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Review the Government's Aged Care Reform Package | April 2013

The Impact of Increased Price Regulation in Aged Care

The Aged Care (Living Longer, Living Better) Bill 2013

Submission to the Senate Community Affairs Inquiry into Aged Care

The Impact of Increased Price Regulation in Aged Care

Background

Since the introduction of the Aged Care Act 1997, the majority of new residential aged care facilities have been built with the use of accommodation bonds. Accommodation bonds are refundable deposits made by people entering aged care facilities. These deposits are guaranteed by the Commonwealth Government, which has recourse to recover any unfunded bonds from industry participants.

Today, there are over $12 billion in accommodation bonds held by Australian aged care providers. The funding has been used to expand and modernise Australia's aged care building stock and improve the quality of accommodation available to older people in care. The level of each bond is largely set by market forces, with higher bonds generally achieved in superior quality homes.

On 20 April 2012, the Government announced its *Living Longer, Living Better* reform package which was intended to prepare the country to support a rapidly ageing population. The policies followed a comprehensive review by the Productivity Commission which recommended a **reduction in regulation over price and supply** in aged care.

Consistent with the Productivity Commission findings, the Government's *Living Longer, Living Better* package recognised that **over-regulation of the industry was a major impediment to investment** at a time when growth was paramount.

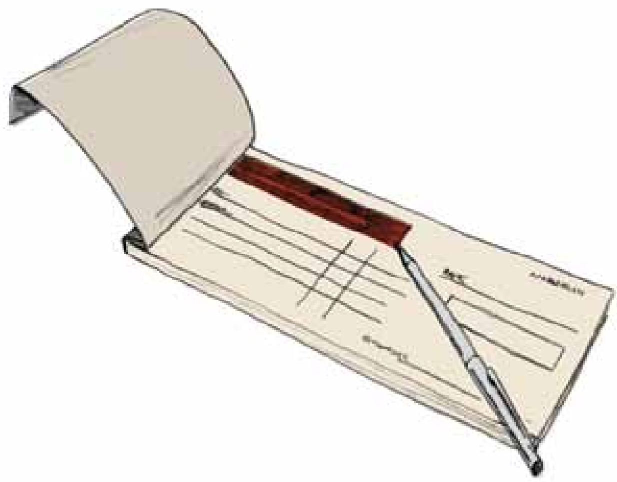
However, the policy document also went on to describe the Government's intention to introduce **additional regulations over pricing** whilst retaining supply regulation arrangements for at least another five years. In March this year, the Government's new Aged Care (Living Longer Living Better) Bill 2013 proposed the introduction of a new "Aged Care Pricing Commissioner" that would be responsible for the monitoring of new restrictions on accommodation pricing for older Australians in residential aged care.

> "The currently highly regulated aged care system, including controls on supply and price, limits competition, choice for consumers and incentives for innovation and efficiency."
>
> **Living Longer, Living Better 2012**

Cam Ansell
National Head of Aged Care
Grant Thornton Australia

Investment Impact

It is intended that a specified price limit would be levied on all aged care accommodation unless otherwise approved by the Commissioner (under guidelines not specified in the Bill). In our opinion, the introduction of price limits will restrict consumers' capacity to demand the accommodation of their choice, based on their means, and the investors' right to provide it. If the reforms are successful in stimulating competition and innovation, market forces will ensure that accommodation charges remain competitive without the need to introduce another layer of bureaucracy.



Proposed Accommodation Pricing Arrangements

New regulated price levels	Qualifying conditions
Level 3 Over $85 per day	Approval required from Aged Care Pricing Commissioner (guidelines not developed)
Level 2 $50 to $85 per day	Requires internal self appraisal and justification of pricing
Level 1 Up to $50 per day	Dependent upon: Assets and income of the potential resident Date facility was rebuilt or significantly refurbished Building certification standards of facility Proportion of financially disadvantaged persons in care

In addition to the introduction of new accommodation pricing regulations, the Government proposes to change payment arrangements for new residents entering residential aged care. Currently, residents and providers agree on the basis of payment for accommodation (a lump sum bond or annuity equivalent) before the person enters the facility. Under the proposed Aged Care (Living Longer Living Better) Bill 2013, this decision would be deferred up to 28 days after the person enters the facility.

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 required for new developments relative to the capital inflows from residents that would traditionally be used to pay down debt.

> "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."

Julie McStay, Partner, Hynes Lawyers

“A number of the substantive concepts relative to accommodation payments contained in the Living Longer Living Better reform package are contrary to the market driven model proposed by the Productivity Commission and will, without significant amendment, deter future investment in the sector.

For example, 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.

The provisions that introduce controls for setting accommodation payments should be removed and replaced with a market driven model where providers set price, as proposed by the Productivity Commission.”

Julie McStay
Partner
Hynes Lawyers

Proposed Accommodation Pricing Arrangements

Viability Implications

The measures are also intended to encourage a transition from lump sum deposits to annuity payments (effectively rent) to reduce the Government's exposure to bond payment defaults. However, the Government's proposed new legislation not only threatens new investment in aged care, it also places at risk the viability of those already in business.

Providers are required to retain sufficient cash reserves to manage normal bond receipt and repayment cycles. A sector-wide shift from lump sum bonds to period payments would create a major outflow of funds that most providers do not have the ability to pay. Such a cash crunch has serious ramifications for the viability of the industry.

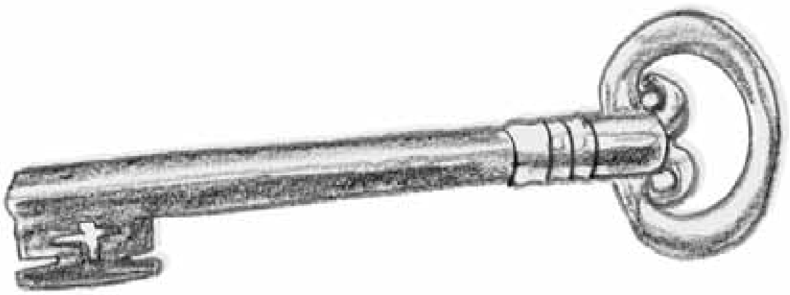
> "The Government's proposal not only threatens new investment in aged care, it also places at risk the viability of those already in business."

Care for the Disadvantaged

Finally, the Government's aged care reforms require that accommodation supplements will be reduced by 25% where facilities have less than 40% financially disadvantaged people in occupancy. Across Australia, there are simply not enough financially disadvantaged people to meet this ratio on a national basis and facilities would be penalised in more affluent areas where there is still demand for services by people with limited financial means. This creates a disincentive to accommodate poorer people who need these services.

In a sector dominated by the religious and charitable organisations, the Government need only provide a reasonable accommodation supplement to promote investment in accommodation for the poor. As long as this supplement is adequate to promote new investment, there is no need to regulate pricing across different standards of accommodation, as outdated services will naturally become redundant.

Both for-profit and not-for-profit operators would be encouraged to support the financially disadvantaged and greater competition will promote higher levels of efficiency and innovation.



Required Changes to the Proposed Aged Care (Living Longer Living Better) Bill 2013

At this most critical juncture for Australia, at a time of unprecedented demographic change, investment in the aged care sector is paramount. The following changes are required if this objective is to be achieved[1]:

1. Removal of provisions that would introduce new restrictions on accommodation pricing (Division 52G) and the role of the Aged Care Pricing Commissioner contained in Division 95B of the proposed Bill
2. Remove provisions which introduce uncertainty in regard to the form of accommodation payments (bond or rent equivalent) during a protracted "cooling off" period as contained in Division 52F
3. Revoke changes to Australian Aged Care Subsidies and Supplements relating to the requirement to accommodate a minimum of 40% financially disadvantaged residents to qualify for full accommodation supplements

Although misdirected, some of the Government's proposed changes are designed to protect residents from rare instances of predatory pricing which are made possible because of supply restrictions. However, the threats are a result of an already over-regulated and outdated system and they cannot be mitigated through increased regulation and bureaucracy.

The following strategies/policies will support the evolution of a fair and sustainable residential aged care system:

1. Improve the process of monitoring and evaluating provider financial performance and prudential management on accommodation bonds through the enhancement of the quality of reporting (as recommended by the Productivity Commission and Australian National Audit Office). This would involve the replacement of General Purpose Financial Reporting with a tailored reporting process that is capable of monitoring performance and better assess provider liquidity
2. Gradually deregulate supply and rationing of residential aged care services, consistent with the practices employed in leading developed countries (as recommended by the Productivity Commission)
3. Establish appropriate accommodation supplements for financially disadvantaged Australians that encourage investment in new supply and promotes quality, innovation and efficiency through competitive mechanisms

1 Separate commentary will be presented on the Aged Care Workforce Supplement and the impact of centralised wage pricing

Contacts

Further information
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