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Dear Dr Holland

Attached are the responses to the Questions on Notice posed for AGAC at the Senate Inquiry in Sydney on 30 April as recorded in Hansard. The questions are directly lifted in an effort to show context.

AGAC has gathered the pertinent information from all States and Territories. Most of the examples given are from New South Wales as more detailed examples were immediately to hand and more people under administration. Where relevant the differing situations in each State are noted.

AGAC supports the changes to Aged Care for all Australians and appreciates the opportunity to provide input into the Inquiry.

Yours sincerely

Imelda Dodds
Acting Chair

Senator FIERRAVANTI-WELLS: I appreciate that there are bonds; I am just asking you in the context of current figures whether we are talking about 10, 20 or 100, or are all 124 in New South Wales?

State Trustees in Victoria has two clients with accommodation deposits in excess of $700,000.

NSW Trustee and Guardian (NSWTG) files show seven accommodation deposits in excess of $700,000.

NSWTG has records of two directly managed clients paying deposits of $750,000 and $780,000 respectively. The client who paid $750,000 was placed in a facility on the Central Coast of NSW with the understanding that when a facility opened near her former home in Neutral Bay she (and the deposit) would be transferred. When the facility in Neutral Bay became available an additional amount of $850,000 was required as a deposit bringing the amount to $1.6million. The deposit amount agreed upon decreased to $1.15m when the client agreed to take a smaller room. This enabled the client to afford some of the quality of life enhancements that she valued. The facility refused to negotiate a more affordable deposit. The client relocated in April 2010 but died in June 2010 prior to paying the balance on the deposit. This client's circumstances are used as a case study in response to the impact the new legislation would have for clients.

NSWTG files also show that two clients under private financial management have paid $1.39m and $780,000. The two clients were husband and wife at the same facility as the one referred to above. The wife is since deceased. As the deposits were paid prior to financial management orders being made, little is know about the circumstances of the arrangements. A further private management client is due to pay a deposit of $720,000. It will be paid as soon as the private manager sells the client's real estate to provide funds.

Other State and Territory Trustees have been unable to provided examples of any deposits in this range.

Senator FIERRAVANTI-WELLS: You say there is ample research to demonstrate the inherent risk of abuse and neglect of older people in institutional care. Have you come across some of the literature that states that most elder abuse actually happens in the family rather than in institutional care?

I think you need to clarify that it is not just in institutions. There is a lot of research out there that shows there is elder abuse in the community.

AGAC agrees that elder abuse occurs both in the community and in institutionalised care settings.

The Office of the Public Advocate in Victoria raises two points of concern that specifically relate to institutionalised care. One is the overuse of pharmaceuticals in institutional care to control behaviour (which can amount to the unregulated use of a restrictive intervention). This has received some press exposure in the recent past. The other concerns deprivations of liberty in aged care facilities (and elsewhere) without legal authorisation. Usually this involves the compliance of the person, but it is recognised now (including by the Victorian Law Reform Commission) to be a human rights problem.

Senator FIERRAVANTI-WELLS: Going to the comment you made about home modifications, presumably we are really only talking about what is available now under HACC services. There used to be a program of assistive technology, which was abolished in the 2008-09 budget, I understand. If there have to be home modifications, as a trustee where do you draw from? Do you go solely to Home and Community Care?

The Home Modification and Maintenance Services (HMMS) provides modifications and maintenance work to allow people to live safely and independently in their own homes. The service is income and asset tested and a referral from an occupational therapist is usually necessary, depending on the type of work requested.

It is important to apply for this assistance early, as there may be delays due to demand and funding limitations.

If NSWTG clients are entitled to the Home Modifications Scheme then NSWTG arranges or facilitates (depending on who else is involved in the client's life) a referral if this has not already been done elsewhere.

Client’s money may be used for a private Occupational Therapist (OT) assessment if this assists to access the scheme more readily than awaiting a government funded OT, assuming they can afford it. Also the client's funds can be used to provide the necessary modifications for safety and independent living if necessary and agreed to, if accessing the scheme would take too long, particularly if it puts the client’s safety and ability to continue to live independently at risk. In any case some contributions are required by the client as this is a subsidised scheme.

If the client has access to significant private funds, they probably wouldn't meet the criteria for the scheme given it is income and assets tested.

For client's who do not meet the criteria for the scheme then their private funds need to be applied, if available. Some clients will not meet the scheme's requirements but then have insufficient funds to pay for the necessary modifications particularly if they are in the category of major modifications. If the modifications are required for safety and maximising the opportunity for client to remain living in their home, then NSWTG will exhaust every creative avenue available. These may include family members contributing to the cost, a loan through Centrelink if they qualify and the costs are small, other types of loans, restructuring their budget if possible to stall some expenditure to a later time. The exploration of options normally realise funds for modifications at the minor end. In reality after a process of elimination some people may not be able to continue to reside in their

home safely and independently as they do not have the means to maintain/modify their house. This is true whether the person has a financial management order or not.

This is no different to when someone can no longer continue to live in their house as funds available will not cover the right level of care to keep them independent.

AGAC members who are trustees do not have additional sources of funding to apply to home modifications for client than those available to other members of the community.

Senator McKENZIE: Can both of you please take on notice how, given the complexity, the bills before us either exacerbate or alleviate the issues of rural and regional. Also, you make comments around the trend for protection against providers and care being packaged in a way that will focus on clients being able to access pensions et cetera. Also, Ms Dodds, I think that your submission discusses an alarming trend of the marketing of products. It refers to 'bonds agreements that would facilitate older Australians becoming eligible for a pension'. You identify that as a trend.

How does this package of bills address that?

The modelling is provided through case studies as each circumstance will differ depending on the particulars of the individual. We have outlined 4 case studies. While three of the four case studies are metropolitan based they display the impact of the delay in liquidating assets and the impact of the current system where based on an individual's asset base.

From the information available in the Bills we believe that: the cap on the assessable value of the home; and inclusion of the accommodation deposit as being an assessable asset in determining a client's assessable income; would appear to address the ability to redirect assets into accommodation deposits to achieve a pension income. That is, the bills decrease the likelihood of a pensions being available where a high accommodation deposit exists.

The 28 days in which the person has to make a decision about the payment of an accommodation deposit versus an accommodation payment is a good initiative. Our experience is most people will still have difficulty assessing and taking the required action within the period available to access the best financial and care options for themselves. If they need to liquidate assets the interest charges incurred while this process is underway have the potential to seriously erode any funds they may have.

If the asset is real property in a location where supply outstrips demand the liquidation can take some time and result in greater fees being paid for accommodation than would otherwise be incurred. Currently the interest rate proposed for outstanding fees outstrips any safe investment return available in the market.

Case Study 1.

Mrs HS was an 88 year old woman for whom a financial management order (FMO) was made in September 2008.

Her diagnosis was one of dementia and she was already residing in an aged care facility at Neutral Bay when the FMO was made.

Mrs HS owned a very valuable property in a nearby suburb. The original aged care facility at Neutral Bay closed later in 2009 and Mrs HS was relocated to an "extra service" facility on the Central Coast with an accommodation deposit payable of $750,000 (plus the extra service fee). This arrangement was made with the intention of returning Mrs HS to the metropolitan area when a new facility opened near her former home. The deposit could then be transferred to that new facility.

Mrs HS's property sold for $1,968,000 in November 2009 and the $750,000 accommodation deposit for the Central Coast facility was paid from the sale proceeds. It is noted that the Central Coast facility attempted to renegotiate for a higher deposit when the proceeds of sale were disclosed by Mrs HS.

In April 2010 NSWT&G were advised that Mrs HS would be relocating to the new Neutral Bay facility (owned by the same organisation as the Central Coast facility) and the accommodation deposit required would be $1.6 million ($850,000 over and above the Central coast facility) for a room with water views as chosen by Mrs HS.

The representative of the Neutral Bay facility stated the rationale for this charge was that:

"She understood that Mrs HS's former property sold for $1.9m, she has no family & she thought that Mrs HS should have the best that is available.

Mrs HS is also liable to pay the daily extra service fee of $78.50 per day which can be deducted from the accommodation deposit". [1]

The cost of the new accommodation decreased to $1,150,000 only because Mrs HS agreed to a smaller room with water views to bring down the cost. The Aged Care Facility refused to negotiate on the deposit. Before the additional amount was paid Mrs HS passed away.

Under the new legislation Mrs HS would be assessed with the asset of her home –value set at $144,500 and her bank account of $42,922. She would not be required to pay a means tested fee (income) in either a tier 1 or a tier 2 facility but may be required to pay a small means (asset) tested fee in the tier 1 facility.

In a tier 3 facility (which might more closely resemble the accommodation entered by Mrs HS) the accommodation deposit or any fees would depend on the assessment of the Pricing Commissioner regarding accommodation and services provided however the fees could not be set based on the individual means of Mrs HS.

[1] File Note in NSWTG client file.

Case Study 2

Mr RJ is an 86 year old man for whom a financial management order (FMO) was made in November 2011.

His diagnosis was one of cognitive impairment with possible dementia and a significant hearing impairment. There were no known family members or friends who could assist with his care decisions.

Mr RJ owned a valuable property in the eastern suburbs of Sydney. The property was however in a very poor state of repair and service providers could not attend due to safety concerns.

Mr RJ expressed a wish to be left alone and remain in his own home. He had been in and out of hospital and respite care since 23 January 2011 but had not settled and refused to leave his property permanently.

The Public Guardian was appointed with an accommodation function and Mr RJ was placed in low level aged care with a requirement to pay an accommodation deposit.

Mr RJ had savings in excess of $125,000 and his home. He received a slightly reduced pension from Centrelink due to his financial assets. Despite the level of his investments he had no capacity to access these funds to pay accounts or purchase food.

Mostly due to the value of his property (land value alone) his assets were determined to be $1,125,000. The aged care facility he entered had their usual accommodation deposits set at $475,000 (but would negotiate a lower amount for persons whose property assets did not exceed that value with the payment free threshold amount added).

Mr RJ did not have cash or savings sufficient to fund that deposit without the sale of his property. There was also an additional amount of interest accrued on the deposit between the date of his entry to care (officially several months before the appointment of the Guardian) and the sale of the property/ payment of the deposit.

He is also liable to pay the daily accommodation fee of $44.54 per day ($16,257 pa) and an income tested fee based on deemed income on the residual assets ($589,605) of $11.51 per day ($4201.15 pa) total $20,458.25.

Mr RJ's property sold for $1,060,000. Mr RJ was once again entitled to a part pension after the deposit was paid.

According to information supplied regarding the new aged care legislation Mr RJ would not be able to remain in his home and be provided home care, due to safety issues.

He was not prepared to enter an external care situation without some assistance from the Guardian and unable to supply the information required to assess his capacity and liability to pay for his care. Without the appointment of a financial manager he would not have been able to make any decisions about which option for payment (daily fees or accommodation deposit) was in his best financial interest within 28 days of entry to care.

Under the new legislation Mr RJ would be assessed with assets of his home –value set at $144,500 and bank accounts of $125,000. He would be required to pay a means tested (asset) based fee in a tier 1 facility and a smaller contribution in a tier 2 facility.

In a tier 3 facility the accommodation deposit or any fees would depend on the assessment of the Pricing Commissioner regarding accommodation and services provided however the fees could not be set based on the individual means of Mr RJ.

Case Study 3

Mr DC is an 85 year old man for whom a financial management order (FMO) was made in January 2013. Mr DC was living in his own unit in Goulburn NSW.

Mr DC has no children of his own but has family support from his brother and his six children. One of his nieces was the applicant for the FMO.

Mr DC had been provided with a low level residential and respite care and community care aged care package in his own unit for the last twelve months. The deterioration in his health and progression of dementia had made that situation untenable.

He entered an aged care facility in the town of Goulburn at the end of February 2013. Besides his unit Mr DC has investments of more than $530,000 and is in receipt of a part pension.

An older asset assessment completed (now invalid) for Mr DC indicated that the total value of his assets exceeded $700,000 and the facility originally requested an accommodation deposit of $675,000. The current asset assessment has indicated a value for all of his assets as $658,000. On that basis the aged care facility have now requested a deposit of $600,000. The value of his property included in that assessment is $120,000.

Under the new legislation Mr DC would be assessed with assets of his home – value “set” at $144,500 (it is unclear if a lower value would be included if the property was less valuable than the $144,500 figure) and investments of $538,000. He would be required to pay a means tested (asset and income) based fee in a tier 1 facility and also in a tier 2 facility but his contribution to his care would be capped at $25,000. If entering either the tier 1 or tier 2 facility he may elect to pay the accommodation deposit but due to the level of his financial investments the sale of his property would not be required to fund that deposit.

In a tier 3 facility the accommodation deposit or any fees would depend on the assessment of the pricing commissioner regarding accommodation and services provided however the fees could not be set based on the individual means of Mr DC

It would however seem unlikely that a tier 3 facility would be available in a country centre such as Goulburn.

Case Study 4

Mrs ES is a 90 year old married woman for whom a financial management order (FMO) was made in September 2009.

Mrs ES was already residing in an aged care facility in the eastern suburbs of Sydney at the time the FMO was made. Mrs ES suffers from Alzheimer's disease. Her husband (not under a FMO) moved into the low level care section of the same facility.

The couple had resided in a unit at Rose Bay which was in the name of Mrs ES only. Each member of the couple was required to pay an accommodation deposit of $695,000. The figure had been set by the aged care facility as Mr S had not disclosed the assets held by the couple by completion of an assets assessment. He contracted for each member of the couple to pay an individual deposit of $695,000.

The aged care facility refused to renegotiate the deposit on that basis.

Mr S paid $250,000 towards the deposit for his wife prior to the FMO. NSWTG did not have any information about the level of funds or income owned by Mr S personally.

The unit at Rose Bay realised $578,571 at sale in April 2010. From that sum $250,000 was paid towards the accommodation deposits for each member of the couple, leaving an outstanding balance of $195,000 owed on the deposit of Mrs ES and accruing interest.

Mr S continues to pay the interest on the outstanding deposit from his funds. The aged care facility agreed to withdraw funds from the deposit balance for any outstanding amounts.

Under the new legislation Mrs ES would be not be required to pay means tested accommodation charges if the only asset held by the couple was the unit as her husband continued to reside there after her entry to the care facility. Mrs ES had minimal funds in her own name. The value of any accounts held by Mr S personally were not disclosed to NSWTG but any means tested fees payable would be dependent on those accounts. Mrs ES may have been required to pay a means tested fee in a tier 1 facility and a smaller contribution in a tier 2 facility.

Due to the fact that an accommodation deposit was payable in this case for a high level of care resident (Mrs ES) it is assumed that this facility would apply for tier 3 recognition and the accommodation deposit or any fees would depend on the assessment of the Pricing Commissioner regarding accommodation and services provided. However the fees could not be set based on the individual or joint means of Mrs S and her husband.