the industry comment on these Guidelines when key aspects of the process will not be known until the amendments to the Principles are published? It is unreasonable not to have these aspects outlined as part of these Guidelines.</p> <p>Notwithstanding the above, whilst it is acknowledged that the Pricing Commissioner can take into consideration a number of pricing factors in determining eligibility for Level 3 pricing, LASA strongly recommends that an agreed set of criteria be developed in conjunction with the industry that will enable providers to self-assess with a level of certainty that they will be eligible to achieve Level 3 pricing.</p> <p>The Guidelines are silent on how often a Provider will need to submit an application. They are also silent on how the DoH&A or the Commissioner will ensure a consistent application of its approval process. These are just two examples of the lack of clarity contained in the Guidelines.</p>
<p>7.2 Minimum Requirements</p> <p>The room will need to be a single...large modern room with private ensuite</p>	<p>The adjectives <i>large</i> and <i>modern</i> are subjective and should be removed.</p>

<p>7.2</p> <p>The facility will need to have met all building and certification requirements under legislation</p>	<p>This is a broad-sweeping statement and needs to be more clearly defined especially in relation to what requirements are being referred to; i.e. Commonwealth, State or Local Government requirements.</p>
<p>7.3</p> <p>Submission of Pricing Plan</p> <p>The pricing plan will have to address in detail the prescribed factors specified in these guidelines and demonstrate how consideration of these and any other relevant factors justify the proposed price for each room or class of room</p>	<p>As previously stated, LASA assumes that in addition to the <i>other factors relevant to price</i> section of the Guidelines, this is where a Provider would articulate issues that are difficult to quantify and are seen as intangibles, such as reputation, history of an organisation, core values etc.</p> <p>If so, the Guidelines should be enhanced to introduce such concepts to guide a Provider.</p> <p>LASA supports the statement that the pricing plan is not required to be published, but would question how this information may be used in addition to its intended purpose. Any such use must be at the consent of the Approved Provider.</p> <p>The Guidelines are also silent on how often a Provider will need to submit a Pricing Plan.</p>
<p>7.4</p> <p>Approval of prices</p>	<p>The Guidelines do not articulate the approval process timeframes. Understanding how long the approval process will take is integral to the strategic and business planning for an organisation.</p> <p>The Guidelines must identify what the timelines will be and the Pricing Commissioner must be held accountable to meeting the timeframes set.</p>
<p>Once a decision is made the Pricing Commissioner will advise the provider of their decision and if approved the provider will be able to commence charging the approved price once they have met the information</p>	<p>The Pricing Commissioner must have a set of standards which outline the approval process and where approval is not given the standards must identify what is to be provided as way of explanation for disapproval.</p> <p>The Guidelines are also silent on what appeal process will be in place. The standards referred to above must include how the appeal process will work and the timelines associated with the appeal process.</p>

disclosure / publishing requirements	<p>The Pricing Commissioner must be held accountable to meeting the timeframes set.</p> <p>It is vitally important that the Commissioner does not set a market signal when deciding on whether a Provider has met the criteria for Level 3 especially in defining prices in certain locations / settings.</p> <p>LASA strongly advocates that the decisions of the Commissioner do not turn into a price setting mechanism by default.</p>
Page 6 8. Other Matters	
Dealing with complaints	<p>The Guidelines indicate that the current Aged Care Complaints System will be used should a consumer have a complaint. LASA supports this process and would advocate the NACA Aged Care Complaints Working Group be consulted on matters that impact on the process of how the complaint will be dealt with.</p> <p>LASA strongly advocates that the complaints system does not turn into a price setting mechanism by default.</p>

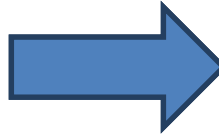
Appendix 1

What happens to Refundable Accommodation Deposits as Interest Rates Rise?

Example 1

DAP	\$50
Annual Equivalent	\$18,200
Current MPIR	7.24%
RAD amount converted by MPIR	\$251,381

AS THE MPIR
INCREASES, THE
EQUIVALENT RAD
VALUE FALLS



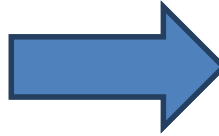
DAP	\$50
Annual Equivalent	\$18,200
Higher MPIR	10.00%
RAD amount converted by MPIR	\$182,000

THE RAD HAS BEEN REDUCED BY:
\$69,381 FOR THE SAME DAILY
PAYMENT

Example 2

DAP	\$85
Annual Equivalent	\$30,940
Current MPIR	7.24%
RAD amount converted by MPIR	\$427,348

AS THE MPIR
INCREASES, THE
EQUIVALENT RAD
VALUE FALLS



DAP	\$85
Annual Equivalent	\$30,940
Higher MPIR	10.00%
RAD amount converted by MPIR	\$309,400

THE RAD HAS BEEN REDUCED BY:
\$117,948 FOR THE SAME DAILY
PAYMENT

ATTACHMENT 3 – Workforce Compact documents

18 April 2013

Carolyn Smith
First Assistant Secretary
Ageing and Aged Care Division, DOHA
GPO Box 9848
Canberra ACT 2601

Dear Carolyn,

Re: Addressing Workforce Pressures Initiative

I am writing to convey Leading Age Services Australia (LASA) extreme disappointment with the production and distribution of the Addressing Workforce Pressures Initiative.

LASA was not consulted on the development or content of the documents, nor were given the courtesy of being alerted to their distribution to members and their staff.

From our meetings to date it was our understanding that DOHA and LASA would work collegiately on industry matters of importance; this issue is one of the primary importance for the industry.

It is disappointing to LASA and its members that this arbitrary step has been taken without adequate consultation with providers on about how best to manage this process.

Feedback from our members is that they are greatly distressed by this material being sent to all clinical staff without prior knowledge, leading to significant angst and disquiet, as it has been delivered in a vacuum and without due consideration of the operational requirements needed to support such material.

LASA members form approximately 65% of the industry and as such we are well placed to advise and support DOHA in the execution of the Aged Care Act primarily with regard to:

- Provider and industry expectations;
- Industry standard practices and obligations, including those beyond the Act; and
- Operational, clinical and strategic issues that may impact DOHA activities

Once again I reiterate our extreme disappointment at the lack of consultation around this initiative and seek your assurance and an undertaking that consultation is still a plank of DOHA relations with LASA, providers and the wider industry.

Sincerely

Patrick Reid
Chief Executive Officer

c.c. The Hon Mark Butler MP
Senator Concetta Fierravanti-Wells
Senator Rachel Siewert

ATTACHMENT 4 – LASA Letter on development of instruments

5 April 2013

Ms Rosemary Huxtable PSM
Deputy Secretary
Department of Health and Ageing
G.P.O Box 9848
Canberra ACT 2601

Dear Ms Huxtable,

I refer to the Living Longer, Living Better package which was introduced into the House of Representatives on 13 March 2013. Leading Age Services Australia (LASA) is quite concerned about the current timeline within which the new principle instruments supporting this package are being developed.

LASA is the largest national peak organisation for providers of care, services and accommodation for older Australians. LASA represents providers across the entire spectrum of the age services industry regardless of their ownership status (private sector, charity, mission or not-for-profit). LASA is committed to improved standards, equality and efficiency throughout the industry. We advocate for the health, community and accommodation needs of older Australians, working with government and other stakeholders to advance the interests of all age services providers, and through them, the interests of older Australians.

It is acknowledged that much of the detail around the implementation of the reform measures will not be known until amendments to the Aged Care Principles and Ministerial Determinations are finally tabled in the Parliament.

We understand that important matters will be dealt with in the development of new principles, including amongst other things:

- possible changes to the accommodation bond retention mechanism contained in the User Rights Principles;
- amendments to the Quality of Care Principles to describe what is to be provided to high and low care recipients via the contents of the Specified Care and Service Schedule;
- the definition of 'significant refurbishment' of premises;
- the purposes to which refundable deposits and accommodation bonds may be put;

- the prudential standards that must be met by approved providers;
- the period of time in which a care recipient must be provided with care, in accordance with (unseen) approval of care recipient principles;
- the changed criteria for granting extra service status under Extra Service Principles, which are unavailable;
- accommodation payments and accommodation contributions according to fees and payment principles that have yet to be seen; and
- the composition and categories of home care subsidies

LASA is acutely aware that the timetable to develop the principles is constrained by:

- the Bills scheduled to be passed by 1 July 2013. Little development of principle documents can be undertaken until the passage of the legislation;
- a general election anticipated to be called on 14 September 2013, with the caretaker period commencing on 12 August 2013. It is likely that the capacity to consult and develop principle instruments will be limited (and could indeed stop) as this could be construed as a step in the making of policy decisions likely to commit an incoming government, and therefore contrary to the *Guidance on Caretaker Conventions* (DPMC, 2010);
- the usual delay in forming a new or changed government; and
- Christmas, where personnel will not be available to develop or process comments made against deadlines set around this period.

In this context, and given the volume of documentation that needs to be developed by 1 July 2014, there is great concern that industry will be given limited time to consider instruments that will form the basis of commercial decisions made by providers worth millions of dollars and will greatly influence the nature of aged care services offered to Australians.

Additionally, the situation creates great uncertainty for older Australians and their families needing to make critical decisions about their care and accommodation options and the associated financial commitments.

Unless appropriate advice can be taken to test propositions contained in proposed rules, or that time is provided to allow a reasonable opportunity to decide whether rules can be practically applied in a commercial environment, regulatory failure will result.

As the Senate Community Affairs Committee said in its Committee Report into the National Disability Insurance Scheme Bill 2012, 'as a matter of good public policy, when a bill seeking to institute significant national reforms is going to rely on extensive subordinate legislation, a draft of that ancillary material should be released as close as possible to the introduction of the bill itself, to enable both Parliament and the public to fully consider the issue before it'.

LASA acknowledges the publication of the attached Aged Care Principles Navigation Overview. However, this document does not provide with sufficient precision as to when particular documents will be developed or what specific issues will be covered.

So as to facilitate the efficient consideration of the important documentation that will determine the rights and obligations of both approved providers and service recipients, LASA requests that the Department publish:

- (a) specific dates as to when draft (or consolidated) principles documents will be made public;
- (b) a summary of the subject matters to be dealt with in the draft; and
- (c) the consultation mechanisms with associated timelines.

Yours sincerely,

Patrick Reid
Chief Executive Officer
Leading Age Services Australia

encl: the Aged Care Principles Navigation Overview
c.c. The Hon Mark Butler MP
Senator Concetta Fierravanti-Wells
The Hon Peter Dutton MP

ATTACHMENT 5 - DoH&A response to LASA Letter on development of instruments



Australian Government
Department of Health and Ageing

Mr Patrick Reid
Chief Executive Officer
Leading Age Services Australia
Unit 2, 4 Torrens Street
Braddon ACT 2612

Dear Mr Reid

I refer to your correspondence of 5 April 2013 in relation to amendments to the Aged Care Principles and Determinations to implement the *Living Longer Living Better* reforms.

Your letter contends that much of the detail of the implementation of reform measures will not be known until amendments to the Principles and Determinations are tabled in Parliament. I do not agree that this is the case. The amendments will reflect the policy settings of the reform package as announced. Significant levels of detail are reflected in existing documents including the explanatory memoranda for the *Living Longer Living Better* bills, and in the implementation engagement that has been occurring with industry through many working groups on which your organisation and other interested parties are represented.

You also note that little development of Principles' documents can be undertaken until the passage of the legislation. This is also not correct. While the Principles cannot be tabled formally in the Parliament until the legislation receives royal assent, considerable development work can occur and has been occurring in close collaboration with the sector, since the announcement of the reform package in April last year.

You will be aware that a number of guidelines are currently out for consultation in the areas of home care and consumer directed care, dementia and veterans' supplements and the workforce supplement. These guidelines have been developed hand in hand with the sector and include coverage of the composition and categories of home care subsidies, a matter which you have raised.

I note that the other specific issues you raise in your letter were also listed in your submission to the Senate Inquiry into the legislation. The Committee asked that we provide a document summarising what information is already available on each of these issues. We will provide this document to the Committee as part of a supplementary submission, but I am also attaching it for your information.

One of the issues you have identified as an area of concern is the way in which the permitted uses of refundable accommodation deposits and accommodation bonds and prudential standards will be framed in Principles. To clarify, these areas are not being amended as part of the *Living Longer Living Better* reforms but have been subject to a separate engagement process through the Prudential Advisory Group, of which I understand Ms Kay Richards from LASA is a member. They are the result of ongoing efforts to improve the operation of these parts of the regulatory framework. I have asked Mr Iain Scott, First Assistant Secretary, Office of Aged Care Quality and Compliance, to provide an individual briefing to you on these issues.

The timing of the development and amendments of the various Principles, especially for the 1 July 2013 changes, is tight. That is why the proposed arrangements have been developed in consultation with stakeholders and draft guidelines released for public consultation. The Principles will reflect the draft guidelines that are currently out for consultation, and the results of that consultation.

The Department is acutely aware of the need to ensure opportunities for broader consultation and timely advice to the sector on arrangements. Further detailed information regarding the nature and timing of the changes to the Principles is being developed and will be released before the end of May.

Consultation and collaboration has been, and continues to be, central to the reform process, and LASA has been involved at every step. I acknowledge the important role that your organisation will play in supporting your members to help shape the future arrangements by engaging with the current and future consultation processes.

Yours sincerely

Rosemary Huxtable PSM
Deputy Secretary
Department of Health and Ageing
10 May 2013

Attached: Response to Attachment 1 to LASA Submission

Response to Attachment 1 – LASA Submission to Senate Inquiry

Leading Age Services Australia (LASA) states that the list of programs below are matters where, “No precise detail of what will be contained in the instruments is available”:

1. *Amendment of the accommodation bond retention mechanism contained in the User Rights Principles.*

On 20 April 2012, the Government announced, in line with the recommendations of the Productivity Commission, that providers would not be able to deduct retention amounts from Refundable Accommodation Deposits paid by residents who enter care from 1 July 2014.

On 21 November 2012, the Department of Health and Ageing (the Department) released a paper providing an overview of the proposed legislative changes. The removal of retention amounts was clearly detailed in this paper as a legislative change to be made to the *Aged Care Act 1997*, and carried through into subordinate legislation.

In parallel with this process the Minister for Mental Health and Ageing reconfirmed on 21 December 2012 that, in line with the final recommendations of the Aged Care Financing Authority, the formula for accommodation payments should no longer refer to retention amounts.

The Department has consistently and clearly outlined the Government’s intent to remove retention amounts. Amendments to the *User Rights Principles 1997* will be in line with the announced policy and proposed amendments to primary legislation.

2. *Amendments to the contents of the Specified Care and Service Schedule contained in the Quality of Care Principles to describe what is to be provided to all residential aged care residents.*

The Department, together with the National Aged Care Alliance (NACA), has established a Specified Care and Services Reference Group including provider, consumer, union, and health professional representatives to provide advice on the Schedule of Specified Care and Services. LASA is a member of this group.

The Reference Group has met six times since August 2012 to discuss the sector’s views about expected levels of ‘standard’ and ‘additional’ care and services in an environment in which there is no low care / high care distinction. The Reference Group throughout these meetings has noted that aged care providers are currently able to negotiate with residents to include in the resident agreement fees for ‘additional services’ above the care and services required by the Schedule.

NACA is expected to make preliminary recommendations on amendments to the Schedule by late June 2013. Recommendations that have potential cost implications will be referred to the Aged Care Financing Authority for analysis by the end of December 2013.

These recommendations will inform the drafting of legislation to support the removal of the low care / high care distinction on 1 July 2014.

3. *What constitutes the 'significant refurbishment' of premises?*

The Aged Care Financing Authority finalised its recommendations on the definition of significant refurbishment to the Minister for Mental Health and Ageing on 21 November 2012. These recommendations have been accepted by Minister and were announced on 21 December 2012.

These recommendations and the Minister's decision are published on the *Living Longer Living Better* website. Amendments to legislation will give effect to the Significant Refurbishment criteria as announced. In addition, guidelines on the application process are currently being developed and will be released for consultation.

4. *The purposes to which refundable deposits and accommodation bonds may be put.*

Permitted uses to which refundable deposits may be put under the proposed legislative changes will be the same as for accommodation bonds i.e. the approved provider must comply with certain prudential requirements to ensure that the care recipient's lump sum payment is used appropriately and kept safe.

There will also be rules that are specific to lump sum accommodation payments. These rules were released for public consultation on 21 November 2012 as part of the overview paper, and are detailed on the *Living Longer Living Better* website.

In response to industry requests the Minister has agreed to amend the *User Rights Principles 1997* to expand the range of permitted uses for accommodation bonds from 1 July 2013 to include, in addition to current permitted uses:

- loans made for the purpose of refunding accommodation bond balances or entry contribution balances;
- loans made to repay debt accrued for the purposes of capital expenditure or refunding accommodation bond balances; and
- investment in Religious Charitable Development Funds.

The expanded range of permitted uses will apply to both accommodation bonds from 1 July 2013. They will also apply to refundable deposits when they commence in 1 July 2014.

5. *The prudential standards that must be met by approved providers.*

Minor amendments will be required to the Disclosure Standard and the Governance Standard as a consequence of the expansion of the range of permitted uses for accommodation bonds from 1 July 2013.

6. *With the removal of the flexible care provisions, the period of time in which a care recipient must be provided with care is in accordance with the approval of care recipient principles that have yet to be seen.*

&

7. *The period of time in which a care recipient must be provided with care, in accordance with (unseen) approval of care recipient principles.*

The Explanatory Memorandum to the Living Longer Living Better Bill 2013 explains that, in order to promote better access to services and improve efficiencies with respect to approvals, it is proposed that from 1 July 2014 approvals for home care and residential care will not lapse.

As set out in item 57 of schedule 3 to the Bill, approvals to receive flexible care will continue to lapse within the entry period specified in the Approval of Care

Recipients Principles or, if no such period is specified, the period of 12 months starting on the day after the approval was given. This preserves the status quo in relation to approvals to receive flexible care.

The *Approval of Care Recipients Principles 1997* currently specify that the entry period for an approval of a person as a recipient of flexible care in the form of transition care is 4 weeks beginning on the day after the approval is given under subsection 22-1(2) of the Act. It is not proposed to make any changes to this provision.

In relation to the lapsing of approvals for other kinds of flexible care, the *Approval of Care Recipients Principles 1997* do not currently specify a period other than the current default period of 12 months specified in the Act. It is not proposed to change this current position.

8. *The criteria for granting extra service status, to be contained in Extra Service Principles.*

The arrangements relating to new applications for extra service status and the granting of extra service status will remain largely the same. Applications for extra service status will continue to be competitively assessed.

The key differences in granting Extra Service status were provided in detail in both the overview of proposed legislative changes document (page 12) released on 21 November 2012 and the Question and Answer document (page 19). Both documents are available on the *Living Longer Living Better* website.

Amendments to the *Extra Service Principles 1997* will support the announced policy.

9. *The precise nature by which accommodation payments and accommodation contributions have yet to be determined. These will be contained in yet to be seen fees and payment principles.*

On 9 April 2013, the Department released a consultation document on the proposed accommodation pricing guidelines. The paper outlines the proposed guidelines that will support the new arrangements for accommodation payments in residential aged care, which will apply for new entrants to residential care from 1 July 2014.

This included the arrangements for justifying prices and for those seeking approval from the Aged Care Pricing Commissioner for level 3 prices. The consultation document is available on the *Living Longer Living Better* website.

Changes to subordinate legislation will be drafted in line with the agreed policy following finalisation of the consultation process.

10. *The unknown criteria to receive the two new supplements for dementia and veterans.*

On 1 May 2013, the Department released a Consultation Paper on the *Living Longer Living Better* website, describing the proposed guidelines for the new dementia and veterans' supplements in Home Care Packages, Residential Aged Care and other programs which will apply from 1 July 2013.

The draft guidelines were developed in partnership with the Dementia and Veterans' Supplement Working Group. Once finalised, these guidelines will form the basis of the subordinate legislation.

ATTACHMENT 6 – Extract from 1 May 2013 Committee *Hansard*

LASA agrees with the following observations made by representatives from Aged Care Guild and Australian Unity Retirement Living:

Our document and our submission are very much focused around the cash flow impacts from the changes in the resident choice issue and the changes in the means testing within the Aged Care Act now around accommodation bonds. Page 4 of our document says that we believe that the proposed legislative reforms will influence consumer behaviour such that there will be a move to accommodation payments and a move away from accommodation bonds. Why do we say that? Because at the moment the family home is excluded from the means test in the pension assessment, but now that there is an asset assessment in the aged-care legislation the family home is included. To add to that, if the family home is excluded, there is now a \$140,000 inclusion. So there are two incentives not to include the family home in the assessment. What that will mean is this. We have spoken to the banks and a number of the bed fillers and the intermediaries that advise residents, and they are telling us that under no circumstances will they advise anybody coming into aged care to provide a bond.

Senator SIEWERT: Sorry, could you explain that a little bit more?

Mr Johnston: Sure. Under the current legislation, the family home is excluded from the means test under the pension. With this legislation, there is now an assets test within the Aged Care Act. There used not to be. Despite what the document says—it says it is the same—it is not the same. Now, if you have a family home, it is included up to \$140,000, so there is an incentive. You do not need to sell the family home to pay a bond. And, if you do sell the family home, all of that cash is included in the asset test; therefore, your government contribution will fall, so you will pay more money yourself. With those two simple things, compounded with the 28-day choice issue, we believe there will be a massive outflow of bonds in this industry. Our advice from the banks and the intermediaries is that that is going to be their positioning, if you like.

CHAIR: They are going to provide that financial advice to their clients?

Mr Johnston: Yes.

Senator SIEWERT: Not to sell their homes?

Mr Johnston: Yes, and not to pay a bond.

And:

Mr Johnston: Yes. In this industry there is a \$12 billion bond pool; the bank debt is about \$4 billion to \$5 billion. The banks probably will not step up more than that. If I can talk from a Regis perspective: I think we have the largest bond pool in the industry—it is \$560 million. That equates to about the value of our enterprise today. If we cannot recover the bond pools, because the bond pools are looked at by the accounting fraternity as a revolving loan, if that merry-go-round stops we cannot fund it in a very short space of time, despite the fact that we have a strong balance sheet today. The outflow we believe will be three years, so we are funding nearly \$200 million a year. We will survive for about 10 months. That is not an overstatement; that is if the banks do not intervene in the process. We are talking about significant amounts of capital. Our debt at the moment is about \$220 million. Why is it that? We have spent a quarter of a billion dollars on new facilities in the last four years, so we are recovering the bonds to fund that. Here is someone who is a good public citizen who has invested in high-quality assets, and we are facing this. If it has to change—the last sentence in this pack says it has to change—do it on a managed basis over five years so that people can adjust their balance sheets and the banks

and everybody can get used to the new order and we can survive. That is, if you like, our message.

We have gone from a regime, as Andrew said, of very strong balance sheets—and the reason there is a \$12 billion bond pool is that providers at the moment can decide how they have sold the bed. We would completely lose that right, so we would be just 'Bed for sale,' and 28 days after the resident comes in they will tell us how they will pay us. What business operates like that? I do not know. Page 5 says we would lose control of how we sell our beds, which is what I just said; we would lose control of our capital structure, where our cash and our assets are; we will have to fund this massive cash outflow; there is the choice issue; and it runs the risk that there will be a serious capital outflow. This will not be an attractive industry if this change goes through. That is what is going to happen. Equity is very difficult to get at the moment in this industry, so that will not solve this problem. I do not think the banks will solve the problem. What will solve the problem is a move back to what we have got, which has worked for 16 years and works quite well. It ain't broke so don't fix it, I suppose is our message

And:

Senator FIERRAVANTI-WELLS: Okay. It begs the question: what else is buried in the principles that we do not know and yet we are being asked to pass this legislation.

Mr Johnston: The act has been a fairly static document for the last 10 years. There have been some revisions around accommodation requirements and things but this moves it. The principles are quite fluid. They could be administered by the minister or the department. This is a new dawn for the aged-care industry, I suppose. You are exactly right, this is the first time and this has been a big surprise for us, and we have other issues. The reason we focused on this issue is the materiality of it.

Mr Sudholz: And also the history of what has happened here. When the initial submissions were made by the guild the concept on the accommodation bond was around the 95th percentile of bonds, which the industry saw was going to come out at about \$490,000 or something like that. It then fell down to another cap, which was around \$406,000. Now it has fallen down to a mechanism where the bond is not the driver but the DAP is the driver. We supported a free market position because that is how it has worked and worked very well in the previous environment. Now that we are in the RAD/DAP relationship there are some serious implications around that. As you look at the DAP and setting the DAP in the tiers and you have the interest rate applied to that, our projection—and we have not seen any projections on this from government; it is a really big concern—is that you are going to finish up with a bond of somewhere between \$170,000 and \$230,000 or something like that. There are two implications. It is the implication of: if you have bonds in your facilities at \$400,000, you are just faced immediately or very close to immediately, with a requirement to pay \$200,000 out of your own balance sheet. So, the resident that moves out gets paid back the \$400,000. The resident that moves in under the assessment program will pay \$200,000. The industry has to pay \$200,000. That is massive. It is not going to happen. It is going to do what Ross implied.

Mr Johnston: That is 10 times the operating cap of a good operator.

Mr Sudholz: So, you have one impact and we have seen no modelling on this. We have had no feedback on this. That is the one impact. That is a massive, serious risk for the industry. It has to be stated over and over again. Someone is going to have to listen to this. The other impact on this is that we are trying to grow the industry and give it viability and sustainability. There are a lot of good people in this industry. The previous speakers were talking about the care, and that is what drives us. We have elderly who suffer and we want to provide the best care and the best

accommodation for them. We have a \$15 billion investment to make. There is absolutely no way known that that investment is going to come into this industry under that environment. This particular mechanism is going to stall and cancel investment in this industry. It is as simple as that. So, what we need to do is have a process in place where we can get to an acceptable scenario. Ross mentioned a program over the next five years. I do not think so. I think the answer is getting it right upfront. We are all trying to attract capital into the industry; we have talked about that. Personally I am trying to convince the superannuation funds in Australia to get into this industry, not for our respective organisations but for the betterment of the industry. We are now getting some coverage on that. That market will not invest in this sector. We have to get this fixed and we have to get it fixed quickly.

And

Senator SIEWERT: You have heard the complaints from some people about the bond system. It is not just the high end. You have also heard the consumers say that they want more choice.

Mr Johnston: That is fine, but you cannot make a change with a high-care population of residents, where things turn over pretty quickly—they come from low to high care and they come from extra service—

Senator SIEWERT: But many people do not do that anymore. That is the point that is being made: with the changing environment, many people do not come from low care to high care; they come straight into high care.

Mr Johnston: They do, but also a lot of residents come in at the back end of high care. What happens is that they age in place very quickly these days. At Regis, 35 per cent of our beds are low care and 14 per cent of those residents are actually low care. They come in and they age in months. That is what happens. They age really quickly. You have got a bond that carries through to high care. To answer your question, in our responses to ACFA and the department and other things, if it is going to be the way it is, the relationship between the accommodation payment and the bond has to be a commercial return and it has to be something like 12 to 20 per cent for an existing facility to a new facility. Why? Because at the moment we get the MPIR rate at 6.9 per cent. That is less than our debt. That is the problem. Andrew's point is that there is a pillar of capital called bonds which makes the equation work. If you take that away, there is a massive gap in return. We have provided a worked example here on what happens to a 100-bed facility over three years if we cannot attract bonds, and it is pretty ugly. It says your operating cash flows increase under the legislation, because we get more accommodation payments, but cash outflow cannot be met. You breach the covenants and you end up with the scenario we talked about at the beginning of the presentation. We have pitched to ACFA and other things that it has to be a commercial return if it is going to be this way, but even if it is you have to give us time to adjust our balance sheets, because again, at Regis, the value of the enterprise equates to the bond pool. We have been really good citizens and invested hundreds of millions of dollars, and we are faced with this.