



**Aged & Community Services**

Western Australia



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Western • Australia • Incorporated

**Submission to the Senate Community Affairs Legislation  
Committee for Inquiry**

***Inquiry into the Living Longer, Living Better Legislation***

***April 2013***

## Executive Summary

Aged and Community Services Western Australia Inc (ACSWA) is the peak industry body representing the church and charitable, and not-for profit organisations and groups that provide residential, community care and housing for older Western Australians. Our members provide services throughout the State in metropolitan, rural and remote locations, and collectively manage:

- 8653 residential aged care beds
- 7803 independent living units
- 51 day care centres
- 1500 community care packages and over \$61.5 million in Home and Community Care funding.

ACSWA is affiliated with Aged and Community Services Australia (ACSA). ACSWA supports their national response to address concerns about elements of the proposed legislative changes including:

- 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
- Australian Aged Care Quality Council (Transitional Provisions) Bill 2013.

ACSWA is providing a supplementary submission to address the particular concerns of Western Australian aged care providers.

## Introduction

ACSWA is concerned that much of the detail in the proposed legislative changes that will significantly impact aged care providers is contained within the Principles and Determinations that are yet to be made available. It is difficult to make informed comment on the consequences and impact to our members without the full complement of proposed changes and amendments for review.

ACSWA recognises the need for fiscal responsibility for Government in health related funding in light of the changing demographics of the ageing population. This was highlighted in the Productivity Commission's report 'Caring for Older Australians' which outlined a future model for aged care that would be sustainable, equitable and market driven. What has been proposed in the Living Longer Living Better reform package and associated legislation appears to be a non-sustainable and over-regulated aged care system that limits consumer choice about the type of services they desire.

Western Australian aged care providers have expressed little faith that the aged care reforms outlined in the Living Longer Living Better package and subsequent proposed legislative changes will support a viable business model.

One example of this is WA residential care providers stated intentions to reject applying for residential care beds in the 2012-13 ACAR round. The minimal number of applications in this year's ACAR round will compound the current shortfall of residential aged care beds in WA. Since 2007 WA has rejected the uptake of 64% of available residential care beds through ACAR. In addition to the shortfall of beds in WA, in which only 1910 of the available 5278 have been allocated since 2007, 570 of those allocated beds were offline as at 30 June 2012, which means that only 1340 additional residential beds have come online in the past 5 years, despite WA having a 5.3% increase in persons aged over 65 in the year ended 30 June 2012. Since 2008 only 89 residential care beds have been allocated outside the metropolitan area in WA; however during the period 1 January 2007 and 30 June 2012, 95 provisionally allocated beds from rural and regional WA were surrendered.

Set alongside this there has also been a significant oversubscription in WA for in-home care packages, which enable people to remain living fairly independently at home.

In 2012, from an allocation of only 279 in-home care places available, Western Australia's applications for these places numbered 2263. The position has deteriorated further in 2013 with just 80 Home Care packages being allocated for the whole of Western Australia out of a total of 5835 across Australia.

This highlights that WA has some unique factors that need to be addressed to ensure older Western Australians, particularly those in rural and regional areas, have access to aged care services that are available to other Australians. The current proposed reforms will significantly impact small providers and rural and regional providers in particular.

## Key Issues

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### **Workforce Supplement (Section 44-5):**

ACSWA acknowledges that there is a need to attract and retain aged care staff through improved remuneration and career structure, and a need to enhance their skills to provide the complex care of incoming residents with increased acuity. Western Australian providers have been at the forefront of developing sophisticated recruitment and retention strategies due to the unique workforce environment in WA. The proposed legislative changes will require providers to conform to an imposed set of conditions to enable supplementary payment by way of the Conditional Adjustment Payment. There is minimal information to assist Home Care providers understand how these arrangements will be applicable to their operations and how funding will apply through the Conditional Adjustment Payment.

The Workforce Supplement adds a significant cost impost for providers, and unnecessary complexity in industrial relations management. To qualify for funding providers must negotiate an enterprise agreement incorporating the Workforce Supplement requirements, provide annual wages increases, make commitments to improve access to training and education, conversion of casual employees to permanent, workload management, union appeasement measures (including the 'right of entry 24/7' by union officials) and improvements to workplace health and safety. The full complement of staff employed in aged care services have differing needs that will make negotiating a 'one size fits all' enterprise agreement extremely complex. The supplementary funds provided under the Workforce Supplement must be passed directly to employees in the form of increased wages and cannot be used to cover employee on-costs or other associated costs.

ACSWA rural and remote providers, and small providers are particularly impacted by the proposed Workforce Supplement. Members have provided examples of the cost impost with respect to legal advice on the terms and conditions of an enterprise agreement, travel and accommodation surcharges to access relevant training, or to bring trainers or specialists to their sites. This has particular relevance for providers in areas of WA that have to compete with the mining resources sector to secure accommodation and airfares for staff or presenters that significantly contribute to additional expenses.

Speculation about the additional costs to providers to fund the Supplement requirements suggest that mitigation factors such as a reduction in staffing numbers will be the most likely result, as providers have no other option than to cut their costs and many are already under financial duress. Providers have limited opportunities to increase their income to cover the additional costs incurred by the Workforce Supplement as they are constrained by a tightly regulated environment and there are no additional income streams available to recoup the additional expenses to achieve the requirements of the Workforce Supplement. ACSWA has received feedback that most small and rural and regional providers will not be able to afford to take up the Supplement. In one instance a 31-bed residential care provider has estimated that to receive \$17,000 from the supplement, it will cost them an extra \$30,000 to meet the requirements.

ACSWA does not support the presumptuous action taken by the Department of Health and Ageing in distributing misleading information about the Supplement to the aged care workforce before the proposed legislation has been debated in Parliament. The aged care sector supports the payment of adequate wages to its community and residential workers through legitimate funding measures.

A model to achieve this without conditions was recently introduced by the Western Australian Government for social service organisations and enables services to increase staff wages without any of the conditions that will be imposed by this Legislation.

***Recommendation: ACSWA requests that the Senate Standing Committee make recommendations to Parliament to delete the proposed amendments to Section 44-5 of the Bill relating to the Workforce Supplement.***

### **Proposed Changes to Accommodation Payments and Contributions**

The Productivity Commission's report 'Caring for Older Australians' advocated for an aged care system that was less complex and easy to navigate for consumers, and recognised a need for a reduction in the regulation of price and supply for industry providers. The proposed legislation introduces yet another layer of legislation with the introduction of an 'Aged Care Pricing Commissioner' to regulate pricing, while maintaining control over supply. In addition, the proposed legislative changes relating to calculating fees and charges is difficult for the consumer to understand, and is complicated by the inequity in means testing arrangements between those receiving home care and those receiving residential care, and those selling, retaining or renting their home. ACSWA members are concerned that the proposed rules and calculation methodology around establishing fees and charges is complex with the potential for error for smaller and less sophisticated services.

### **Home Care Fees**

Proposed changes around establishing fees for home care services will require some care recipients to contribute to the cost of their care through an income tested care fee (Section 52-d). Co-contribution levels and scaling of fees for part pensioners seems excessive. ACSWA members include the church and charitable and not for profit sector that provide services for many disadvantaged and special needs groups, and provide the majority of aged care services in rural and remote areas of WA. Our members report that significant debt is incurred due to unpaid service fees, particularly in outer rural and remote areas, which will be exacerbated under the proposed changes. Home care providers advise that as average income declines with distance from major cities, their capacity to augment packaged care subsidies with fees from consumers also declines. Home care providers advise that establishing administrative systems for calculating fees and charges, and direct debiting will incur further costs.

***Recommendation: Co-payments for community care be removed under the current reform process and re-introduced over a much slower phasing period. Partially supported pensioners in the community should not be asked to pay more than 17.5% of their pension towards home care costs.***

### **28-day Choice of Payment Period**

The proposed legislation relating to establishing accommodation fees notes that means testing does not have to be completed prior to entry into residential care and individuals do not have to inform providers about how they will pay for their accommodation for a period of up to 28-days post admission as described in the 'The Choice of Payment Method Period'. ACSWA cannot provide an example of any other business model that enables consumers to occupy a residency prior to the establishment of terms of agreement about payment. This proposed legislation makes providers particularly vulnerable as they will have little strategic financial stability, commercial institutions will not look favourably on this form of business model, and there will be little protection for providers who are exposed to debts as a result of inaccurate means assessments or non-payment of fees.

ACSWA notes there are no proposed amendments to the Security of Tenure arrangements as outlined in the *Aged Care Act 1997* and that the onus of responsibility for ongoing care and accommodation for debtors remains with the provider to find alternative accommodation for such persons, while still accruing debt. ACSWA recommends that payment options (Refundable Accommodation Deposit or Daily Accommodation Payment) be negotiated and established prior to entry.

***Recommendation: ACSWA requests that the 28-day post-admission period to decide payment options be deleted and that payment options for accommodation are negotiated and established prior to entry.***

## **ACFI**

Proposed legislative changes give increased powers to the Secretary to suspend approved providers from making ACFI appraisals/reappraisals (including in more than one of the provider's facilities) based on perceived false, misleading or inaccurate information (which may have been made inadvertently on one or more occasions may not provide procedural fairness for providers). There does not appear to be avenues for the provider to appeal the Secretary's decision in the proposed legislation.

***Recommendation : ACSWA recommends that the wording in current legislation that requires a 'substantial' number of appraisals must be involved before invoking the Secretary's powers to suspend providers from making ACFI appraisals be maintained.***

Data from the ACFI Monitoring Group (March 2013), and Minister Butler's media release of 15 April 2013 demonstrate that while care subsidy expenditure is broadly in line with Budget estimates, the changes to the ACFI funding tool have resulted in a disproportionately high percentage of appraisal days impacted by changes to the ACFI tool (around Complex Health Care), particularly for rural and remote services, and small providers. ACSWA rural and regional providers have expressed concern about their ongoing viability in light of these and further proposed ACFI tool modifications. The Federal Government's review into the ACFI Funding Instrument in May 2011 identified that providers of low care facilities in outer regional and remote areas are the most disadvantaged users of ACFI. The Productivity Commission's report 'Caring for Older Australians' recommended 'block funding' be made available for special needs groups, including rural and remote services.

ACSWA notes that a proposed amendment (Item 114, Section 1) intends to pay subsidies to approved providers of multi-purpose facilities based on the number of allocated places, rather than the actual number of care recipients on a particular day. Discussion in the Explanatory Memorandum advises that this is designed to provide a consistent level of funding to ensure the continued availability of aged care services in small rural and remote communities where natural fluctuations in demand exist. Consideration should also be given to all providers in rural areas.

***Recommendation: ACSWA recommends that similar funding arrangements are made for multi-purpose and rural/regional/remote services.***

## **Dementia Supplement**

Sections 44.5 and 48.3 outline the proposals to implement a dementia supplement for residents diagnosed with dementia in the residential and home care settings. The majority of residents in residential care, and many receiving home care, experience some form of cognitive impairment that is often associated with challenging behaviours.

Many residential care facilities are purpose-built to accommodate the needs of residents with dementia and additional staffing resources are required to care for such residents. Recent media interest about the under reporting of physical assaults by residents with cognitive impairment, and comments from the Minister about the use of psychotropic medications, highlight the specialist needs of residents with dementia and the requirement for specialist mental health services.

ACSWA would like to highlight that many older people who do not have a diagnosis of dementia have complex care needs and mental health issues that require additional resources. Many younger people under 65 years are also entering care with alcohol and drug related conditions, or chronic mental health disorders. The Supplement should not be limited to those with a diagnosis of dementia but take into account other diagnoses in which mental health issues are common.

There is little detail about eligibility for the Dementia Supplement, whether there are varying levels of supplement dependent on the level of impairment, the assessment process, the amount of the supplement and how the funding is calculated, or where the additional funding is coming from. Departmental advice suggests that some of the funding for the new Dementia Supplement will be redirected from current funding paid through mainstream aged care funding arrangements.

***Recommendations: ACSWA recommends that the mechanisms for determining the Dementia Supplement be transparent and the supplement amount reflect the specialised needs of residents with dementia, or other associated disorders in which mental health issues are common.***

### **Role of the Aged Care Quality Agency**

The proposed legislation to establish the Australian Aged Care Quality Agency will create a sole agency that home and residential care providers will deal with in respect to quality assurance. ACSWA notes that from 1 July 2014 the agency will conduct all reviews on home care services, as well as residential care facilities. It appears that the Quality Agency will operate as a monopoly for providing accreditation to the home care and residential care sectors.

There are some concerns about the independence and objectivity of the Quality Agency, with its dual functions of quality and compliance, and the direct reporting relationship to the Minister.

***Recommendations: ACSWA recommends that the Bill include further detail related to governance issues of the Aged Care Quality Council.***

### **Conclusion**

For many years Western Australians have felt the brunt of the inadequacies of the current aged care system, especially given the State's size, remoteness and unique circumstances. In this submission ACSWA has outlined some specific issues that particularly impact on the future sustainability of aged care in this State.

WA aged care providers have distinct challenges that impact on their ability to provide sustainable aged care. There are a number of geographical, sociological, financial and industrial issues that particularly impact on the provision of care for older Western Australians including inflationary pressures above most of the nation, escalating construction costs, soaring utility costs and workforce issues.

The aged care system in WA has come to a stand-still through Federal Government inaction. Older Western Australians must be acknowledged as a priority by the Federal Government.