Minister for Ageing

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Committee Secretary
Senate Standing Committee on Community Affairs
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***Living Longer Living Better* legislation**

Dear Committee Secretary

I write in with reference to the referral by the Senate on 14 March 2013 of the Aged Care (Living Longer Living Better) Bill 2013; Australian Aged Care Quality Agency Bill 2013; Australian Aged Care Quality Agency (Transitional Provisions) Bill 2013; Aged Care (Bond Security) Amendment Bill 2013; Aged Care (Bond Security) Levy Amendment Bill 2013, for inquiry and report.

Please accept the attached submission from the Government of Victoria on the implications of this legislation.

Yours sincerely

Hon David Davis MP
Minister for Ageing

29/4/2013

State Government Victoria

Submission to the Senate Standing Committee on Community Affairs

Regarding the *Aged Care (Living Longer Living Better) Bill 2013*; *Australian Aged Care Quality Agency Bill 2013*; *Australian Aged Care Quality Agency (Transitional Provisions) Bill 2013*; *Aged Care (Bond Security) Amendment Bill 2013*; *Aged Care (Bond Security) Levy Amendment Bill 2013*.

Government of Victoria

April 2013

Background

The Commonwealth has introduced five bills to the Parliament to amend the *Aged Care Act 1997* and other related legislation in order to implement the changes encompassed by the *Living Longer Living Better* package (the package).

The Victorian Government is concerned that:

- The financial detail underpinning the package does not deliver on the reforms required.

- The lack of certainty about financial and other important detail, brought about by including many elements in as-yet undrafted delegated legislation (Principles), is stifling development of services and investment. Ultimately, this will disadvantage consumers.

Although some aspects of the package have been welcomed by consumers and by the sector, there is grave concern within the sector that the detailed financial arrangements underlying the changes will not support the sustainability of the sector. This disappointing by-product of the changes will occur in the context of fast growing need for services associated with the growing population of older people.

This submission does not deal with the technical details of the legislative changes but the underlying purpose of delivering an aged care system that will meet the present and future needs of our ageing population. The lack of detail supplied by the Department of Health and Ageing on the implementation of the legislative changes means that it is difficult for the sector and indeed anyone to provide a sufficiently comprehensive and specific response. It should be noted generally that the legislation proposed continues to move much of the detail about the changes from the bills to increased reliance on the Principles (legislative instruments, similar to Regulations) which receive less scrutiny than the principal legislation. Both these factors contribute to the level of uncertainty and concern about the consequences of these bills for the aged care sector.

An important focus for COAG in the development of National Health Agreements was the relationship of the health and aged care systems. The intention was that reforms were made at a range of points in the system that would allow both health services and aged care to work more effectively and efficiently. That will be the test of the changes announced in the package.

Aged care cannot be considered in isolation from the broader health system. Older people are the single biggest users of health care services and their health issues are more complex than those of younger cohorts. The health system will not operate effectively or efficiently if it cannot act in concert with the aged care system.

The views of the Victorian Government which are expressed in this submission have been informed by consultations with the sector, including through two forums that the Victorian Government initiated with service providers to elicit their feedback.

The underlying issue – regulated revenue streams that provide insufficient income for sustainability.

Several particular aspects of the changes flowing from the bills are highlighted below but the effect is the same. The revenues earned by providers are regulated through this legislation, both those for recurrent costs for all services and those aimed to provide for capital expenditure in residential aged care. Where consumers have the capacity to contribute more towards the cost of their care government subsidies are reduced proportionately. There is no capacity to increase revenues to meet required service standards. At the same time many costs are increasing.

Meetings with senior aged care sector representatives convened by the Victorian Government have revealed evidence of revenue losses and restrictions brought about by

a number of the changes contained in the package. This will seriously affect the sustainability of the sector.

Effects of insufficient financing

The effects of the changes that reduce or affect the distribution of revenues will impact the sector in an uneven way. The total funding available to provide for quality services will not increase sufficiently to meet growing need. Services that already face challenges under existing arrangements will face growing challenges.

If services cannot meet present needs and cannot grow to meet emerging needs health and hospital services will be impacted.

- If staff are not there to meet higher-level clinical needs in aged care, the impact falls to hospital emergency services, hospital beds and ambulance services.

- If sector cannot invest to provide new residential care services as needs grow, people with higher level needs will have decreasing ability to choose residential care. That may cause them to move out of their local area to find care. It will impact on availability of higher level community care, on families and on the hospital system.

- Rural and other smaller services face increasing obligations with reduced revenue. They will generally not be able to take advantage of increased accommodation subsidies because the capital will not be available for them to undertake significant refurbishment that meets the criteria proposed. The continuing viability of small and rural services is threatened and increased rural supplements are required. If small rural services were to fail there would be a flow-on of adverse health and social effects.

- The amalgamated Rural, Regional and Other Special Needs Building Fund will deliver no additional funds over the diminished amount offered in recent years and the Zero Real Interest Loan Scheme will end, significantly reducing capital assistance to services that cannot access sufficient resident contributions or other capital.

The effects of the changes on a regional service provider are illustrated in the following case study.

Wharpilla Lodge is a mixed care service operated by the Echuca Benevolent Society. It has been or will be impacted by a range of the measures included in the package.

The withdrawal of anticipated **indexation of subsidies** in 2012 led directly to a modest surplus of $65,000 for the six months to December 2011 turning to a loss of $65,000 in the six months to December 2012. If indexation of just 2.5% had been applied to the first half of 2012/13, their income would have been $53,454 higher.

The organisation is now considering staffing cuts which they assert will inevitably impact on the quality of care provided to residents.

The organisation is seriously concerned about the loss of **retentions on accommodation bonds**. These presently contribute some $120,000 per annum to the organisation's revenue. They also have concerns about the future introduction of an **insurance** requirement for lump sum contributions. If this was to run at 2% of the value of deposits it would cost the organisation $170,000 per annum.

The organisation points out that the Living Longer Living Better policy is already having a real, every day adverse impact on aged care providers striving to operate in an environment of continuous improvement. The organisation is proud of the services it provides to older members of the community. It cannot see how it can continue without making operational changes that will affect the quality of care afforded to residents.
Correspondence from Echuca Community for the Aged (Echuca Benevolent Society Inc) 20 February 2013

The failure of the LLLB bills to deliver sustainability and growth is a whole-of-health-system issue that affects all jurisdictions.

Specific issues

Victorian public sector revenue losses The Commonwealth's changes will have a direct effect on the residential aged care services provided by the public sector in Victoria. It is estimated that the revenue loss attributable to the Commonwealth not providing the expected annual indexation increase (COPO) of 1.6 percent for 2012-13 will be $3.52 million. That loss will be cumulative.

Additionally, public sector aged care services are impacted by the changes to the Aged Care Funding Instrument (ACFI) also effective from 1 July 2012. Data prepared for Leading Aged Services Australia[1] suggest that the loss to revenues for the 6,249 public sector aged care places will be in the order of $8.1 million in 2013.

Such losses affect the ability of the Victorian Government to provide services in areas of market failure, such as small rural services and those providing specialist services for residents with acquired brain injury (ABI) or mental health conditions. The losses are additional to impacts on the wider hospital and health system, dealt with below.

Potential impacts on the hospital system The framework for aged care funding must provide the capacity for providers to raise sufficient capital and earn the recurrent revenues needed to encourage the expansion of places to meet growing demand. Even with the reduced planning parameters for residential care under the package, some 500 additional residential places will be required in Victoria to 2017 and over 14,000 by 2022. If these places are not commissioned people will inevitably await placement in hospital beds, including public hospital beds.

Victoria has the lowest number of days of any mainland state of patients eligible for and awaiting residential aged care. However if the Victorian rate were to rise to the national average rate per 1000 patient days (of 11.7)[2] because aged care was unavailable, that would mean an additional 79,000 patient days spent in Victorian hospitals, at an annual cost exceeding of $35 million.

The National Partnership Agreement on Long Stay Older Patients has provided $12.7 million to Victoria in 2011-12 and $12.8 million in 2012-13 in recognition by the Commonwealth that some older people in public hospital beds who have completed their acute or subacute episode of care and have been assessed as suitable for some form of Commonwealth aged care remain in hospital longer than is suitable while appropriate community or aged care places are secured. These amounts represent just 11.8 percent and 13.8 per cent of the funds available nationally yet Victoria has 25 percent of the relevant population. 2013-14 is the final year of this NPA and Victoria's share of the national funding will again be far less than our population share.

Rural services The package changes impact particularly on small rural services. Rural services are very often the only service available to residents over a sizable area. Services cannot choose which residents they accept and often must carry vacancies for a period, thus revenues are reduced and subject to issues beyond their control. There is no proposal to increase or even review payments made as rural Viability Supplements.

Changes to accommodation payment arrangements will however, impact unevenly on rural services. A change in preference from a bond to periodic payment for just a few residents could have a major effect on service finances and borrowing requirements. Small services often do not have the critical mass to even consider major redevelopments, especially when their catchments have depressed real estate markets. Accordingly, they will not be eligible for the proposed increased accommodation subsidies

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[1] Sector wide impacts of changes to the aged care funding instrument over the next four years: Centre for International Economics, 27 August 2012.

[2] *Report on Government Services 2013*, Table 13A90.

available for services where substantial refurbishment has been carried out and will not be able to bring into being the improved accommodation standards promised by the changes.

In Victoria, residential aged care services are integral to small rural health services and the doubtful sustainability of the aged care component threatens the viability of those services, which are in turn fundamental to the viability of the communities they serve.

Workforce The stated intent of the 'workforce compact' is to address workforce pressures with the aged care workforce needing to almost triple in size by 2050 to support Australia's ageing population. It is claimed that it will provide for 'a better paid, better skilled and better trained workforce that will underpin a more responsive system that provides older Australians with quality care, when and where they need it': Minister Butler, media release 5 March 2013.

Yet, the sector asserts[3] that most providers are unlikely to sign up to the compact because they simply cannot afford to do so. The Workforce Supplement offered by the Commonwealth simply returns money taken from the sector through changes to ACFI funding in 2012 and requires providers to absorb the on-costs associated with any increases in wages. A medium sized provider in Victoria with services across metropolitan Melbourne and one regional centre, has estimated that unfunded costs for the organisation under the compact would amount to $1.7 million over the four years of the compact.

Providers are particularly concerned that they must absorb on-costs estimated to be 31.5 percent, and that there is no provision for the workforce supplement to extend beyond four years yet increased costs will be built into the cost base of employers. The Commonwealth has not given any indication of how the budget set aside to address workforce issues will be committed to that purpose in the event that it is not expended.

It is noted that there are long term workforce trends that provide evidence of a "de-professionalising" of the workforce with little close examination in the package of the need to match resident care requirements to the level of professional skills or any examination of the links to quality and safety outcomes for residents.

The Commonwealth's Workforce Census reveals a decreasing proportion of professional staff contribution over the past decade. This has likely been exacerbated by changes in the Aged Care Funding Instrument formula. The Aged Care Financial Performance Survey for the six months to December 2012 conducted by Stewart Brown Chartered Accountants[4] cites decreasing staff hours overall and a decreasing proportion of professional staff contribution. The survey notes that staffing costs account for 65.25 percent of total operating expenditures in aged care services.

Personal care staff have benefitted from improved training over the past decade and are now better equipped to provide quality care to residents but they require professional leadership and cannot substitute for professional staff where more advanced clinical care is required.

Shifting the emphasis in aged care to care in the community means that a much larger and more professional workforce is required there too. Censuses of the community care workforce have only been conducted twice – in 2007 and 2012 but the story reflects that of the residential aged care workforce. Registered nurse and allied health professional numbers have shown little growth while the numbers of high care packages (and clients) have grown substantially.

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[3] Meetings between Minister David Davis MP and sector representatives, Melbourne 14 and 21 March 2013.

[4] High-level findings of the survey are published on Stewart Brown's website. The full quarterly survey is available to members and organisations/peak associations on a subscription basis.

The response from the Commonwealth to the critical workforce situation is inadequate to maintain viability of service providers let alone provide for the future.

Accommodation payments and supplements This matter was dealt with at length by the Productivity Commission in its report and the Commonwealth response moves toward a direction that acknowledges that accommodation costs should be recognised as such and the arrangements for meeting them should be self-sustaining. However, there are two 'technical' matters that should be addressed, as follows.

Calculation of lump sum and periodic accommodation payments

The method of calculating the equivalence of lump sum and periodic payments affects directly the cash flows and balance sheets of residential aged care providers. The Aged Care Financing Authority recommended setting an upper threshold for lump sum payments by determining the 95th percentile of the lump sum accommodation payments for the most recently available year of data. However, a maximum daily payment was subsequently determined at a dollar amount, which will be indexed and used as the basis of calculating lump sums.

The effect of that decision is that lump sum amounts allowable under the arrangements will vary with interest rate movements unrelated to changes in the daily payment amount. As we are currently experiencing historically low interest rates, the inevitable movement upwards will translate to a lower cap on lump sum payments. Thus when a resident leaves a facility and their lump sum is refunded the provider may not be able to replace that sum with a similar one.

This decision will have significant effects on the ability of providers to invest in and renew residential facilities and should be urgently reviewed.

It has been agreed by the Minister that the Aged Care Financing Authority will examine the threshold on an annual basis and advise on the effectiveness of the arrangements with a more detailed review to be undertaken after three years. An early review should be undertaken to reduce the risk of adverse effects on the capacity of the sector to develop services. Such a review should be undertaken by an independent reviewer.

Discounting of supported resident subsidies

The proposal to discount supported resident subsidies for services with less than 40 percent supported residents is unjustifiable and should be varied. While the intent of continuing the historical encouragement to providers to provide for residents who cannot afford to contribute themselves is recognised, the proposed level is unachievable for the majority of services.

Nationally, 38.2 percent of new entrants qualify for supported resident status. In Victoria the figure is just 34.3 percent[5] . Those figures mean that the 'average' service will have their subsidies discounted by 25 percent. Disadvantage is also concentrated geographically meaning that in many areas services could never expect to meet the threshold. This provision is particularly unfair to small rural services which are typically the only local provider and must take whoever requires care.

Summary

Reform of aged care is important. Facilitating a shift in emphasis to care in the community responds to what older people want. Making sure that there is a framework to provide for future needs for services is essential.

However, aged care must be sustainable. The government subsidies and regulations around consumer contributions must combine to deliver revenues sufficient to make existing providers viable, to support investment and to attract providers and capital to meet the growing needs of our older population.

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[5] *Report on Government Services 2013*, Table 13A38.

The financial detail underpinning the present package does not deliver on any of those measures and should be urgently reviewed.