

**Thomas Holt Submission Senate Standing Committee on  
Community Affairs re Aged Care (Living Longer Living Better Bill  
2013**

**Aged Care (Living Longer Living Better) Bill 2013**

**Aged Care Quality Agency Bill 2013**

**Aged Care Quality Agency (Transitional Provisions) Bill 2013**

**Aged Care (Bond Security) Amendment Bill 2013**

**Aged Care (Bond Security) Levy Amendment Bill 2013**

**CONTACT**

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The Government's response to the Productivity Commission (PC) Report, Caring for Older Australians (August 2011) through Living Longer Living Better (April 2012) involved a package of reform measures with an estimated cost of \$3.7 billion over five years. Most of this funding was through the redirection and reprioritisation of funds that were already in the Budget forward estimates, increases in user pays and savings through providing more care through home care. New Budget funding contributed \$500 million to the cost of the package, 72% of it in 2015-17.

The package comprised:

- increased user contributions but excluded the family home from the means test for home care;
- increased the supply of age care services but stopped short of entitlement based on assessed needs;
- increased the opportunity for people to receive care at home through more Home Care Packages;
- continues the balance of care ratios, Age Care Approval Round (ACAR) processes and licences;
- home care support
- embedded consumer directed care (CDC) principles in all home care packages, with the intention of trialling CDC in residential care;
- created the Aged Care Gateway with the aim of improving access to care;
- introduced choice of fully refundable lump sum payments or rent for all residents;
- increased the accommodation payment for supported residents in new or redeveloped homes to \$50/day (2012 prices);
- recalibrated scores and/or payment levels within the ADL and Complex Health Care domains of the ACFI to reduce the rate of growth in care subsidies;
- redirected \$1.6 billion of the ACFI 'blow out', with \$1.2 billion of it to be used to improve terms and conditions for the aged care workforce under a "Workforce Compact";
- created an independent pricing commissioner to make recommendations to Government on subsidies and payments and to approve prices for accommodation and optional extra services;
- included a number of measures to improve care for people with dementia, increase support for carers and improve palliative care;
- included a number of measures to improve services for people from diverse and marginalised backgrounds, including rural and remote communities;
- created a new statutory authority (the Aged Care Quality Agency) to accredit and monitor residential and home care providers, while retaining DoHA's role with the Complaints Scheme and compliance and sanctions;
- established a Data Clearing House in the AIHW to support research and policy development; and

- created an Implementation Reform Council to guide the implementation and further development of the reforms.

Thomas Holt is a moderate sized community not for profit organisation that has been delivering services to the older Australians in the Sutherland Shire and recently at San Souci for over 57 years. Thomas Holt has a consistent occupancy rate of 98% because we understand our local community's unique needs and older Australians have confidence and trust in the services we have provided for decades as a not for profit organisation.

Sutherland Shire and the St George Community have one of NSW largest populations of ageing Australians. Therefore it was pleasing to initially read that consistent with the Productivity Commissions (PC's) findings the Governments Living Longer Living Better package recognised that over regulation of the industry was a significant factor in deterring interest in investment to the industry. This indicated to us that the Government understood industry reform and significant growth in the sector is clearly needed. Reform is necessary to ensure our nation can cope with the exponential increase in the aged population, and provide the necessary care and support our older Australians so deserve, particularly those aged over 85 and living with dementia.

### **In summary Thomas Holt recommends the following required changes to the proposed Living Longer Living Better Bills**

The LLLB reforms fundamental shift away from the PC's recommendation of a market driven model to the introduction of controls by the Government in setting accommodation payments will result in many local providers being unable to provide the services their clients want. The introduction of pricing limits denies older Australians of their democratic right to choose aged cares services and accommodation of their choice based upon their capacity or means.

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.

Remove provisions which introduce uncertainty for Approved Providers (AP) in regard to the form of accommodation payments (bond or rent equivalent) during a protracted "cooling off" period as contained in Division 52F.

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.

Reform is needed to ensure a sustainable aged care sector. The gradual deregulation of the supply and rationing of residential aged care services consistent with the practices employed in leading developed countries (as recommended by the PC) needs to occur.

The government also needs to ensure that it establishes appropriate accommodation supplements for financially disadvantaged Australians that encourage investment in new supply and promotes quality, innovation and efficiency through competitive mechanisms.

The existing strategy to redirect 1.6 Billion dollars in ACFI funding has already had a negative financial impact upon Thomas Holt and other providers we have spoken with. Thomas Holt is renowned as being a not for profit provider, any profit is redirected back into providing quality care. Specifically, we offer complex and specialised care to the majority of Residents because they require acute and sub-acute high level care. This is because of the chronic and complex diseases most frail aged clients live with. The inability of the NSW health system to cope with the number of older Australians needing acute care is obvious. There is a fundamental shift by the state health system to provide services via acute out-reach teams delivering care within the aged care facility. This is to avoid older Australians presenting to emergency departments or staying in hospital as the system cannot manage the volume of older people presenting. Aged care providers are not funded to safely or adequately embrace this shift. The ACFI funding changes have resulted in Thomas Holt caring for frail aged clients with complex care needs yet without the subsequent and appropriate increase in subsidy/funding to do so. Thomas Holt is concerned about our ongoing ability to provide the necessary resources and skill mix to care for our high acuity residents as a result in the change of the ACFI funding, loss of unexpected annual indexation in 2012 and the proposed workforce supplement.

#### **Workforce Supplement Section 44-5(1)(a)(vi)**

***As a matter of principle, Thomas Holt does not support a framework that diminishes aged care funding to providers in order to channel funds to supplement wage increases.***

The workforce supplement will have significant impacts on the sustainability of providers and the level of care delivered to the frailest and most vulnerable members of our community. Whilst this does not affect Thomas Holt directly the capacity of small, independent, rural and remote aged care providers to satisfy the requirements to access this funding must be identified, acknowledged and addressed. For example, rather than have an arbitrary delineation of 50 beds as a determining

condition there should be greater flexibility taking into consideration factors such as the provider's rural, regional and remote situation. The size of a facility should not necessarily be the sole determining factor as other factors such as remote location influence wage matters. Neither rural, regional and remote providers nor stand-alone providers should be financially compromised in the implementation of the workforce supplement.

The reforms make a range of assumptions about the capacity and viability of the aged care sector without recognising the diversity. We are concerned that by including the Workforce supplement as a primary supplement within the legislation, the risk of potential inequality between those that are within a proposed workforce agreement and those that are outside of such an agreement becomes institutionalised.

As "on-costs" are to be borne by the employer and unfunded, the workforce supplement reforms package creates an obligation for aged care providers to fund up to \$1.30 in wages for each \$1 on offer from the government. On costs such as superannuation (increasing to 12% over the life of the agreement), work cover premiums, annual leave, annual leave loading, personal/carer's leave, long service leave, parental leave and public holidays represent a real and considerable cost impost to employers.

Generally speaking, the level of the Conditional Adjustment Payment (or CAP) is 8.75 per cent of the basic aged care subsidy for each resident. There is no obvious connection between CAP and wages per se such that the CAP amount should become the measure for supplementing wage increases. That the supplement amount is tied to the CAP is arbitrary, flawed and needs to be reviewed and revised, or removed completely.

Thomas Holt's governing industrial instrument is a multi-enterprise agreement that remains active and on-going to 1 July 2014. The requirement that the mechanism by which these increases will be delivered is through enterprise agreements and the introduction of new industrial provisions will have both a financial and administrative impact.

As organisations are required to have an EBA in place in order to get the CAP by 31 December 2013, providers such as Thomas Holt will be required to terminate existing agreements before bargaining for and making an agreement that is supplement-compliant. In this respect, the risk that Union and employee bargaining representatives will seize the opportunity to expand the scope of bargaining (i.e. not limited to merely modifying the existing Enterprise Agreement in order to make the necessary changes) is a real possibility. Moreover, any modified agreement in this manner will likely have an expiration date in 2014. The need for employees of

Thomas Holt to be put through three voting processes on two enterprise agreements within the span of 12 months is oppressive and unduly burdensome.

Aged care providers and their staff should be free to determine above-award employment arrangements at a local level, reflecting the circumstances in their workplace. That supplement/compact requirements are super-imposed on enterprise bargaining in the aged care sector sets a precedent for industrial relations in Australia and a departure from the good faith bargaining principles of the Fair Work Act. The workforce supplement means that in the aged care sector, unlike other industries, parties are no longer free to negotiate over any and all matters that pertain to the relationship between employers and employees. That vital funding will be withheld unless organisations sign up to an agreement that in key areas is pre-determined is neither in our sectors nor in the national interest. Thomas Holt already delivers rates of pay to all levels of care staff that are industry-leading with terms and conditions that in many respects mirror those announced in the supplement reforms.

The legislative amendments also leave a number of questions unanswered that have the potential for confusion and controversy if the Bills are passed “as is”, in particular:

- The Bill nor any published Departmental advice contains any definition of the Aged Care “Workforce Supplement”.
- The Bill nor any published Departmental advice, addresses the question of what happens if an organisation pulls out of the compact at some stage (i.e. their enterprise agreement reaches the nominal expiry date and is no longer Compact compliant or when after 4 years have elapsed when the compact ceases)?
- The Bill nor any published Departmental advice addresses the question of whether the wage increases required for the supplement (of the greater of 2.75% or Fair Work Commission annual increase) apply to the previous year’s wage including the 1% CAP (and in subsequent years including the value of the CAP rises to 3.5%) or whether the wage rise applies excluding the value of the 1% CAP and then adding back in the 1%? In the second year add back in 2% etc.

Leaving these matters to policy, as yet to be determined by the Minister or the Department, and outside of parliamentary scrutiny, opens the door to ad-hoc and non-consultative decision-making of the type experienced by the industry since Compact negotiations foundered.

**Thomas Holt rejects the notion of a Workforce Supplement and requests that the senate standing committee make recommendation to Parliament that Section 44-5 of the Bill be deleted.**

## **Dementia Supplement Section 44-5(1)(a)(iv)**

The second of the proposed supplements is currently called the 'Dementia Supplement'. It is suggested that this supplement be renamed as the **Behavioural Supplement** to more accurately reflect the targeted older Australians that may be eligible for such a supplement, as the Act indicates that the supplements is in 'recognition of the additional costs involved in caring for people with dementia and *other mental health issue*'. Many consumers may have symptoms of a cognitive impairment that is negatively impacting on their life and wellbeing, as well as their family, carers and fellow residents, without a specific medical diagnosis of dementia or Alzheimer's being established.

It must be clarified if the level of the supplement is determined by the level of cognitive impairment and who will be charged with determining that level, what assessment tool will be used (eg. PAS) and how it will be translated into a dollar value.

Thomas Holt believes that the supplement must be sufficient to cover the costs of providing appropriate care to the consumer. Any cognitive impairment results in additional Workforce Supplements.

## **Refundable Accommodation Deposit**

### **Recommendations**

#### **Thomas Holt recommends that the Senate Standing Committee make the following recommendations to Parliament**

The use of Maximum permissible Interest Rate to calculate the Refundable Accommodation Deposit (RAD) is unacceptable and must be changed. ACFA needs to undertake this task as a matter of urgency:

- Co-payments for community care should be removed from this 5 year reform and only re-introduced at a much slower phasing-in period, as part of the review of the Act. As a minimum, partially supported pensioners in the community should not be asked to pay more than 17.5% towards their community care costs.
- The government must run a communication program for the community and consumers to explain their policy changes and how it will impact on them. This must not be left to the Approved Provider (AP).
- Payment of any levy for RAD security should be a Permitted use of the RAD.

The LLLB introduces common **accommodation payment** and **contribution** arrangements across all residential care.

This includes the requirement for a prospective resident to be informed about prices before entry to an RACF and to have choice of payment method. The choices are for either a daily accommodation payment or contribution (DAP) or a refundable accommodation deposit or combination of both, determined through agreement between the AP and the consumer.

There is to be agreement in writing before entry on the maximum accommodation price the resident would have to pay under either payment method and for provision for the resident to agree within 28 days what form the payment will take.

The proposed legislation allows for the **draw-down of daily payments** from the refundable accommodation deposits (RAD). An approved provider must agree to any drawdown from the RAD if a resident makes the request in writing. The amendment sets out the arrangements that apply, including having the details included in the Accommodation Agreement.

If the care recipient has chosen the draw-down option, the care recipient must continue to maintain the agreed accommodation payment, either by topping up the RAD or by paying higher daily payments.

Amendments also allow an approved provider to deduct from the RAD, when the person leaves the service, other amounts agreed in writing that are specified in the Fees and Payments Principles, and any other amounts agreed in writing between the care recipient and the approved provider. This will mean that a care recipient may have their care fees deducted from their RAD if both the care recipient and AP agree.

A number of aspects of the proposed residential care accommodation are cause for concern for providers.

### **28 Days Period to Decide Payment Option**

The legislation states that if a person does not decide how to pay within 28 days, a daily accommodation payment (DAP) regime will apply.

The rules about resident payments and the introduction of a 28 day cooling off period to decide payment options together with the six month period to actually pay a RAD further creates a situation where Thomas Holt will be financially vulnerable and will surely create an unstable platform for planning capital expenditure and debt/equity decisions within the whole sector.



We will be more exposed to debt/defaults without adequate protections through changes to security of tenure provisions which means it is the obligation of the provider to find alternative accommodation for the debtor (while still accruing debt). Similar arrangements will exist for home care providers who will have to have debt recovery processes. The requirement for the provider and resident to enter into an agreement within 28 days of entry – is this reasonable if the person has not decided the payment option within the 28 day period? This section of the Bill needs major adjustment. Thomas Holt's position is that it is unreasonable and not consistent with current practice to allow a resident to enter into services without agreeing the terms of payment. For example, when purchasing a home one doesn't move in without agreed terms of payment or conditions.

### **Linking the Maximum Permissible Interest Rate to the Accommodation Bond**

The PC recommended 'limiting accommodation bonds to no more than the equivalent of periodic accommodation charges but uncap such periodic accommodation charges to reflect differing standards of accommodation'. The PC's intent was that consumers be offered a periodic payment (rent) equivalent in value to a bond.

The Minister for Health and Ageing has stated that the Maximum Permissible Interest Rate (MPIR) is to be used in determining this equivalence. This method was recommended by the ACFA because the interest rate referred to in the MPIR appeared significantly less than the rate that appears using the alternative measure. However the MPIR approach fails to recognise that in the absence of a stable lump sum (RAD), an AP may need to commit capital (both equity and debt) to fund investment in residential aged care as a result of the RAD movement via MPIR utilising DAP as the baseline.

Finally, the MPIR is volatile, changing quarterly, which will result in erratic price movements in RADs and equivalent charges for places in residential aged care which may not serve consumers interests and impose compliance burdens on APs. It would be most unreasonable to offer the same quality of accommodation to a consumer at one price based on the link to the MPIR and then in the next quarter a new consumer has to pay either a higher price or a lower price depending on the value of the MPIR within the same year. This is unacceptable for both AP's and consumers.

### **Bond Price Controls**

On 21 December 2012, the Minister for Mental Health and Ageing outlined the regulatory framework that will apply for accommodation payments for residents

entering residential care on or after 1 July 2014. The key aspects of the announcement were the classification of accommodation prices into 3 levels:

- Level 1 – up to the level of the maximum Government accommodation supplement (\$50 per day (2012 prices))
- Level 2 – Prices between Level 1 and an upper threshold of \$85 per day (2012 prices)
- Level 3 – Prices above the Level 2 threshold

There is a requirement for all Aged Care Providers (ACP's) to publish prices in advance in the form of a daily accommodation payment (DAP), refundable accommodation deposit (RAD) and examples of combination payments.

The PC did not recommend the implementation of price controls. Indeed it recommended 'limiting accommodation bonds to no more than the equivalent of periodic accommodation charges but uncap such periodic accommodation charges to reflect differing standards of accommodation'. The PC was proposing uncapped accommodation charges, not explicit price controls as proposed under LLLB.

In Recommendation 7.2, the PC said the Government should mandate that residential aged care providers offer and publish periodic accommodation charges and any combination thereof.

The clear intent was that offering choice of payment mode and publishing of prices would serve the interests of consumers.

The Government's response has been to impose additional price controls when the evidence indicates that RADs are negotiated.

Thomas Holt considers that this response is the Government's reaction to so-called 'super bonds'. It is however evident from the data that the incidence of these bonds is very low and there is no widespread problem. Presently, there are in the order of 21,127 accommodation bonds in Australia. The incidence of so-called 'super' bonds is very low with 124 bonds between \$750,000 and \$1 million and 33 in excess of \$1 million which represents approximately 0.7 per cent of all residential aged care accommodation bonds. Thomas Holt does not demand super bonds. It is the Resident that approaches Thomas Holt to consider a larger bond sum following independent advice.

The implementation of price controls of bonds under LLLB will introduce compliance complexity and limit our ability to undertake capital works to replenish stock as required.

We agree with PC's recommendation to publishing of prices for accommodation and choice of mode of payment as it will provide a significant boost to price transparency, increase competition and serve the interests of consumers.

### **Recommendations**

That the Senate Standing Committee recommends to Parliament that price controls be removed.