Combined Pensioners & Superannuants Association OF NEW SOUTH WALES INC

CPSA

CPSA's additional comments to the Senate Community Affairs Legislation Committee inquiry into the *Living Longer Living Better* Bills

May 2013

Combined Pensioners & Superannuants Association of NSW Inc (CPSA)

Address: Level 9, 28 Foveaux Street, Surry Hills NSW 2010 **ABN:** 11 244 559 772

Phone: (02) 9281 3588 **Country Callers:** 1800 451 488 **Facsimile:** (02) 9281 9716

Email: cpsa@cpsa.org.au **Website:** www.cpsa.org.au **Donations:** 1800 451 488

Kalyna Care's submission and its modelling for Mrs Jones and Mrs Smith

CPSA understands that consumers will only pay means-tested care fees for residential care if they have paid for all of the accommodation fees. This will, in effect, mean that many people will not contribute to the cost of their care (above the basic care fee) because many will not have sufficient wealth to pay over and above the accommodation fee.

CPSA also understands that the value of the consumer's principal residence when assessing assets for residential care will be capped at $144,500 (March 2012 rate). It appears that Kalyna Care's modelling for Mrs Smith has not taken this into account.

However, what remains unclear (despite repeated attempts to get clarification from the Department) is whether the $144,500 cap continues to be in effect if the home is sold. If not, this cap will be ineffective for the vast majority of pensioners who own their home (and it's valued over $144,500). This is because the family home is typically a pensioner's only asset and will most likely need to be sold to finance care fees, even if their total asset worth is assed as being $144,500. Therefore, do the proceeds of the sale over $144,500 count as an assessable asset for aged care fee purposes? If so, the pensioner's care fees will be higher than if the home remained as bricks and mortar.

However, assuming the $144,500 cap applies regardless of whether the home is sold or not, Mrs Smith's fees would be assessed as the following:

Income

Mrs Smith's annual assessable income: 8,000 – 3,952 (single pension income free area) = 4,048
= (0.5*$4,048)/364
= $5.56 (per day)

Assets

Mrs Smith's assessable assets would be worked out as 144,500 + 200,000 = 344,500
=0.175*(144,500-40,500)
= 18,200
+
=0.01* (344,500 – 144,500)
= 2,000

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Asset tested amount = $20,200
Mrs Smith's daily asset tested amount is $20,200/364 = $55.49
+ $5.56 (income tested amount)

Mrs Smith's daily means-tested amount is therefore: $61.05

This means that unless Mrs Smith's accommodation costs are less than $61.05 per day, she would not have to pay any means-tested care fees. The equivalent bond for someone in Mrs Smith's case would be $291,627 (adopting an interest rate of $7.62 % as per DoHA modelling).

If Mrs Smith's accommodation fee was $50 per day (for example), she would be required to contribute $11.05 per day to her care fees, or $4,033 per annum. In addition to that, she would pay the basic care fee which is 85% of the base rate of pension for residential care, ($16,214 per annum, March 2012 rate).

Her total residential care cost contribution is $20,247 per annum. However, one must compare the means-tested care fee amounts – the $4,033 per annum used in the previous example – and not the basic care fee, to compare apples with apples. Therefore, the difference in care fees paid by Mrs Smith and Mrs Jones depends on the accommodation fees paid by Mrs Smith. The lower the accommodation fee, the higher her care fee will be. As homes will have an incentive to charge the highest accommodation fee they can up to $85 per day, it's unlikely that Mrs Smith will have sufficient income to pay care fees.

Otherwise, on the basis of income only, both Mrs Smith and Mrs Jones would contribute the roughly the same amount to their cost of care in income-tested care fees.

Assuming the $144,500 cap does not apply because the home was sold, it appears that Mrs Smith's care fees would be as Kalyna care assessed. The reason for this is because the home care means test assesses income and not assets, while the residential care means test assesses both.

CPSA does not support Kalyna Care's recommendation for the home and residential care means tests to be aligned if that means introducing an asset test for home care recipients. Many home care recipients, in particular pensioners, will find the proposed home care fees prohibitive. Including assets into the means test will exacerbate that cost of living pressure.

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With respect to Kalyna's claim that the new means test constitutes a 'death tax', aged care means testing has always included the home under the *Aged Care Act 1997*. The difference is that the LLLB Bills will treat the home the same way regardless of the level of residential care accessed. CPSA has always opposed bonds as a means of financing aged care and it has largely been providers calling for the home to be included in means testing arrangements.

In CPSA's view, the inequity seems to be in the arrangements regarding the cap on the family home. If the cap does not carry over if the home is sold, the inequity then exists between wealthy retirees and those whose only asset is the home. A wealthy retiree will not have to sell the home to fund their aged care costs and would thus have their home's value capped at $144,500. On the other hand, a pensioner would need to sell the home and would then no longer be protected by the cap. This is unfair and undermines the intent of the cap in the first place. The cap should continue to apply to the family home if it is sold to fund care costs.

Supplements

For care recipients with means that require them to pay care fees, they may pay for both the basic subsidy and primary supplements, which would otherwise have been met by the Australian Government. The primary supplements include:

- Oxygen and enteral feeding supplement;
- Dementia supplement;
- Veteran supplement ; and
- Workforce supplement.

It appears that there is a case to be made to remove the workforce supplement from 'primary supplements' in terms of a care recipient's care cost contribution because it is not strictly tied to the individual's care. Its inclusion seems to go against the tenet of charging the care recipient for the cost of their care.

Fines as a compliance tool in US nursing homes

The US employs fines in its quality and compliance system, which is enacted by the federal government's Centres for Medicare and Medicaid Services and administered by the states. The states inspect nursing homes and issue fines (civil money penalties or CMPs), which are designed to reflect the degree of severity of the noncompliance. CMPs range between $50 and $10,000 per day, and cease

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once the noncompliance is addressed. CMPs may also be imposed for past failures of the standards[1] .

There has been discussion on whether there needs to be reform of standards guiding how states issue CMPs because there is concern that their application is quite uneven.[2]

To give a picture of the application of CMPs, Propublica put together data on CMPs broken down by state: http://projects.propublica.org/nursing-homes/summary .

Impact on the Public Health Act 2010 in NSW

The removal of the distinction between high and low care has possible implications for the operation of the NSW *Public Health Act 2010*. Division 4, 104, (N.127) (a) of the *Public Health Act* requires all nursing homes in NSW as defined by the *Aged Care Act* to have a registered nurse on at all times.

This is a minimum staffing requirement by which currently 425 of NSW's 885 residential aged care facilities must abide.

Once the high/low care distinction is removed, it is unclear how the registered nurse requirement for nursing homes will be enforced by the *Public Health Act*, unless it is also amended.

The *Aged Care Act* does not mandate that nursing homes or facilities with high care residents have a registered nurse on at all times. Rather, Division 54-1 (b) of the *Aged Care Act* states that a residential aged care facility should "maintain an adequate number of appropriately skilled staff to ensure that the care needs of care recipients are met". This is open to interpretation and results in residential aged care facilities employing staffing practices that do not ensure the safety of residents.

In July, 2010, a 91 year old woman died when she was strangled by a bed pole after falling from her bed in the middle of the night at BCS Mid Richmond Centre-

[1] US Centre for Medicare and Medicaid Services (2010) 'State Operations Manual: Chapter 7 - Survey and Enforcement Process for Skilled Nursing Facilities and Nursing Facilities' available at: http://www.cms.gov/Medicare/ProviderEnrollmentandCertification/SurveyCertificationEnforcement/index.html

[2] Charlene Harrington, Theodore Tsoukalas, Cynthia Rudder, Richard J. Mollot, Helen Carrillo 'The role of sanctions in Australia's residential aged care quality assurance system' *Int J Qual Health Care* (2010) 22(6): 452-460 http://gerontologist.oxfordjournals.org/content/48/5/679.abstract

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Coraki nursing home.[3] Her death was linked to the home's poor staffing as only two carers for 45 residents were rostered on the night she died, one of whom was on cleaning duties.[4] Although the home met accreditation requirements under the *Aged Care Act* the Coroner criticised the home's staffing levels, stating:

> "One carer to 45 residents at Mid Richmond, as it was in July 2010, is unsatisfactory even if it meets the legislative requirements."[5]

The home also had 20 high-care residents at the time, but it was classified as a low-care facility. However, it did meet the *Aged Care Act*'s staffing guideline, which proved to be unsafe. The risk in NSW is that the NSW Government will decide that there is no longer a need to have the RN requirement in nursing homes, which will place residents, particularly those with high care needs, at risk.

Impact on rural and regional older people

Older people in rural and regional areas tend to have a lower income and asset base than older people in metropolitan areas. Median sale price reports for homes in rural NSW show that sales range from $55,000 in Walgett to $538,000 in Palerang. The NSW average median home sale price (including metropolitan areas) is $424,000 (as at September 2012).

To give an idea of the property market in rural and regional Australia, many reverse mortgage lenders do not lend in selected postcodes in non-metropolitan areas because the risk is too great that the loan will not repaid. Other lenders reduce the amount they'll lend because the home is in a rural or regional area. This indicates that in some areas, the property market is not as strong as in others and this has implications for older people trying to sell their home to fund aged care fees.

The issue for older people in rural and regional areas who have asset values above $40,500 will be realising those assets to pay care fees. For most people, this will be through the sale of their home. As discussed above in the case of Mrs Smith, there may be substantial implications if the home takes time to sell – the care recipient may find that their care fees are higher than what were first assessed (because they were based on the $144,500 cap). This then raises the question of if the person needs to back pay fees because the asset test on which

[33]NSW Coroner (Magistrate R Denes) (2011) 'Inquest into the death of Martha McKee' Local Court, NSW Ref: 0054/10
[4]Ibid.
[5] Ibid.

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they were valued was ‘incorrect’. If it takes nine months to sell the home, which is not unreasonable in rural areas, the individual under current rules would not necessarily qualify for financial hardship, would have to pay daily care fees, and if s/he could not meet those fees, would be liable to pay interest on amounts owing. It appears to CPSA that this would encourage fire sales of homes to avoid debt to the nursing home.

From CPSA’s interpretation of the Bills and the current system, if a farmer who went into care, but whose farm was continued to be run by a child or children, the farm would still be considered an asset for aged care fee purposes, unless a protected person resided in the home. It would appear that there is a need to clarify treatment of a home when it forms part of a business, as is the case with a farm. Although the number of older people in this situation would no doubt be small, it seems that a provision to protect the home and property from being assessed as an asset would be required.

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