UnitingCare Australia

SUBMISSION

to the

Senate Standing Committees on Community Affairs

In relation to 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

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UnitingCare Australia

UnitingCare Australia is the national body for the UnitingCare Network, and is an agency of the National Assembly of the Uniting Church in Australia.

The UnitingCare network is one of the largest providers of community services in Australia. Around 1,500 sites provide services and support to more than 2 million Australians each year. The network employs 35,000 staff and 24,000 volunteers. We provide services to older Australians, children, young people and families, Indigenous Australians, people with disabilities, the poor and disadvantaged, people from culturally diverse backgrounds and older Australians in urban, rural and remote communities.

UnitingCare Australia works with and on behalf of the UnitingCare network to advocate for policies and programs that will improve people's quality of life. UnitingCare Australia is committed to speaking with and on behalf of those who are the most vulnerable and disadvantaged for the common good.

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1. Introduction

UnitingCare Australia welcomes the tabling of the five Aged Care Bills that are designed to give effect to the “Living Longer, Living Better” package of reforms.

These reforms are an important first step in implementing the recommendations of the Productivity Commission report *Caring for Older Australians* released in August 2011. We welcome the comprehensive review provisions in the **Aged Care (Living Longer Living Better) Bill 2013** (pages 2-4) which may contribute in time to the full implementation of the Productivity Commission recommendations.

The majority of the changes to the legislation are supported by UnitingCare Australia, including:

- the removal of the distinction between high and low care
- the provision for older people to contribute to the costs of their care, where they are able to afford to pay
- the provision for annual and lifetime caps on these contributions
- the additional levels of Home Care
- the ability to offer additional amenities on a fee for service basis
- the removal of the 25% “claw-back” from extra service places.

While the proposed changes to the legislation outline the broad principles of the reforms, it may not be possible to fully assess the impact on older people and providers of services until the details of the Principles, Guidelines and Determinations are known.

We support the passing of the legislation to enable enough fundamental reform of Australia’s aged care system to position us for the future. These reforms are an important step towards implementing all of the recommendations of the Productivity Commission Report.

UnitingCare Australia’s key concerns relate to the impact of the reforms on the most vulnerable older people in the community. We also wish to ensure that Australia has a robust, fair, and sustainable aged care system for all older people into the future.

The major areas we wish to comment on in relation to the proposed legislation include:

1. The impact of the Income testing fees regime for Home Care older clients with low to moderate incomes.
2. The potential impact and unintended consequences of the changes to residential care, pricing arrangements, including:
    - means testing arrangements for residential aged care, particularly for people of low to moderate means (i.e. part pensioners)
    - the choice between Refundable Accommodation Payments (RAD) and Daily Accommodation Payments (DAP)
    - the removal of retention on bonds, and
    - the cap on accommodation payments.

3. The need for independent pricing of aged care services and an independent Cost of Care study.
4. A number of other factors relating to “Significant Refurbishment”, the Bond Security Levy, the Workforce Compact, changes to the ACFI and special recognition of Remote and Rural Services.

In addition we are concerned about the amount of change being faced by the sector at this time, when the reforms have resulted in reduced funding to the sector in recent times, and some of the revenue measures are not due to be implemented until July 2014. The sector requires additional resources to implement the new systems and processes required, to train staff and to communicate with older people about the changes that will affect them.

2. The impact of the income tested fees regime for Home Care clients with low to moderate incomes

Summary of the Issue

The Living Longer, Living Better reforms package is premised on “ensuring that older Australians are able to access quality care and support that is appropriate to their needs, when they need it”.

While we generally support higher contributions from people who can afford to pay, we are concerned for those with limited means who may be unable to gain access to services. This is particularly the case for part pensioners. Given that the fee arrangements are a major departure from what older people are currently paying, there is concern that some may not choose to access services.

For some older people living in the community on a part pension, they already lose 50c of pension income for every additional $1 of earnings. If they require Home Care, subject to the proposed threshold rules, they will be required to pay a further 25c towards their care fee out of their gross additional $1 of income. As a result, they will be left with 25c from every additional $1 earned. This means that the Government takes away 75% of the value of every additional $1 earned. This rate of contribution is perversely weighted against part pensioners on lower incomes compared to part pensioners on higher incomes.

Providers under the current legislation are obliged to deliver services regardless of people’s ability to pay. Under the new system, if home care recipients do not pay their fees, providers are required to continue to provide services and bear the costs whilst pursuing payment options or hardship arrangements. Providers also currently have the ability to charge a client 50 per cent of their income above the pension. Most providers Cap this themselves as this is market driven.

Current situation

Providers may ask a care recipient who is on a basic pension, to pay a basic fee of up to a maximum of 17.5% of the single basic pension - $3,163 per annum (pre July 2012 figures). If the care recipient earns any income above the basic pension then the Provider under the current guidelines can ask for fifty per cent of income above the pension rate. This is currently driven by market forces and is usually capped by the Provider. The Provider is also competing with HACC clients who may pay as little as $5 per occasion of service.

Nationally, the average fee paid by the majority of care recipients receiving home care services is around $1,800 per annum (ie care recipients, on average, are not able to meet the current maximum costs).

Proposed situation with implementation dates

From 1 July 2014, new home care recipients will be asked to pay a care fee based on an income test, **in addition** to the basic care fee already payable (ie in addition to the amount currently payable referred to in the paragraph above).

The additional income-tested care fee will apply when income exceeds $23,543 for a single part-pensioner. For every $1 of income above that level, an additional 50 cents of income tested fee will apply up to $33,543.

There is no additional income-tested fee payable on income earned between $33,543 and $43,543. On each additional $1 of income earned above $43,543 up to $53,543, an additional 50 cents of income tested fee will apply.

The income-tested fee will be collected by the reduction in the subsidy which would otherwise be payable by the Government to the home care provider for that care recipient, and will be capped at $5,000 per annum for part pensioners and $10,000 per annum for self-funded care recipients. The caps do not include the basic fee and there will be a lifetime cap of $60,000.

In effect, the real annual cap is the amount currently payable (being the basic fee of $3,163) plus $5,000 per annum (ie a total of over $8,000 per annum for part pensioners and over $13,000 per annum for self-funded care recipients). We acknowledge that no care fee can exceed the subsidy payable in respect of the relevant care package.

A hardship supplement will be available on application to the Department of Health and Ageing, as currently occurs in residential care.

Expected impact of proposed change on:

(a) Consumers

Care recipients are currently paying around $1,800 per annum towards the cost of their home care services. This represents around 7.5% of income for those on a full pension, reducing to 3.5% for a care recipient on $50,000.

A full pensioner (on income of up to $23,543) will not pay an income tested care fee, but will continue to pay the current basic fee of up to 17.5% of the single basic pension (which currently results in an average fee contribution of around 7.5% of income based on the $1,800 average amount currently paid). A part pensioner on $35,000 will contribute up to $8,163, representing $3,163 basic fee and $5,000 income tested care fee. This combined fee is 23% of income, compared to 5% under current arrangements. Comparing the two care recipients, we note that of the additional income of $11,457 ($35,000 less $23,543), 44% is used for the additional income tested care fee.

Similarly, a self-funded care recipient on income of $50,000 will contribute up to $11,570, representing $3,163 basic fee and $8,407 income tested care fee. The combined fee is 23% of income, compared to 5% under current arrangements. Comparing against the full pensioner, we note that of the additional income of $26,457 ($50,000 less $23,543), 32% is used for the additional income tested care fee.

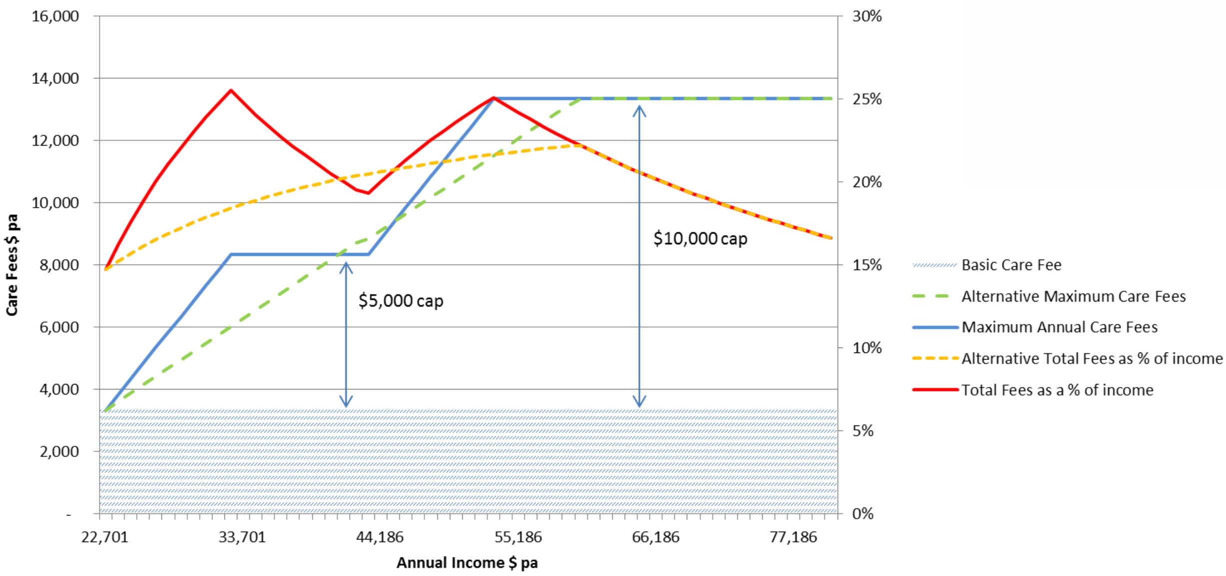
The following table highlights the percentage fees to income at different levels of income.

Annual total income	$23,543	$32,864	$35,000	$43,186	$50,000	$55,952	$81,952
Basic fee	$ 3,163	$ 3,163	$ 3,163	$ 3,163	$ 3,163	$ 3,163	$ 3,163
Care fee	$ -	$ 4,661	$ 5,000	$ 5,000	$ 8,407	$10,000	$10,000
Total fees	$ 3,163	$ 7,824	$ 8,163	$ 8,163	$11,570	$13,163	$13,163
% of income	13%	24%	23%	19%	23%	24%	16%

While the proposed methodology is based on income, it does not seem to take account of any additional costs of living at home, including for people with a disability or chronic condition.

The above can be expressed in a graph as follows, together with an alternative approach which presents a fairer outcome for those on low incomes.

Total Care Fees as a % of Income



We acknowledge that care recipients who can contribute to their cost of care should do so. However, we are concerned that the level of co-contribution may be prohibitive for many people and that the scaling of fees for part-pensioner is too aggressive. Consumers who are *not* capable of making basic fee and care fee payments according to the schedules proposed may be unable or unwilling to gain access to aged care services as their care needs would otherwise require. This is unacceptable, notwithstanding that the reforms note that hardship support may apply in certain circumstances.

(b) Providers

The Department of Human Services will administer the income test for Home Care recipients, and advise the Provider of the fees that should be charged. The Government subsidy for Home Care will be reduced by the amount of the income tested care fee. If the person does not pay their fee, they may apply for a Hardship Supplement from the Department of Health and Ageing. If this is not approved, the Provider must pursue payment or enter into negotiations to withdraw services on the basis that the care recipient is not upholding their side of the agreement to pay for their services. These processes may take some time, during which time the provider is required to either fund ongoing services, or face a duty of care dilemma to reduce services in line with the subsidy being received (minus the fees due). Debt collection will become a larger part of Provider's administration tasks.

Providers, who currently charge non pensioners and part pensioners the extra 50% of the income above the basic pension, will no longer be able to charge this as part of their basic fee. The proposed guidelines have limited the amount the Provider can charge to the 17.5% despite the level of income they earn. This will be a reduction to most Providers in their income.

(c) Government (and DoHA)

We acknowledge that the new arrangements will benefit the Government in lower outlays. However, arrangements to better target the income commencement point, level and scaling of the co-contribution are unlikely to materially change the fiscal outcome for the Government. Further, we do not believe that it affects any other aspect of the Living Longer, Living Better reforms package.

Our change request

Provide more manageable levels of co-contribution, higher income commencement points and less aggressive scaling for the introduction of consumer co-contributions. Better arrangements should allow a gradual scaling with recognition of the expenses of staying at home. In addition, the new co-contribution should be a single fee (combining the basic fee and care fee). The consequential subsidy reduction for the combined fee can be based on a proportional sharing arrangement between Provider and the Government. This will simplify the arrangements and avoid differential treatment of the basic fee and the care fee by care recipients and providers.

The changes should apply as proposed from 1 July 2014.

3. Residential Care pricing arrangements and the impact on consumers

UnitingCare Australia is concerned about the potential impact and unintended consequences of the changes to residential care pricing arrangements, including:

- **means testing arrangements for residential aged care, particularly for people of low and moderate means (i.e. part pensioners)**
- **the choice between RADs and DAPs**
- **the removal of retention on bonds, and**
- **the cap on accommodation payments.**

Summary of the issues

There are three key issues:

(a) Providing a choice between RADs lump sum accommodation and DAPs, and the removal of retentions on bonds, increases the overall cost to a provider which must be recouped from consumers under the new arrangements through charges to all residents apart from full pensioners.

At an interest rate of 4.6% per annum, an additional bond amount of $84,261 would be needed to offset the annual loss of retention income. For one larger UnitingCare aged care provider, they will need to recoup $9m per annum in lost revenue through the removal of retention on bonds. For that provider around 25% of their current holdings of bonds are less than $100,000. These are from the people of moderate means about whom we are expressing our concerns.

(b) Once people of moderate incomes become aware of these increased costs of residential care there might be a number of potential consequences:

- Consumers on moderate incomes who do not qualify for concessional status and are only able to contribute a small bond may be less attractive to residential care providers and thus have more difficulty accessing residential care.
- Consumers with a small bond who must retain a minimum asset level of $40,500 will have the remaining costs recouped through DAPs (which will potentially erode that minimum asset level). This also creates a moral dilemma for providers in terms of being required to make charges that will erode people's remaining assets.
- People on moderate incomes who do not qualify for full concessional status may decide not to enter care because of the costs.

(c) The changed arrangements have an impact on the balance sheet and financial model for Providers, which will have a particular impact on small providers (eg those in rural and remote areas, or catering to special needs groups) and on new developments.

It is of concern that there has been no financial modelling on the consequences of the changes. The Government claims that the changes will expand the revenue base for services but this has not been backed up with any research about the impact of the changes on consumer behaviour and choices.

Our change request

UnitingCare Australia would like to see the reforms include a choice for consumers that include a retention option, to mitigate against the impact of the changes particularly for those on moderate incomes.

4. The need for independent pricing of aged care services

The Productivity Commission recommended an Independent Australian Aged Care Commission, which would have authority over quality, pricing and complaints. UnitingCare Australia believes that the Aged Care Financing Authority (ACFA) and the Pricing Commissioner should be truly independent from Government to ensure a fair and equitable aged care system. In the current reforms there is no requirement for the Minister to take the advice of ACFA, and the Pricing Commissioner's role is very limited. There is also the potential for overlap between these two roles.

The lack of financial modelling on the impact of the Aged Care Reforms and the impact of the Workforce Compact reinforces the need for an Independent Cost of Care Study to determine the real costs of delivering quality aged care in Australia.

Why this is important

We believe that adequate funding of support for older people in Australia should not be subject to political whim, but be based on accurate information about the cost of providing care to the standard required by government and in line with community expectations.

Our change request

That the Government reviews the role of ACFA and the Pricing Commissioner, and put mechanisms in place to ensure their independence and ability to provide sound advice based on information from an independent cost of care study.

5. Other issues

There are a number of issues not directly addressed in the legislation about which UnitingCare Australia has concerns. We believe the Senate Committee should be aware of these issues in considering the legislation that has been tabled.

5.1 Incentives for Significant Refurbishment

The arrangements for "significant refurbishment" may have unintended consequences for services that currently cater for people on low to moderate incomes. The higher accommodation payment and supplement that applies to significantly refurbished facilities provides an incentive to upgrade facilities. While we support the provision of high quality services to all older people regardless of their income and assets, the traditional resident base of these facilities may no longer be able to afford to access the upgraded services. An inability to adapt to the changes may lead to more service failures.

5.2 *Aged Care (Bond Security) Levy* 5 *Amendment Act 2013*

This amendment does not make any substantial changes to the current Act, apart from terminology. The Government has decided at this point not to introduce an insurance scheme for Accommodation Payments. We support this initial response in that the proposed insurance scheme had potential for significant and unmanageable costs. However the provision for a levy as it currently stands (although already part of the existing legislation) is an unjust and unworkable arrangement into the future. This is particularly the case over the next five years during which the sector will be adjusting to the changes introduced as part of the reform, for which there has been minimal sector adjustment funding.

Current situation

Around 85% of aged care homes hold accommodation bonds, with an average new bond value of around $250,000. Total bonds in Australia exceed $12b, unsecured against the assets of a Provider. The ten largest providers hold over 20% of all bonds. Under the Accommodation Bond Guarantee Scheme established under the Aged Care (Bond Security) Act 2006, the Commonwealth guarantees the repayment of bonds in the event of default by a Provider. Other Providers holding bonds may be required to pay a levy to the Commonwealth to compensate it for bond payments made under the Aged Care (Bond Security) Levy Act 2006. Since enactment, the Commonwealth has paid around $25m (representing around ˙2% of current bond holdings) in respect of five Providers and the Minister has *not* levied other providers.

Additional prudential arrangements to protect bonds include the Liquidity Management Strategy, Governance Standard, Permitted Uses Legislation, Investment Management Strategy, Disclosure Standard, Annual Prudential Compliance Statement and sanctions/criminal penalties for contravention of certain rules and repayment obligations.

It is proposed to amend the Aged Care (Bond Security) Levy Act 2006 to allow its application to the new forms of payment, in particular the "Refundable Accommodation Deposit".

There are no other consequential amendments proposed which change the coverage of the current legislation.

Expected impact of proposed change on:

(a) Consumers

In the event of a Levy being imposed under the Levy Act, Approved Providers will be obligated to pay the Commonwealth an amount up to the equivalent of the amount incurred by the Commonwealth. As it currently stands, this is likely to be a lump sum obligation. Since the amount is unfunded from current sources of income, Approved Providers will be required to make decisions about changes to services and these decisions may directly impact consumers through reductions in services and/or higher costs.

(b) Providers

Approved Providers currently have a Levy exposure to the Commonwealth of $24.5m. This contingent liability is subject to the Minister's discretion and may be imposed at any time. In addition, the Levy, if imposed, is not a Permitted Use for the purposes of the prudential obligations under the Aged Care Act. This means that Approved Providers must fund the Levy out of service revenues, with consequential negative outcomes for consumers.

(c) Government (and DoHA)

Passing the risk of accommodation bond defaults to Approved Providers would lessen the exposure of the government to defaulting providers.

Our change request

We do not believe that Providers who meet their prudential requirements and competently manage their services to ensure consumers are refunded their lump sum accommodation payments in a timely manner should be penalised for the behaviour of organisations that do not meet their requirements. We believe that these matters should be dealt with by the Department through existing mechanisms to ensure the proper screening of new providers before they are approved, and the monitoring of the prudential arrangements.

Therefore, the imposition of a Levy on industry in this way is not supported. Our preference is for an industry-wide government sponsored annual levy system so that costs are limited and there is an opportunity to align liability costs to Providers with a risk based approach. We therefore propose that the changes to the legislation are *not* enacted, effectively meaning that the current Levy arrangements remain in place for current bond balances only (not new Refundable Accommodation Deposits). In the alternative, we recommend that the Levy Act is amended to:

(a) Create a 12-month deadline for the Minister to make a decision. If a Levy is not imposed within 12 months, then it cannot subsequently be imposed.

(b) Allow a period of repayment for the Levy of up to five years in regular instalments.

In addition, we recommend that the Aged Care Act 1997 is amended to provide that a Levy is a Permitted Use for the purposes of the prudential obligations under the Aged Care Act.

Why our change request is important

The Living Longer, Living Better reforms package is premised on "ensuring that older Australians are able to access quality care and support that is appropriate to their needs, when they need it".

We do not support arrangements which result in costs to Providers which are not within their control and where the payment mechanisms are not flexible.

5.3 The Workforce Supplement

The amendments to the legislation allow for the introduction of a Workforce Supplement, but the details of this supplement are likely to be included in subsequent principles.

UnitingCare Australia has always argued for a better deal for aged care staff who are crucial to quality care and currently poorly paid but committed to caring for older people. However, we have serious concerns about the structure of the "Workforce Compact" that underpins this change. This is not directly addressed in the legislation, but our concerns relate to the linking of industrial relations conditions to essential funding to support a quality aged care workforce.

5.4 The changes to ACFI (Aged Care Funding Instrument)

We are concerned that section 25-4(1)(a) changes from the existing requirement of a "substantial " number of claims to "one or more" we believe this has potential to be inconsistently applied by DoHA and seek the existing definition to be maintained of "substantial ".

5.5 Special recognition of Remote and Rural Services

There is insufficient recognition and related strategy to respond to the special needs of remote and rural services. The Productivity Commission recommendation to consider a lump sum sustainable funding model was not adopted by Government, such a strategy would reduce some of the risk. We seek that the following strategies be adopted within the Government proposed reforms:

a) the workforce supplement eligibility conditions be at a lower threshold , such as the requirement of a collective agreement in residential services (as against the certified agreement proposed in Home Care), the required above-award pay level be lower for all services , FWA national wage review rather than the minimum 2.75% currently proposed.
b) the accommodation subsidy be paid at the highest government subsidy level irrespective of whether the facilities meet the post 2012 eligibility condition.

c) a sustainable lump sum funding model be established as recommended by the Productivity Commission.

6. Summary

In summary, UnitingCare Australia is supportive of the broad direction of the five pieces of legislation that will enable the implementation of the “Living Longer Living Better” package of reforms. While the reforms generally cater well to the most disadvantaged older people who are in receipt of a full pension, we wish to make sure that the changes do not have an adverse impact upon those older people with low to moderate incomes. We also wish to ensure that the funding mechanisms do not inadvertently create difficulties for this group in accessing services, and for providers to be able to cater to their needs. With some fine tuning of the legislation, it will enable enough, much needed,fundamental reform of Australia’s aged care system to ensure sustainable provision of the necessary supports for the current and future cohorts of older people.

Accordingly we support the passage of the legislation to enable reform of Australia’s aged care system.