CATHOLIC HEALTH
Australia

Catholic Health Australia

Submission to Senate Community Affairs Inquiry

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

April 2013

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Catholic Health Australia
21 public hospitals, 54 private hospitals, and 550 aged care facilities are operated by different bodies of the Catholic Church within Australia. These health and aged care services are operated in fulfilment of the mission of the Church to provide care and healing to all those who seek it. Catholic Health Australia is the peak member organisation of these health and aged care services. Further detail on Catholic Health Australia can be obtained at www.cha.org.au.

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1. Introduction

Catholic Health Australia and its members have a vital stake in the fate of the five aged care reform Bills that are the subject of the Committee's Inquiry.

Our members are significant providers of health and aged care services, employing around 35,000 people. Their aged care services comprise some 19,000 aged care beds; 8,000 home care packages; home support services for over 6,000 people each year; and over 6,000 retirement and independent living units and serviced apartments. These services are provided in fulfilment of the mission of the Catholic Church to provide care to all those who seek it.

Catholic Health Australia has also been a strong advocate for reform of Australia's aged care system to enable it to meet the future care and support needs of all older Australians, irrespective of their cultural background, financial means, where they live and the level and nature of their frailty.

It is now widely accepted, and confirmed by the Productivity Commission in their ground breaking report *Caring for Older Australians*, that our current aged care system is not capable of meeting the future care needs and expectations of the increasing number of frail older Australians.

2. Qualified support for the Bills

<u>Subject to the important qualifications outlined later in this submission</u>, Catholic Health Australia supports these Bills. They are the next step in progressive reform to support the future sustainability and quality of aged care services.

The passage of the Bills would enable the implementation of those reform elements of the *Living Longer Living Better* package requiring legislation, including providing the authority for the making of subordinate law through Aged Care Principles and Ministerial Determinations.

The reform elements include:

- Creating new levels of home care packages to allow increased choice and continuity of care for those who wish to be cared for in their own homes for as long as possible.

- A significant increase in the accommodation supplement for supported residents living in new and refurbished homes, and introducing for all new residents the choice of making accommodation payments by refundable deposit or daily payment, or a combination of both, including options to have fees and charges drawn down from the refundable deposit.

  As well as giving consumers greater payment flexibility, the measures will help secure new investment to support the renewal and expansion of the residential services that will be required.

- Reasonable contributions to the cost of their care by those who can afford it, with caps on contributions to protect those who experience excessive care costs.

  Fairer contributions will help offset the cost of the reforms, including the cost of the other elements in the *Living Longer Living Better* package not requiring changes to the *Aged Care Act 1997*, and help make aged care services more sustainable for the community.

- Making provision in law for a further report to Parliament by 30 June 2017 to address the next steps for reform, including whether the number and mix of residential and home care services should continue to be controlled.

- Making one body, the Australian Aged Care Quality Agency, responsible for accreditation of all residential and home care and support services.

It is critical that this opportunity for progressive reform is not delayed or lost, and that these Bills are dealt with before Parliament is prorogued for the Federal election. It is also important, subject to the qualifications below, that the measures in the Bills are seen as integral components of the wider reforms covered in the *Living Longer Living Better* package.

Catholic Health Australia notes that much of the implementation detail for the *Living Longer Living Better* package will be covered in subordinate legislation which will warrant separate scrutiny.

> Recommendation:
>
> That these Bills are dealt with by Parliament before Parliament is prorogued for the Federal election so that this opportunity for progressive reform of Australia's aged care system is not delayed or lost.

3. Our qualifications on the Bills

3.1 Missed opportunities from the Productivity Commission Report[1]

Catholic Health Australia strongly supports the Productivity Commission's view that aged care policy should aim to deliver an aged care system which:

- promotes the independence and wellness of older Australians and their continuing contribution to society;
- ensures that all older Australians needing care and support have access to person-centred services that can change as their needs change ;
- is consumer-directed, allowing older Australians to have choice and control over their lives and to die well;
- treats older Australians receiving care and support with dignity and respect;
- is easy to navigate, with older Australians knowing what care and support is available and how to access those services;
- assists informal carers to perform their caring role;
- is affordable for those requiring care and for society more generally; and
- provides incentives to ensure the efficient use of resources devoted to caring for older Australians and broadly equitable contributions between generations.

Catholic Health Australia acknowledges that the thrust of the Government's response to the Productivity Commission recommendations, as reflected in *Living Longer Living Better* package, works towards the creation of a system that fulfils the above policy aims, but remains concerned that not all of the Productivity Commission's recommendations were adopted.

[1] *Caring for Older Australians* Productivity Commission Inquiry Report No 35 June 2011

3.1.1 Continued rationing of services

The *Living Longer Living Better* reforms will increase, over ten years, the opportunity for care recipients to be cared for in their own homes by increasing the provision target for home care packages and introducing new levels of packages. However, by continuing the control over the number and mix of services through caps on the availability of residential and home care services, the negative consequences of service rationing will continue to be a feature of the aged care system. In particular:

- constraints on timely access by care recipients and their families to care and support services of their choice that are received in accommodation of their choice (including in their own home) and reflect their financial and care priorities;

- a costly and burdensome regulatory apparatus to manage service rationing which bedevils consumers and providers and increases bureaucracy; and

- the dilution of competition and consumer choice which in other sectors of the economy is the primary incentive for productivity and innovation, and the delivery of effective and responsive quality services.

Catholic Health Australia considers that the Bills should include a firm commitment to phase in the removal of service rationing. We note, however, that the Bills recognize this matter as an issue for the future by making specific provision for the current controls on service availability to be reviewed in the report on future reform required to be tabled in Parliament by 30 June 2017. (*Aged Care (LLLB) Bill 4(2) (b)*)

> Recommendation:
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> That the Committee's Report recommends that the Parliament commit to the phased removal of the current rationing of aged care services, with the report to Parliament to focus on an appropriate transition timetable.

3.1.2 Facilitating user contributions

Our other main concern is the failure to adopt the Productivity Commission's recommendations which would make it simpler for people who can afford to contribute to their care to make their payment, such as more secure home equity release arrangements and pensioner savings account- type arrangement. With an ageing population, user contributions will have to be revisited if aged care is to be sustainably funded and the risks of structural Budget deficits minimized. Accordingly, better and fairer ways to facilitate the payment of fees and charges will be essential.

The Bills recognize that user contributions is a continuing issue by making provision for the report to Parliament on future reform of aged care to address the effectiveness of the means testing arrangements, including the alignment of the charges across residential and home care services. (*Aged Care (LLLB) Bill 4(2) (d)*)

Recommendation:

That the Committee's Report recommends that an independent inquiry be undertaken to investigate options for simpler, fairer and more secure arrangements to facilitate consumer contributions to the cost of aged care by those who can afford to contribute to their care.

3.2 Workforce Supplement

Catholic Health Australia is on the record as supporting the payment of competitive wages as one of a number of measures needed to attract, train and retain the appropriately skilled workforce that will be needed for aged care. However, this support is on the condition that wage increases are funded.

The Productivity Commission also recognised the importance of fair and competitive wages. It recommended that an independent pricing agency should be created to recommend care prices that take into account, inter alia, the need to pay fair and competitive wages.

3.2.1 The conditions attaching to the Workforce Supplement

The Government's reform package aims to support fairer and more competitive wages in aged care by making access to a Workforce Supplement (1% of care subsidies in 2013-14, rising to 3.5% by 2016-17) conditional on employers meeting prescribed wage and wage-related increases and fulfilling other terms and conditions, as follows:

- a minimum increase in wages of 2.75% per annum, or the Fair Work Commission's minimum wage adjustment if it is higher; plus
- a minimum 1% increase for all employees each year in the period 2013-16 and 0.5% in 2016-17;plus
- absorption of the consequential salary 'on cost' increases; plus
- phased increases to achieve or maintain a margin over the relevant Award rate by 2015-16 of 12.6% for Registered Nurses, 8.5% for Enrolled Nurses and 3% for all other employees; plus
- other terms and conditions such as access to training during normal working hours; training for workplace delegates; specified circumstances under which employees may be offered permanent employment or increased regular hours; and processes for governing workload management, disciplinary matters and workplace health and safety; plus
- for residential providers with more than 50 places, an enterprise agreement that incorporates the above conditions.

3.2.2 Consequences for residential providers

These conditions pose affordability problems, especially for residential care providers:

- The Workforce Supplement is not new or additional funding to cover the cost of the prescribed wage increases.

The Workforce Supplement in residential care will be created by quarantining a percentage of the forward estimates for residential care subsidies. These estimates are based on a reduction in growth rates to be achieved by changes to the Aged Care Funding Instrument (ACFI) which applied from 1 July 2012 ie reducing the per capita annual growth in care subsidy per resident to 2.7% real per annum. The Workforce Supplement is inclusive of the reduced forward estimates for residential care subsidies.

The attachment to this submission illustrates how the $1,600m 'saving' from pulling back the growth rate in residential care subsidies is to be allocated over the forward estimates period ie $400m to help fund the other measures in the *Living Longer Living Better* package; $320m to fund the Workforce Supplement in home care; and $880m recycled back into residential care subsidies to fund estimates of care subsidies based on a per capita growth in daily care subsidies of 2.7% real per annum.

- The minimum 2.75% wage increase will not be matched by the annual indexation of care subsidies, which has been less than 2% on average and is estimated to be a little over 1.5% in 2013-14.

- Employers will be required to absorb the 'on costs' associated with the wage increases.

- Access to the Workforce Supplement is being used to leverage prescribed margins above Award rates for employee categories.

  Almost all providers already pay over Award rates, but not all meet the prescribed margins. The number of providers in the latter category is not known.

- Employers will be expected to absorb the cost of the 3% increase (over 7 years) in the Superannuation Guarantee Charge, starting from 1 July 2013.

For many providers, especially residential providers, the cost of the wage and wage-related increases that will be required will not be covered by the indexation of the care subsidies. Excluding any increase required to achieve or maintain the prescribed margins over Award rates, the wage cost increase would be about 4.2%[2]. Indexation of a little over 1.5% is well short of what would be required to cover costs, and the gap would be greater for those providers who are not meeting the prescribed over-Award rates.

A less costly option for some providers would be to forego the 1% Workforce Supplement and increase wages by a factor approaching CPI.

In the case of home care providers, the Workforce Supplement is additional money, so the impact of the conditions would be a little less.

Some will argue that because of growth in residential care subsidies under ACFI in recent years has exceeded growth in total expenditure on wages, providers have the capacity to meet higher wage increases.

This view needs to be tempered by the fact that increased residential care subsidies during that period contributed to reducing the proportion of residential providers making a loss, from 43% in 2008-09 to 31% in 2010-11. It also enabled the proportion of providers achieving a positive EBITDA to increase from 75% to 84% over the same period. This is not to suggest that providers on average were making a reasonable rate of

[2] Minimum 2.75% wage increase; another 1% increase; absorption of 0.2% on costs; 0.25% SGC increase.

return, which averaged only 3.2% in 2009-10. As noted above, the prescribed wage increases also coincide with the future per capita growth in residential care subsidies being reduced by the recent changes to ACFI.

It could also be argued that the increased revenue that will flow to providers with new or significantly refurbished aged care homes, and from the new accommodation payment arrangement that will apply from 1 July 2014 for self-funded residents, need to be taken into account. The issue here is twofold:

- Not all providers will be able to access the higher accommodation supplement for supported and partially supported residents ($52 per day in 2014 prices), especially those who have recently built or refurbished their homes before the eligibility date (20 April 2012).

- It is questionable policy to allow accommodation payments (rent) made by self-funded residents to be used to cover increased care costs as a result of wage increases.

  This is effectively acknowledged by the Government's tightened regulations for setting accommodation prices for self-funded residents, where the primary objective is to ensure that prices reflect the value of the accommodation. The Government's (draft) accommodation payment guidelines do not list care costs as a factor to be taken into account when reviewing and setting prices.

  Similarly, the *Living Longer Living Better* documents do not countenance that the increase in the accommodation supplement for new and refurbished homes is also intended to cover increases in care costs (otherwise some of the increase would apply to all homes).

3.2.3 Financial performance of the sector

Fulfilling the conditions for accessing the Workforce Supplement would impact differently on each provider. Accordingly, the policy ought to be considered in the context of the financial performance and viability of service providers across the sector.

A striking feature of the sector is the significant variation in financial performance of individual providers. In 2010-11, the top 25% of providers achieved an average EBITDA per resident of around $18,000 compared with around -$5,500 per resident for the bottom 25%, which means that the result for some providers was even worse than -$5,500. For the average 60 bed home, this is an annual EBITDA range of approximately $1.4m.

The reasons for and implications of such a large variation is not well understood.

Catholic Health Australia is concerned that prescribing wage increases through a funding contract in these circumstances without funding to cover the cost of the wage increases (other than indexation), and knowing the impact will be variable, poses financial risks for some providers if they were to accept the conditions of the Workforce Supplement. It would reduce the capacity for each workplace to agree wage rates and conditions which reflect local operating circumstances.

A consequence is that some providers may not 'sign on' for the Workforce Supplement, and the objective of increasing the competitiveness of wage rates in the sector will not be achieved. A survey of Catholic Health Australia members indicates that 40% will not or are unlikely to sign on to the Supplement, and the other 60% are unsure at this stage. A further consequence may well be that the disparity between wage rates within the sector will increase.

Arguably, the Government would be better advised to gain a better understanding of the variations in financial performance and the implications for the sustainable delivery of quality services, and to address this matter directly through measures which improve financial performance and productivity in the sector, rather than imposing wage increases and hoping for the best.

3.2.4 Catholic Health Australia's position

Catholic Health Australia does not support, in principle, the use of funding and service contacts to achieve industrial outcomes, or a role for Government in setting wage rates through service contracts. Wage rates and terms and conditions should be negotiated by the parties at the local level having regard to each business entity's operating circumstances, using the legislated industrial relations framework.

Alternately, if the Government wanted to increase wage rates in aged care, it should seek to do so by proposing increases in the various aged care Awards and fully funding the award increases it might seek.

Catholic Health Australia supported the creation of a 'wages bridging supplement' and the incorporation of the wage increases into a registered industrial agreement as a short term measure to make a start to addressing uncompetitive wages in the sector.

However, our support was conditional on the 'bridging supplement' being a genuine supplement with new funding to cover the cost of the wage increases; that the 'bridging' period would be temporary pending the creation of an independent pricing agency to recommend prices for aged care which would take into account the need to pay fair and competitive wages; and that there would be an independent cost of care undertaken.

Under the *Living Longer Living Better* reforms, none of these conditions have been met;

- the Workforce Supplement in residential care is not new money to cover wage cost increases;
- a cost of care study will not be conducted; and
- the Productivity Commission's recommendation for the creation of an independent pricing agency which would recommend a schedule of fees based on fair and competitive wages has not been adopted.

The new Aged Care Financing Authority goes part of the way to meeting the Commission's recommendation, but its role falls short of recommending aged care prices to the Minister. Instead, the Authority's role is confined to advising the Minister 'on the impact of the aged care financing arrangements on access to quality care, sustainability, industry viability, and the aged care workforce, including an analysis of revenue, cost and productivity movements, to inform the Minister's annual review of pricing policy.'

3.2.5 Adjustment assistance

Many residential care providers are already under pressure from increasing regulatory requirements, the increasing acuity of residents, higher quality assurance and governance requirements, successive negative EBITDAs and increased availability of community care which is seeing a gradual decline in occupancy rates. Many also have ageing infrastructure.

Measures deriving from the *Living Longer Living Better* package, including the complexity of administering the new accommodation payment guidelines, populating the new *My Aged Care* website (including with quality indicators) and the incorporation of consumer directed care principles into service delivery, will add further overhead and management pressures on many providers. Fulfilling the conditions of the Workforce Supplement would add to these pressures.

Faced with these trends, there has been a small movement towards greater consolidation in the sector. With the further reforms now on the table (including the Workforce Supplement if it proceeds), and the prospect for further reform, consideration should be given to the creation of an adjustment package to assist eligible providers to purchase independent financial and business advice to help them assess their future business options and prospects.

Such an adjustment mechanism was recommended by the Productivity Commission to assist eligible providers who could be expected to struggle in a reformed aged care system.

3.2.6 Legislative basis of the Workforce Supplement

Catholic Health Australia notes that the payment of a Workforce Supplement is not dependent on the passage of the Bills, and that the Bills of themselves would not make the conditions referred to above law.

Instead, payment of a Workforce Supplement may be enabled through a change to the Aged Care Principles without an amendment to the current *Aged Care Act 1997*. Indeed, the payment of the Workforce Supplement from 1 July 2013 will need to be authorised in this way as the Bill does not provide for the creation of the Workforce Supplement in the *Aged Care Act 1997* until 1 July 2014. (*Aged Care (LLLB) Bill Section 44-5*)

Catholic Health Australia also notes that changes to the Aged Care Principles are disallowable by Parliament.

<u>Recommendation:</u>

That the Committee's Report concludes that:

- attaching conditions to Government funding and service contracts is not an appropriate vehicle for achieving industrial outcomes, and the role of Government should not extend to setting wage rates;
- the Workplace Supplement as currently configured is unlikely to result in more competitive wage rates for the sector, and may even result in increased wage disparities within the sector if providers cannot afford to accept the Workforce Supplement conditions;
- imposing largely unfunded wage increases on a sector with such variable financial performance poses unacceptable financial risks to the sector;

and recommends:

- the deletion of the Workforce Supplement provisions from the Aged Care (Living Longer Living Better) Bill 2013 and the foreshadowing of a move to disallow any amendment to the Age Care Principles to enable the payment of the Workforce Supplement from 1 July 2013;

- that the $320m allocation for the Workforce Supplement in home care be redirected to an increase in home care prices (subsidies) which are not linked to wage outcomes;

- if the Parliament passes the Bill as currently drafted, a structural adjustment scheme is funded to assist eligible providers experiencing viability difficulties as a result of recent and further aged care reforms, including the Workforce Supplement, to purchase business planning advice to assess their future business options and prospects.

3.3 Operation of the new income and assets test for residential aged care

Catholic Health Australia supports the use of a combined income and assets test for residential care, but is concerned that the current proposals are based on policy inconsistencies.

3.3.1 Fairness of the proposed arrangements

Under the provisions in the Bills, assessable assets will include the former principal residence which is not occupied by a 'protected person', but capped at $144,500, irrespective of the value of the asset. However, if the principal residence is sold, the proceeds from the sale of the house (including any refundable deposit that is made) become assessable assets and increase the resident's care fee. On the other hand, if the house is retained and rented, the rental income is not an assessable asset (and the house is capped at $144,500). *(Aged Care (LLLB) Bill Section 44-26A)* and (*Aged Care Act 1997 Section 44-24)*

Catholic Health Australia cannot discern any social policy justification for this configuration. Why should a change in the form in which wealth is held have implications for care fee liabilities? It discriminates against people who, for whatever reason, sell the principal residence. Also, is it fair to cap the former family home at $144,500 irrespective of its value?

One option to achieve consistency would be to cap the former principal residence and the proceeds from the sale of the residence at the same level ($144,550). However this would be a cost to the Budget because of the resulting reduction in care fees. An alternative would be to introduce a taper to the value of the assets in whatever form they are held. Such an arrangement could not only be configured to maintain current budgeted care fees, but also the taper would introduce greater equity linked to capacity to pay.

Note that the cap on annual and lifetime care contributions would still be in play to protect people from excessive care costs.

<u>Recommendation:</u>

That the Committee:

- explore and articulate the social policy justification for the different treatment under the proposed means testing arrangements of wealth according to the form in which it is held; and

- note Catholic Health Australia's view that introducing a taper on assessable assets which includes the former principal residence or proceeds from the sale of the residence would result in a fairer system linked to capacity to pay.

3.3.2 Implications for choice of accommodation payment mode

A consequence of the proposed means testing arrangement is that it may help tip the choice of payment method in favour of the daily accommodation payment over refundable deposits.

This arises because if a resident chooses to retain and rent the house, it would not only be an opportunity to reduce care fees, but the house and income would also be exempt for age pension means testing purposes if the resident is making daily accommodation payments. Further, unlike the refundable deposit, rental from the house would not count as assessable income for the aged care means test.

The Productivity Commission's report noted that a significant shift to daily payments by new residents could pose a liquidity risk for providers whose balance sheets are heavily leveraged on lump sum payments, at least for a transition period, because withdrawn lump sums that are not replaced would need to be refinanced. In some cases, this could lead to loan covenants being compromised, with implications for ongoing operations. Some financial institutions have also informally noted that the sector and the financial markets are not mature enough to assemble the capital required for the expansion of services without a significant injection of capital through refundable deposits.

The issues which impact on a decision to choose one form of accommodation payment over another are complex and will vary for each family, and often will not be economically rational. However, there is a concern in the sector that the proposed means testing arrangements could tip the balance in favour of daily payment and would be best avoided in order to reduce the financial risks referred to above.

It should also be noted that should the proposed proportion of residents who retain the former home and use daily payments increase, it would expose the Commonwealth to a Budget risk as a result of an increase in care subsidy costs.

<u>Recommendation:</u>

The Committee Report notes:

- the risk to the Budget should the proposed means testing arrangements significantly tip the choice of accommodation payment mode in favour of daily payment by people choosing to retain and rent the family home; and

- that treating the assets of the former principal home as assessable assets for the aged care means test, irrespective of the form in which the wealth is held, and introducing an appropriate taper, would reduce this risk.

3.4 Restriction on accessing the Accommodation Supplement in Extra Service

From time to time, circumstances arise when mission based providers accommodate supported residents in an Extra Service place, such as when there is no other appropriate alternative service available. In doing so, the provider foregoes Extra Service revenue and the accommodation supplement. The latter is not payable under current legislation when a supported or partially supported resident occupies an Extra Service place.

The Bills would not change this situation. (*Aged Care (LLLB) Bill Section 44-28 (2) (iii)*)

The original motivation for this policy may have been a budgetary. That is, occupancy of an Extra Service place by a supported resident would mean that the Budget would have to forego the care subsidy reduction that applies to Extra Service residents ie the care subsidy reduction of 25% of the approved Extra Service fee.

The Bills include amendments that would remove the care subsidy reduction for Extra Service residents, and thereby reduce the budgetary rationale for the policy.

Recommendation:

The Committee's Report recommends amendment of Section 44-28(2) (iii) of the *Aged Care Act 1997* to allow the payment of the accommodation supplement for supported residents occupying an Extra Service bed in order to give mission based providers more options to care for supported residents in need.

3.5 Permitted uses of refundable deposits

The Bills provides for the current permitted uses by providers of accommodation bonds to be extended to refundable deposits. Under these provisions, the depositing of these lump sum accommodation payments in Religious and Charitable Development Funds (RCDFs), such as the Catholic Development Funds, is not permitted unless such deposits are specified under the Aged Care Principles as permitted 'financial products'. (*Aged Care (LLLB) Bill Section 52N-1* in combination with existing *Section 32-8(3) (b) of the Aged Care Act 1997*)

There is currently no provision in legislation for deposits in RCDFs to be specified as a permitted 'financial product' beyond 30 September 2013.

RCDFs are a significant source of capital for the development of new residential aged care services by religious and charitable aged care providers. Making deposits in RCDFs unlawful will significantly constrain access to an important source of capital for religious and charitable providers to fund the expansion of the aged care services that will be required in the community.

The amendments to the *Aged Care Act 1997* as a result of the Bills will require a significant redrafting of the Aged Care Principles, including the creation of new Fees and Payments Principles. It is very important to the future operations of religious and charitable aged care providers that the new Fees and Payments Principles, and any associated regulations, recognize deposits in RCDFs as a permitted financial product.

Recommendation:

That the Committee Report recommends that deposits of refundable deposits and accommodation bonds in Religious and Charitable Development Funds be specified as a permitted financial product under legislation.

Catholic Health Australia
April 2013

ATTACHMENT

THE ACFI COMPACT MONEY TRAIL