SUBMISSION TO THE SENATE COMMUNITY AFFAIRS LEGISLATION COMMITTEE INQUIRY INTO THE LIVING LONGER, LIVING BETTER LEGISLATION

COOK CARE GROUP
44 PENSHURST STREET, WILLOUGHBY NSW 2068
18 APRIL 2013

The Cook Care Group is the owner/operator of ten (10) residential aged care facilities in both NSW and Qld offering High and Low Care totalling **731 places (with a further 35 places coming online late 2013)** . We have been owner operators since 1987 and currently include five (5) Extra Service Facilities in our Group.

We have read and obtained permission from AEGIS Group to fully endorse their submission which is repeated hereunder.

In particular we draw your attention to **Item 8 Section 52N** of the legislation which **MUST** be amended to include intercompany loans between related parties. We have built five (5) new buildings over the last ten (10) years across NSW and QLD also including a 103 bed facility currently under construction in Epping, NSW. In each case we have built under one entity and operated under another. This is a normal accounting practice for the Property entity (PROPCO) to build and the Operating entity (OPCO) to collect Bonds (now RAD's) and pass them to the PROPCO which repays the debt to the financial institution. The interim legislation, introduced in 2012, currently operating and the proposed legislation has failed to correct this anomaly and does in effect make it illegal for loans between the entities to occur in order to repay bank debt. This is ludicrous! The simple amendment to include loans between related entities, for the purposes as prescribed under 52N, would solve this problem. This is also in accordance with the recommendation of the Minister's Prudential Compliance Committee.

We are only involved in residential aged care and therefore do not make any recommendations or comments on the home care components of the Living Longer, Living Better legislation.

We believe the legislation proposed has not achieved all of the universally supported recommendations of the Productivity Commission report into aged care, but has achieved some of these and is a “good start”.

We support the abolition of the high care and low care demarcation and combining the two into one care type.

We also support Daily Accommodation Payments (DAP) and Refundable Accommodation Deposits (RAD) being introduced and being based on the quality of the accommodation provided, not the assets of the individual (as used by some Providers in assessing accommodation bonds). However, the legislation will create a

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very significant bias away from lump sum payments for accommodation and towards daily accommodation payments in the way the legislation has been drafted. This will prove to be a major problem for all Providers.

ISSUES WITHIN THE LEGISLATION

Many submissions will be made to the Senate Inquiry by various people about the legislation as it affects them. As a Provider, we raise the following issues that we believe will affect potential residents and the ability of Approved Providers to offer the type of accommodation and services those residents will expect in the future:

1. PRICING DAP AND LUMP SUMS.

Section 52 G sets out the rules for calculating Accommodation Payments and Contributions. These rules are too prescriptive.

Instead of the three tier system, **the levels of Payments should be based on a self-assessment of the value of the accommodation, predicated on the Accommodation Pricing Guidelines.**

No caps should have to be approved by the Pricing Commissioner. The prices charged should be transparent and published on the Provider's website and the Government's My Aged Care website.

Market forces will determine whether a Provider is charging excessively or not.

2. INTEREST RATE TO DETERMINE LUMP SUM AMOUNT

The methodology for determining an equivalent Lump Sum to a Daily Accommodation Payment is flawed and needs to be addressed.

It is proposed that a DAP is determined and the Maximum Permissible Interest Rate (MPIR) is used to set the equivalent Lump Sum.

As interest rates rise, the Lump Sum equivalent to a DAP will be falling. This is inequitable as interest rate rises increase the cost of building and Lump Sums need to rise.

The solution is to allow both the Lump Sum and the DAP to be set at commercial rates that can be substantiated in line with 1 above.

3. VALUE OF A PERSON'S ASSETS FOR MEANS TESTING PURPOSES.

Page 63 of the Explanatory Memorandum states:

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"Subsection 44-26(5) provides that a refundable deposit balance is included as an asset. **This is consistent with current treatment of accommodation bonds."**

This statement is not true.

Accommodation Bonds are currently not included as assets for income testing purposes on the basis that the Accommodation Bond is a payment for accommodation and therefore exempt because it replaces the person's prior accommodation, being the home, which is also exempt.

The effect of including the Refundable Deposit as an asset for means testing purposes will be to increase the means tested payment by between 1% and 2% of the amount of the Refundable Deposit the person pays each year. For example, if a person with income of $40,000 per annum sells their house for $750,000 and has no other assets and pays a refundable deposit of $300,000, the means tested amount will be $18,720 a year instead of $12,705 if the refundable deposit was exempt from the means testing.

As the Means Tested Amount is a contribution to care, it is inequitable to include the Refundable Accommodation Deposit in the assessment and is double dipping by Government.

4. **DAILY MEANS TESTED AMOUNT SHOULD HAVE DAILY CAP, NOT ANNUAL CAP.**

The legislation provides for an uncapped means tested fee to a limit of $25,000 per year. However, a care recipient could be required to pay all of their care fees, which could be as much as $200 per day as well as the resident's daily care fee and a DAP or lump sum.

The effect of this is that the $25,000 annual cap could be reached within approximately four months.

If the Government makes Residential aged care too expensive, it will force people to stay at home and not achieve the care, nutrition, security, social interaction and support they require and can receive in residential aged care but not at home.

Residents are not a bottomless pit of money and it is more reasonable to have a daily cap of $68.68 so the means tested amount is spread evenly over the whole year.

5. **CONCESSIONAL RATIOS FOR REGIONS.**

The legislation does not deal with the treatment of concessional ratios. This is supposedly in the Principles, which the Industry has not seen.

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Currently, accommodation supplements of $33.29 are paid for each concessional resident in a Facility if more than 40% of its residents are concessional. If there are 40% or less concessionals, the supplement is reduced by 25% for ALL of the concessional residents. This is a disincentive to accept concessional residents. If it is not likely the Facility can achieve the 40% level or the Facility cannot afford to achieve the 40% ratio, the Facility may decide to admit the minimum number of concessionals required.

The LLLB package says the Government will pay over $50 for concessionals in Facilities built or substantially renovated after 20th April 2012. This is supposed to be an incentive to build but we have no detail on the payment of the $50 amount. Will it be for Facilities with more than 40% concessionals? Will it be reduced if you have less than 40% concessionals? How much will it be reduced by?

What will the rules be about a concessional requirement in each Facility? **Mathematically, it is impossible for all Facilities in a Region to achieve the regional requirement of about 21% if some Facilities have more than 40% concessionals**. For example, if a Region has 400 aged care residents available, four facilities of 100 beds each are built and two facilities each take 40 concessionals, being all of the concessionals available, the other two facilities cannot achieve the regional ratio of 21% as there are no concessional residents available.

Will the Government penalise a Facility for not achieving its regional ratio? What will the penalty be? How can it overcome the problem?

The answer has to be that there should not be a regional requirement and the Government should pay the full accommodation supplement for ALL concessionals accepted into a Facility. By doing this, most Providers will accept concessional residents because of their compassion for the elderly and/or their need to maintain high occupancy.

Regional ratios should only be an issue where that ratio is not being serviced across ALL of the Facilities in that Region.

6. 28 DAYS FOR RESIDENT TO DECIDE METHOD OF PAYMENT.

Section 52F-3 sets out what must be in an Accommodation agreement. One of the clauses gives the residents a choice of a daily payment, a lump sum or mix of the two to pay for their accommodation. But, this decision does not have to be made until 28 days AFTER the resident enters the Facility.

This is totally uncommercial as a resident may want to pay a lump sum on day one, and is not permitted to. An existing Provider does not have certainty about replacing an outgoing accommodation bond with a lump sum. If a DAP is paid instead of a lump sum, the Provider needs to borrow the money to repay the bond. As the

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Government's biased legislation is encouraging residents to pay DAPs instead of Lump Sums, this can lead to financial stress on Providers in the future and will be a disincentive to building new Facilities.

Section 52F-3(1)(e) should be amended to include "unless the method of payment is mutually agreed between the care recipient and the Provider on the date of entry".

The same inclusion should be added to section 52F-4 as this clause is uncommercial and probably contravenes the Trade Practices Act.

There are also many other instances in the draft Legislation where the words "must" or "must not" are used to unnecessarily protect care recipients against Providers.

In each of these instances where those words are used and apply to protecting care recipients we propose the term "unless mutually agreed between the care recipient and the approved provider" be added to the relevant clause.

7. PAYMENT IN ADVANCE.

Section 52H-1 says a person must not be required to pay a daily payment more than 1 month in advance. But, **can a person pay a daily payment for a longer period in advance if they so choose?**

The ambiguity of this one sentence should be extended to make it clear that a person can choose to pay more than one month in advance if they so elect.

8. PERMITTED USES OF REFUNDABLE DEPOSITS AND ACCOMMODATION BONDS

Section 52N-1 sets out the permitted uses of refundable deposits and accommodation bonds.

The Prudential Advisory Group recommended to Government that Section 52N-1(2)(c)(iv) be amended to include the uses in (d), (e), (f) and (g).

The effect of this was to allow loans to be made to associated entities of the approved provider that could then be used to build aged care facilities, repay bonds and lump sums, repay debt used to build ACFs and repay debt accrued for aged care purposes. There are some instances where Providers build inone entity and operate aged care facilities in another. This amendment is needed to ensure those who have done this do not use the bonds and lump sums for the intended purposed but illegally and have sanctions imposed against them.

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Similarly, subsection (3) should be amended **to allow Religious & Charitable Development Funds (RCDFs) to be approved investments as recommended by the Prudential Advisory Group.** Accommodation bonds and refundable deposits should be allowed to be placed in those RCDFs and meet the prudential requirements.

In conclusion, the Government commissioned the Productivity Commission Report into aged care and the final Report had the unanimous support of the whole Industry. The Government has then cherry picked the PC Report and again given the Industry reform which has more bureaucracy and less self-governance than it had before. The full implementation of the recommendations of the Productivity Commission would have achieved the opposite.

Reform is required and the changes are a good start but there is a lot that can be improved on, particularly with the issues mentioned above.

Thank you

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