Submission to the Senate Committee on Community Affairs Legislation Committee on the *Living Longer Living Better* Aged Care Legislation

On behalf of:
Braemar Presbyterian Care (WA)
Dunbar Homes Inc (SA)
Kirkbrae Presbyterian Homes (Victoria)
Presbyterian Aged Care NSW & ACT
Presbyterian Care Tasmania Inc.
PresCare Queensland

22 April 2013

Introduction

The Presbyterian Church of Australia, through its state-based aged care organisations, provides over 1,960 residential aged care beds, over 810 home care packages and related community care services and seniors housing. The National Presbyterian Aged Care (NPAC) Network is a member of the National Aged Care Alliance (NACA).

We are pleased to see the Australian Government has accepted the need to reform the aged care system through its *Living Longer Living Better* (LLLB) reform package. In this submission, we will briefly comment on our overall response to the LLLB reforms, highlight areas of concern with the reforms in general and identify three specific recommendations for change to the legislation currently before Federal Parliament.

1. Importance of Aged Care Reform

Australia has a strong aged care system by international standards, but with a combination of an ageing population, pressures on the aged care workforce and challenges maintaining a sustainable system for older people and aged care providers, it currently faces a crossroads. In that context, the NPAC Network welcomed the commissioning of the Productivity Commission's Caring for Older Australians inquiry in 2010.

The NPAC Network supports the thrust of the Productivity Commission's recommendations for aged care reform in its Caring for Older Australians Inquiry Report.[1] The Commission's recommendations are also broadly supported by the sector – see the NACA Blueprint for Aged Care Reform.[2]

2. Analysis of *Living Longer Living Better*

The Gillard Government announced its response to the Productivity Commission in April 2012 and the suite of 5 Bills before the Parliament are the legislative changes required to introduce the LLLB reforms.

The first thing to say is that LLLB is not the Productivity Commission's reform agenda. In a minority government context, and with a budget deficit to be addressed, the Gillard Government shunned the fundamental reforms sought by the Productivity Commission, including:

- a shift to an entitlement-based system with removal of artificial constraints on supply of aged care places;
- establishment of mechanisms to help older people manage higher user payments for their accommodation and care such as a government-backed Aged Care Home Credit Scheme and Age Pensioners Savings Accounts; and
- creation of an Aged Care Commission separate from the Department of Health & Ageing, responsible for pricing recommendations and quality.

In that context, we welcome the inclusion of a review of the LLLB reforms to commence within 4 years of the *Aged Care (Living Longer Living Better) Bill 2013* being enacted. The proposed terms of reference will commit a future Government to a thorough examination of the aged care system at that time. We hope the Government of the day is then prepared to take the bold decisions to fundamentally reform aged care.

Noting the limitations just outlined, the NPAC Network supports the majority of the five Bills before Parliament (but see our comments under Section 3). In particular, we support:

[1] Productivity Commission (2011) *Caring for Older Australians*, Inquiry Report, Canberra.
[2] National Aged Care Alliance (2012) *Blueprint for Aged Care Reform*, at http://www.naca.asn.au/Age_Well/Blueprint.pdf.

- Removal of the high/low care distinction in residential care
- Enhanced choice regarding additional amenities and services for all residents
- Creation of a streamlined Home Care Package system including consumer directed care
- Creation of the Australian Aged Care Quality Agency to oversee quality across residential and home care services.

We were gratified to see that the Government has dropped its proposal to require refundable accommodation deposits and contributions to be insured (notably not a recommendation of the Productivity Commission or NACA) and has decided instead to extend the Bond Security legislation to cover these new payments.

Under the five Bills before Parliament, much of the detail of the LLLB reforms will be enacted via Principles or Determinations under the *Aged Care Act*. The details of these are not yet available. The NPAC Network therefore alerts the Committee to two areas of particular risk:

A. ***Accommodation Payments.*** A number of aspects of the new residential care accommodation payment regime are untested and potentially problematic. These include:
   - Whether the Minister’s power to set a maximum accommodation payment and the role of the Pricing Commissioner will prove counterproductive in restricting providers unnecessarily from setting fee levels which allow development of new residential care facilities?
   - How the 28-day election period for residents to choose how to pay will operate in practice? We note it is highly unusual to have an arrangement whereby someone can enter a service without agreeing to the terms of payment before they take residence.
   - Whether the removal of regulated retention amounts will disadvantage some residents who can only afford to pay a lump sum below the maximum permissible amount – e.g. in rural areas where property values are lower?
   - Whether the Maximum Permissible Interest Rate (MPIR) or an alternative such as the Weighted Cost of Capital (WACC) is the more appropriate rate for linking the value of refundable accommodation deposits and daily accommodation payments?

B. ***Specified Care and Services.*** As part of the removal of the high/low care distinction, the schedule of specified care and services in residential care is under review. This process must not be used to drive up costs for providers without accompanying funding increases to cover any expansion of what is deemed a ‘specified service’.

3. Specific Comments on LLLB Legislation

We draw to the Committee’s attention three specific areas where we believe the *Aged Care (Living Longer Living Better) Bill 2013* requires either amendment or re-evaluation:

a) ***Workforce Supplement.*** The *Aged Care (Living Longer Living Better) Bill 2013* creates a capacity for a new form of aged care subsidy supplement to be created – a workforce supplement. The Minister for Ageing announced in March some of the proposed details for this following an abortive effort to negotiate a ‘Workforce Compact’ between employers, unions and the government. This negotiation failed for a number of reasons, including the Government’s decision to fund the supplement by taking funding away from residential aged care through a cut to the Aged Care Funding Instrument (ACFI), the imposition of on-costs onto providers, and the mandatory inclusion of industrial relations matters into the conditions for receipt of the supplement. We are concerned there are fundamental flaws in the proposed mechanisms for the supplement and that it will not achieve its goal of improving aged care wages, especially for most lowly paid on award rates whose employers may not be able to afford the percentage margin above the awards required to be eligible for the supplement. Given the level of concern, **NPAC recommends the provision in the Bill allowing a workforce supplement to be created be removed**. An alternative, sustainable process must be created to ensure improved wages for aged and community care workers.

b) ***Home Care Package Recipient Fees.*** The *Aged Care (Living Longer Living Better) Bill 2013* creates for the first time an income-tested component for Home Care Package subsidies. We share the concerns of some other not-for-profit home care providers that the phase-in of these fees for part-pensioners may prove difficult for some older people to afford. They may also create problems in encouraging people to move from Home and Community Care services with much lower fees onto Home Care Packages, which may be more appropriate for their needs. NPAC is not privy to the modelling used by the Department of Health & Ageing to set the proposed income-tested fee levels, so we are not in a position to recommend a specific change to the formula in the Bill, but **we recommend the phase in of income-tested fees for home care packages is re-evaluated before the Bill passes Parliament**.

c) ***ACFI Appraisals.*** The *Aged Care (Living Longer Living Better) Bill 2013* amends the powers of the Secretary of the Department of Health & Ageing under section 25-4 of the Act in response to approved provider appraisals of care recipients via the Aged Care Funding Instrument. The Bill extends the power to remove the right of providers to self-assess ACFI levels to address "inaccurate" appraisals not just "false or misleading or significantly incorrect" appraisals. It also proposes to extend the power to cover one single instance of an inaccurate appraisal. **NPAC believes these extensions of Department power re ACFI appraisals are unnecessary and potentially unfair to approved providers**. The Department can already (and frequently does) recoup subsidies it finds to have been mistakenly claimed. No case has been made out for the need to extend the powers to remove the self-assessment rights of providers in this manner. Note we do not oppose the amendment to allow the Secretary to take action in respect of one or more of the approved provider's services, rather than automatically applying to all of them.

Conclusion

The National Presbyterian Aged Care Network is disappointed that the *Living Longer Living Better* reform package fell short of the Productivity Commission and sector calls for a fundamental revamp of Australia's aged care system. Our submission has outlined our position on the five Bills currently before Parliament.

We would welcome any questions the Senate Committee may have and are prepared to appear at a formal hearing if requested.