Combined Pensioners & Superannuants Association OF NEW SOUTH WALES INC

CPSA

Submission to the Senate Standing Committees on Community Affairs' Inquiry into 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

April 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

CPSA is a non-profit, non-party-political membership association founded in 1931 which serves pensioners of all ages, superannuants and low-income retirees. CPSA has 130 Branches and affiliated organisations with a combined membership of over 29,000 people living throughout NSW. CPSA's aim is to improve the standard of living and well-being of its Members and constituents. CPSA depends for the majority of its funding for core activities as a peak body on a $440,000 grant from the NSW Government and a $68,000 grant from the Australian Government. CPSA engages in systemic advocacy on behalf of its constituency and also auspices four services which receive Government funding: the Health Promotion Service for Older People, the Older Persons Tenants' Service, the Park and Village Service and a Community Visitors Scheme. CPSA acknowledges the potential for conflict of interest arising for CPSA and the NSW and Australian Governments as a result of this funding arrangement. CPSA is committed to managing any conflict of interest issues in an ethical manner.

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

CPSA welcomes the opportunity to provide comment on the *Living Longer Living Better* (LLLB) Bills.

This submission will focus on the aged care fee arrangements under LLLB as well as quality of care.

Residential aged care accommodation fees

It appears to CPSA that the LLLB reforms will not necessarily provide consumers with greater choice in terms of how they pay for residential aged care. While CPSA agrees with the Government's aim of increasing consumers' options in terms of paying for aged care accommodation, most with assets above the minimum asset threshold will have no choice but to pay a bond. This is because they are unlikely to be able to generate sufficient income to pay a daily fee that is equivalent to the bond from the principal. In addition, keeping the principal in a term deposit (for example) may impact their pension payments and result in a loss of income.

Bonds are generally financed through the sale of the resident's home. It is not uncommon for the sale of the home to take time, which can be costly for the resident as interest accrues on the amount owing. As of 1 April, 2013, the Maximum Permissible Interest Rate (MPIR) is 6.95% (for the year). If someone owed a bond of $250,000 to be paid from the sale of their home, and only sold the home after four months of living in care, they would owe the home an additional $5,791 (((250000*.0695)/12)*4).

Although the home and the resident may negotiate a lower interest rate than the MPIR, it is widely recognised that negotiations between the home and the resident is a one-sided affair favouring the home. CPSA seldom encounters a resident paying an interest rate lower than the MPIR. It seems unfair that a resident be penalised for not being able to sell their home shortly after entering residential aged care, particularly if they required residential aged care at short notice. Obviously, the housing market is out of the resident's control, yet they are penalised the longer it takes for their home to sell. The upshot is fire sales of homes to save money on the bond.

This issue is likely to expand under the LLLB reforms because bonds will apply to all nursing home residents rather than just low-care and Extra Service high-care residents. High-care residents generally enter residential care in a highly dependent state. For this reason, high-care residents were excluded from paying bonds following the 1997 reforms because they would not be in a position to:

a) negotiate a bond, and
b) sell their home to raise the bond

The clear risk for high-needs residents is that they are exploited when it comes to negotiate the cost of their accommodation. Although the Department of Health and Ageing will

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

regulate accommodation prices at the high end to a degree, the proposed guidelines are lax at best and will do little to protect consumers from price gouging. CPSA will raise its concerns about this issue in its submission to the pricing guidelines discussion paper.

Community Care fees

In setting community care fees, the Department's priority should be to make community care affordable. It would appear that for the vast majority of older people, the proposed fee structure for home care packages is unaffordable.

For full-rate Age Pensioners, paying 17.5% of the pension in basic care fees is unaffordable. The pension currently sits just above the Henderson Poverty Line as set by the Melbourne Institute of Applied Economics and Social Research[1]. Reducing it by 17.5% will set it at a level of some $50 per week below the poverty line of $392 (per week) for a single pensioner.

The impact will be greater on pensioners living in social housing whose income is automatically reduced by 25% to pay for rent (and who are not eligible for rent assistance). This group would see their income almost halved by rent and care fees because 'assessable income' is considered to be the income received from Centrelink, regardless of amounts earmarked for rent. They will actually spend approximately 23% of their disposable income on the basic care fee for a care package. Private renters in receipt of the Age Pension will be particularly disadvantaged because their rents typically exceed 25% of their income. The private rental cohort of older Australians is expected to grow as more and more people enter retirement without owning their own home, which will have implications in terms of the affordability of home care. In any case, the current cohort of older people renting is not minute. As at 2009/10, older people renting privately comprised 10% of the over-65 population, with a further 8% renting in social housing[2].

CPSA understands that people will be able to apply for financial hardship relief if the fees are unaffordable. CPSA also understands that care recipients will not be refused a service due to inability to pay. However, these provisions are ambiguous. There are no guidelines published as to what constitutes financial hardship. All that is known of this provision is that a determination is made by the Department on a case-by-case basis using secret guidelines. Therefore, financial hardship is determined at the discretion of staff in the same Department that is also responsible for home care package funding. This raises the question of the Department's ability to determine cases of financial hardship with impartiality, given grants for financial hardship will result in increased government expenditure on home care, and equally, knocking back financial hardship applications will save the government money.

---

[1] Melbourne Institute of Applied Economics and Social Research (2013) *Poverty Lines Australia September Quarter 2012* available at http://melbourneinstitute.com/miaesr/publications/indicators/poverty-lines-australia.html accessed 19/04/2013

[2] Australian Institute of Health and Welfare (2013) *The desire to age in place among older Australians* Volume 1: (Reasons for staying or moving) available at: http://www.aihw.gov.au/publication-detail/?id=60129543093 accessed 19/04/20103, p.4

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

Moreover, the use of discretion in social security policy generally hinders access of those who would otherwise be eligible (because of shame and a belief that one is not needy enough to access it) and fosters a sense of mistrust in the system because no one knows what the ground rules are.

Another difficulty with the proposal is that it is unlikely that home care recipients would actually know that they do not have to pay the full fee if they cannot afford to do so. Consequently, many may resist accessing care because of its cost.

If the Australian Government has a commitment to increase access to home care, this is not demonstrated by the proposed fee reforms, which may act as a deterrent to home care. Furthermore, it is likely that there will be an increase in applications for financial hardship (providing care recipients are alerted to this protection), which raises questions about the Department's ability to process such claims in a timely and equitable manner.

The Aged Care Quality Agency

It is disappointing that the Government has not taken the opportunity in this suite of aged care reforms to address quality of care. It is disappointing that these reforms will maintain the current standards governing aged care quality. These standards set a minimum standard of care, focus on processes rather than actual care delivered, and restrict compliance action because even when a home fails to provide basic care, the Department often cannot impose penalties that recognise the home's negligence. For example, if a resident dies because of poor wound management and the home subsequently demonstrates that it has a wound care system, which staff know how to follow, the home has, under the Act, complied with the standards. Consequently, no compliance action is taken.

This scenario occurs time and time again to the distress of family members, staff and residents who feel that the complaints and compliance process does not deliver justice. And, in essence, the complaints and compliance process is not designed to deliver justice – it is designed to act as a quasi-accreditation scheme that inspects whether a home has complied with the standards. Where a home fails to comply with the standards within a set period of time or it is considered to pose an immediate risk to residents health and safety, non-compliance action may be taken, which again, is based on the home meeting the standards.

CPSA believes that the compliance system should be strengthened to include fines for homes that fail standards. Fines are used in the US as part of addressing non-compliance with nursing home standards and also form part of compliance and enforcement systems in other jurisdictions, such as food safety authorities. Fines would act as a deterrent to poor standards of care in nursing homes and encourage homes to provide quality care.

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

The National Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Ageing and Aged Care Strategy

CPSA supports this strategy, and considers it long overdue. However, CPSA calls for discrimination against older people on the basis of sexuality and gender to be outlawed in aged care, including in terms of accessing aged care. Surely this should be a basic condition of residential aged care provision. Yet, people discriminated against on the basis of sexuality or gender do not have legal recourse to counter or overturn such discrimination. In an industry that received $12.5 billion in public funds in 2011/12, the absence of anti-discrimination laws in this area is a blight on the system and urgently needs reform.

The removal of the distinction between high and low care

The abolition of the high and low care distinction will impact the NSW *Public Health Act 2010* that mandates a registered nurse be on duty in a high care facility as defined by the *Aged Care Act 1997* at all times. In NSW this legislation is the sole protection standing for high care nursing home residents in terms of staffing as the Aged Care Act does not specify the need for registered nurses in facilities.

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 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".[3] This is open to interpretation and results in residential aged care facilities employing staffing practices that do not ensure the safety of residents.

There are a number of examples where homes have no staff rostered on, let alone a registered nurse. Queensland residential aged care facility Southport Lodge, was found to roster no staff on between 8pm and 6.30am, or 10.5 hours overnight, every night.[4] Illawarra Retirement Trust's Towadgi Park Village was found in December 2008 to roster on no staff at night, despite having high care residents.[5] Viewhills Manor in Victoria was found in 2005 to roster no staff on in the afternoons and evenings despite caring for 35 high care residents.[6]

Despite these particularly egregious cases of neglect, each of these facilities was, and continues to be, accredited under the *Aged Care Act*.

CPSA understands that the Commonwealth is allowing states and territories to decide the course of action they will take in response to changes made to the *Aged Care Act*.

[3] Commonwealth of Australia (2012) *Aged Care Act 1997* p.227
[4] The Aged Care Standards & Accreditation Agency (2012) *Southport Lodge* p.8
[5] Ibid. (2008) *Decision to Accredit IRT - Towradgi Park Village* p. 29
[6] Ibid. (2005) *Decision to Vary Accreditation Viewhills Manor*, p.9

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

However, as the above examples show, the *Aged Care Act* is inadequate in ensuring safe staffing of nursing homes. The *Aged Care Act* does not protect nursing home residents from neglect or poor care and needs reform.

Aged Care Pricing Commissioner

CPSA calls for the Aged Care Pricing Commissioner to be independent, without any real or perceived conflicts of interest.

CPSA also calls for the Commissioner's powers to be extended to cover complaints made by residential aged care consumers who feel that they have been exploited by their aged care provider in terms of accommodation fees. The Commissioner will be responsible for assessing applications made by nursing homes to charge Level 3 accommodation fees. However, according to the Accommodation Pricing Guidelines currently out for consultation, consumers who feel they've paid too much for their accommodation may complain to the Aged Care Complaints Scheme. It is incomprehensible as to why the Complaints Scheme would be considered the appropriate body to gauge whether price gouging has occurred when the Commissioner is being set up to oversee accommodation pricing, at least for some facilities.

The Complaints Scheme already struggles with its workload and given that it will not have determinative powers in terms of overturning fees deemed not reflective of cost, the proposed complaint mechanism is all but futile. It would seem that the Commissioner is better placed to handle such complaints.

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