



Council of Social Service of New South Wales

66 Albion St, Surry Hills NSW
phone 02 9211 2599 fax 02 9281 1968
email info@ncoss.org.au web www.ncoss.org.au

abn 85001 797 137

23 April 2013

Senator Claire Moore, Chair
Senate Standing Committee on Community Affairs–Legislation
C/- Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senator

**Re: Inquiry into the Aged Care (Bond Security) Amendment Bill 2013,
the Aged Care (Bond Security) Levy Amendment Bill 2013,
the Aged Care (Living Longer Living Better) Bill 2013,
the Australian Aged Care Quality Agency (Transitional Provisions) Bill 2013, and
the Australian Aged Care Quality Agency Bill 2013**

Thank you for the opportunity to comment on the *Aged Care (Bond Security) Amendment Bill 2013*, the *Aged Care (Bond Security) Levy Amendment Bill 2013*, the *Aged Care (Living Longer Living Better) Bill 2013*, the *Australian Aged Care Quality Agency (Transitional Provisions) Bill 2013*, and the *Australian Aged Care Quality Agency Bill 2013*.

The Commonwealth Department of Health and Ageing released an *Overview of Proposed Changes to the Aged Care Act 1997 and related legislation* in December 2012¹, to which NCOSS made a response. The proposed changes that NCOSS expressed concerns, and made recommendations about, are included in the Bills that came before Parliament in March 2013. NCOSS therefore presents our submission made in December to the Committee for consideration of the issues discussed and recommendations made therein. Please see the attached document.

People with lifelong/long-term disability who are ageing

NCOSS recommends that people with life-long/long-standing disability are included in Part 2.2, Division 11-3 in the *Aged Care Act 1997* relating to people with special needs. This would be consistent with the inclusion of care leavers, veterans, people who are homeless or at risk of being homeless, and lesbian, gay, bisexual, transgender and intersex persons in this section of the Act.

People with lifelong/long-term disability over the age of 65, and people who acquire non-ageing-related disability after the age of 65, have recently come to public attention through discussion in relation to the National Disability Insurance Scheme (NDIS), and the provisions for the Scheme cover only people who make an access request to the NDIS before they turn 65 years of age. This will mean that there are significant numbers of people with disability who will not have access to the NDIS, and who will instead need to rely on aged care services. People who acquire a disability after they turn 65 will be in similar circumstances. Aged care services have historically not been able to support people with non-ageing-related disabilities appropriately, nor are they funded to do so. The Aged Care

¹ Available at: <http://www.livinglongerlivingbetter.gov.au/internet/living/publishing.nsf/Content/Overview-of-proposed-changes-to-the-Aged-Care-Act-1997-and-related-legislation> (last accessed: 22/04/2013).

Funding Instrument, and pricing for Community Aged Care Packages (CACPs) and Extended Aged Care at Home (EACH) packages does not take disability into account. Workers in aged care services are also not usually trained to work with people with non-ageing-related disability.

People using disability services at the moment in this group will be subject to the terms of the *National Partnership Agreement on Transitioning Responsibilities for Aged Care and Disability Services*, which specifies that the Commonwealth (Department of Health and Ageing) is responsible for funding their supports. It's not clear what will happen for these people once the NDIS comes into effect – if the services they are using will need to continue as they are, even while younger people using the same service but accessing the NDIS might change their support arrangements.

NCOSS therefore recommends that the Australian Government develop a strategy to ensure that people with lifelong/long-term, non-ageing-related disability have their support needs met appropriately, and that the aged care system is responsive to their specific needs.

Means-testing and care fees

NCOSS reiterates the caution in our previous submission regarding the impact of means-testing and particularly the introduction of an income-tested care fee into Home Care Packages. NCOSS is particularly concerned for the impact of these changes on low income part pensioners, who will be required to pay 50 per cent of their income above the relevant threshold in care fees, up to the value of the annual cap. NCOSS is concerned that this will cause undue hardship for low income people. NCOSS recommends that the guidelines and process for determining considerations of financial hardship are subject to a public review in the light of these changes.

Accommodation payments and the role of the Aged Care Pricing Commissioner

NCOSS acknowledges that since consultation in December 2012 on proposed changes to the Act, the Minister for Ageing, Mental Health, Social Inclusion, Housing and Homelessness, the Hon. Mark Butler, announced the threshold levels for accommodation payments on 21st December.² Further to NCOSS' comments made in December 2012, NCOSS is concerned that the Level 2 threshold, beyond which an approved provider must seek approval from the Aged Care Pricing Commissioner, remains too high. A threshold of \$85 per day, or a lump sum of \$406,037 (2012 prices) allows considerable scope for variation. Furthermore, with no scope for the Aged Care Complaints Scheme to overturn prices, as per the draft *Accommodation Pricing Guidelines* released by the Department of Health and Ageing³, consumers will have no opportunity for redress should the price of a service be found unsupported by evidence. NCOSS recommends that the Aged Care Pricing Commissioner has the power to overturn Level 2 and Level 3 prices so long as the Commissioner is satisfied that evidence supports this conclusion.

NCOSS appreciates the opportunity to make comment on these important legislative changes which will affect a large number of older people. For further information please contact NCOSS Senior Policy Officer Rashmi Kumar

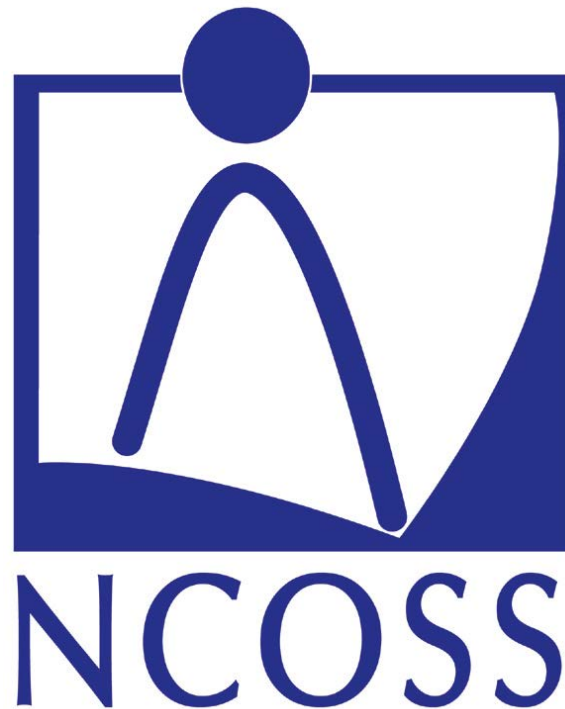
Yours sincerely

Alison Peters
Director, NCOSS

² Available at: <http://www.health.gov.au/internet/main/publishing.nsf/Content/ageing-aged-care-acfa-final-recommendation-gov-response>, last updated 21/12/2012 (last accessed: 22/04/2013).

³ Available at: <http://www.livinglongerlivingbetter.gov.au/internet/living/publishing.nsf/Content/consultation-accommodation-pricing-guidelines>, last updated 10/04/2013 (last accessed: 22/04/2013).

Submission on proposed changes to the *Aged Care Act 1997* and related legislation



20 December 2012

Council of Social Service of NSW (NCOSS)

66 Albion Street
Surry Hills NSW 2010
Ph: 02 9211 2599
Fax: 02 9281 1968
Email: info@ncoss.org.au

About NCOSS

The Council of Social Service of NSW (NCOSS) provides independent and informed policy development, advice and review and plays a key coordination and leadership role for the non government social and community services sector in New South Wales. NCOSS works with our members, the sector, the NSW Government and its departments and other relevant agencies on current and emerging social, systemic and operational issues in community and human services.

NCOSS has a vision for a society where there is social and economic equity, based on co-operation, participation, sustainability and respect.

NCOSS membership is composed of community organisations and interested individuals. Affiliate members include local government councils, business organisations and Government agencies.

Member organisations are diverse, including unfunded self-help groups, children's services, youth services, disability service providers, emergency relief agencies, chronic illness and community care organisations, family support agencies, housing and homeless services, mental health, alcohol and other drug organisations, local Indigenous community organisations, faith-based groups, peak organisations and a range of population-specific consumer advocacy agencies.

Contents

Introduction	2
Summary of Recommendations	2
Residential Care	3
Increased flexibility in care and services	4
Fees and subsidies	6
Accommodation payments	7
Home Care Packages	7
Package design and details	7
Fees and means-testing arrangements	8
Governance and administration	11
Aged Care Pricing Commissioner	11
Aged Care Quality Agency	12
Review of the Act	12
Conclusion	13
Acknowledgements	13

Introduction

NCOSS welcomes the opportunity to comment on the Overview of proposed changes to the *Aged Care Act 1997* and related legislation (the Overview).¹ NCOSS hopes these amendments will improve access, affordability, appropriateness and availability of aged care services to frail older people.

NCOSS has some concerns about the proposed changes to the *Aged Care Act 1997* (the Act), however, which we hope can be addressed through this consultation process. NCOSS is concerned that the standard and quality of care and services is not reduced as a result of the amendments.

Summary of Recommendations

1. That the minimum standards for residential care reflect the increasingly high care needs of users of residential aged care services.
2. That the Aged Care Pricing Commissioner have oversight of pricing and services offered as 'additional amenities' in residential aged care facilities, and is notified of any complaints made through the Aged Care Complaints Scheme in relation to fees and charges.
3. That the *User Rights Principles 1997* are amended to ensure that fees for additional amenities are required to be transparent, and that a person entering an agreement with an aged care provider for extra services or additional amenities may make a complaint and seek resolution about the services or amenities with the Aged Care Complaints Scheme.
4. That the Act specifies that the annual and the lifetime cap on care costs be escalated according to movements in the Consumer Price Index That Australian Government subsidies and supplements for residential aged care be escalated annually, and be kept in line with movements in the Consumer Price Index.
5. That Australian Government subsidies and supplements for residential aged care are escalated annually, and be kept in line with movements in the Consumer Price Index.
6. That a threshold amount for accommodation lump sum payments is set, above which any lump sum payment amount would be reviewable by the Aged Care Pricing Commissioner.
7. That the Commissioner is responsible for ensuring that accommodation payments are commensurate with costs of accommodation.
8. That core principles ensuring consumer choice are embedded in the Aged Care Act.
9. That the value of Home Care packages and supplements are escalated annually, and kept in line with movements in the Consumer Price Index.
10. That cultural appropriateness, and equity of access are taken into account in the review of amendments to the Act.

¹ DoHA (2012) *Overview of proposed changes to the Aged Care Act 1997 and related legislation*, Canberra, available at: <http://www.livinglongerlivingbetter.gov.au/internet/living/publishing.nsf/Content/Overview-of-proposed-changes-to-the-Aged-Care-Act-1997-and-related-legislation> (last accessed: 19/12/2012).

11. That a maximum basic daily fee charged to users is set for each level of Home Care package, increasing progressively by level.
12. That any determinations of financial hardship by the Secretary must take into account housing, health care, utility, and family related expenses.
13. That any fees paid for services provided by the Home and Community Care Program, and the Home Support Program, are included in the annual and lifetime cap on care fees.
14. That the dementia supplement is classified as an 'other supplement' and is not included in the calculation of the care subsidy reduction.
15. That a formal diagnosis is not required for a person to access the dementia supplement to their Home Care Package.
16. That the Aged Care Pricing Commissioner is required to:
 - Monitor pricing in the aged care sector;
 - Review complaints made to the Aged Care Complaints Scheme in relation to financial matters; and
 - Receive feedback directly from consumers regarding aged care pricing.
17. That the Aged Care Quality Agency is required to respond to consumer feedback, and report transparently on its functions.
18. That the Aged Care Quality Advisory Council specifically include a representative with experience in advocacy for older people using aged care services.
19. That the review of the reforms is public, and independent.
20. That the review of the proposed Aged Care (Living Longer Living Better) Bill 2013 take into account:
 - effectiveness of the reforms to means-testing, pricing arrangements, and workforce strategies for consumers of aged care services;
 - affordability of aged care services; and
 - the level of quality in aged care services as a result of the reforms.
21. That consultation in relation to the *Living Longer. Living Better.* reform package is restricted to the months of February-November, and align to the Shared Principles in the National Compact.

Residential Care

NCOSS supports the overall aim of Government policy to increase support for older people living in their own homes as they age, and to reduce reliance on residential care. This change in policy emphasis is likely to improve the quality of life of many older people who require support due to frailty.

However, NCOSS believes this aim could be strengthened through increased emphasis on provision of residential aged care on a temporary basis (and not as a respite service), in keeping with the emphasis of the *Living Longer. Living Better.* reforms on restorative and reablement approaches throughout the aged care system.² Furthermore, NCOSS also promotes the increased diversification of supported accommodation options for frail older people beyond congregate care in a

² Australian Government (2012) *Living Longer. Living Better. Aged Care Reform Package 2012 (technical document)*, Canberra, April 2012, available at: <http://www.health.gov.au/internet/publications/publishing.nsf/Content/ageing-living-longer-living-better-reform-package-toc> (last accessed: 17/12/2012), p. 15.

grouped, institutional environment. Introducing options for supported accommodation for people with lower support needs may reduce demand for additional support from residential aged care for people with lower support needs, and would sustain a higher quality of life for older people with support needs. From the Overview, it is not apparent that these aims will be achieved. As well as more sustainable financing options for residential aged care, opportunities to support and encourage alternative models of supported accommodation should also be explored.

Increased flexibility in care and services

In relation to Part 1 of the Overview

NCOSS supports an increased emphasis on aligning residential care services with the actual needs of the person. However, NCOSS is concerned that removal of the distinction between low care and high care may result in reduced services and amenities for some residents. NCOSS is particularly concerned that requirements for residential aged care facilities to provide continence support, podiatry services, and wound management must be maintained with the removal of the distinction between high care and low care.

The specified services for people using a high level of residential care are sometimes not delivered due to a range of circumstances, including where a service has been classified as a low care facility, but the residents have a high level of need. NCOSS has heard a number of reports of people in residential care being charged an extra fee for basic care and services such as wound care, continence management, and social activities which are required under the *Quality of Care Principles*.³

Many residents of low care residential aged care facilities have aged in place, and their care needs have escalated; the majority of new entrants to residential care in recent years have also had higher support needs.⁴ Thus the needs profile of users of residential aged care is considerably higher than the specified services for low-level residential aged care in the *Quality of Care Principles*. NCOSS recommends that minimum standards for residential care reflect the needs profile of people using residential aged care services.

Recommendation

1. That the minimum standards for residential care reflect the increasingly high care needs of users of residential aged care services.

NCOSS supports increased flexibility for people using residential aged care. However, NCOSS cautions that a basic standard of reasonable care and support should be required under the *Quality of Care Principles* and the *Accreditation Standards*, which are not being consulted upon in this review of the Act.

NCOSS cautions that, if a reasonable standard of care and service is not included in the Act or the Principles, that residents may be charged additional fees for delivery of basic services as 'extra services' or 'additional amenities'. NCOSS recommends

³ Consultation held 17/12/2012.

⁴ Productivity Commission (2011) *Caring for Older Australians*, Report No. 53, Final Inquiry Report, Canberra, p. 26.

See also AIHW (2012) *Residential aged care in Australia 2010-11: a statistical overview*, Aged care statistics series no. 36. Cat. no. AGE 68. Canberra: AIHW, Table A4.1.

clarification of the distinctions between a reasonable standard of care, extra service status, and 'additional amenities'.

From NCOSS' reading, at present, a basic support service, such as transport to and from local shops, as recommended in the *Standards and Guidelines for Residential Aged Care Services Manual*⁵, would be considered an 'additional amenity'. In a 2003 report, *On the Road, Again*⁶, NCOSS surveyed residential aged care providers, community care providers, older people living in residential aged care facilities, and community transport providers regarding provision of transport services for people living in residential aged care. NCOSS found that funding or policy responsibility for provision of transport to residents of aged care facilities was not clear, and so these services were being provided either by family members of the person, or community transport providers who would utilise spare capacity to support people in residential aged care. Since the report was published, there has not been a change in policy or funding to address this gap. Increasingly, as community transport providers' spare capacity has reduced, NCOSS is hearing reports that these services are no longer being provided to people living in residential aged care.⁷ This type of policy and funding gap should not be replicated in the present reform process.

NCOSS is concerned that the proposed changes relating to extra service status and to allow additional amenities in residential care will also require consumer protections. The Overview makes it clear that the Aged Care Pricing Commissioner (the Commissioner) will have oversight of pricing for extra services, but not for 'additional amenities'. NCOSS is concerned at this lack of oversight and recommends further consumer protections be extended to additional amenities for which an aged care provider charges an extra fee. Where providers are not approved for extra services are providing additional amenities, the number and nature of these additional amenities may in fact be very similar to those with extra service status. Oversight by the Commissioner is necessary to ensure consistency of outcomes in the extension of the capacity to offer 'additional amenities'.

Aged care is provided to people who are, by definition frail, many of whom are socially isolated. By virtue of their entry into residential aged care, a person automatically has less access to the community. Although basic consumer protections exist through contract law, aged care services are government subsidised, and thus the Government needs to maintain a level of oversight of the quality, affordability, and accessibility of services.

Recommendation

2. That the Aged Care Pricing Commissioner have oversight of pricing and services offered as 'additional amenities' in residential aged care facilities, and is notified of any complaints made through the Aged Care Complaints Scheme in relation to fees and charges.

Continued next page

⁵ DoHA (2001) *Standards and Guidelines for Residential Aged Care Services Manual*, Canberra, available at: <http://www.health.gov.au/internet/publications/publishing.nsf/Content/ageing-manuals-sgr-sgrindex.htm>.

⁶ NCOSS (2003) *On the Road, Again: The Transport Needs of People in Residential Aged Care*, Sydney, available at: http://www.ncoss.org.au/bookshelf/agedcare/submissions/0312_on_the_road_again.pdf.

⁷ Consultation held 17/12/2012, and feedback received to date.

Recommendation

3. That the *User Rights Principles 1997* are amended to ensure that fees for additional amenities are required to be transparent, and that a person entering an agreement with an aged care provider for extra services or additional amenities may make a complaint and seek resolution about the services or amenities with the Aged Care Complaints Scheme.

Fees and subsidies

In relation to Part 2 of the Overview

NCOSS supports the inclusion of an annual and a lifetime cap on care fees payable by a person using an aged care service. However, while NCOSS supports indexation of this amount, the level of indexation needs to be specified in the Act, to ensure that the annual and lifetime caps escalate appropriately. NCOSS recommends that the caps be escalated in line with the Consumer Price Index.

Recommendation

4. That the Act specifies that the annual and the lifetime cap on care costs be escalated according to movements in the Consumer Price Index.

NCOSS also notes that supplement values will be set in Determinations, and that they will be indexed bi-annually. NCOSS recommends that government subsidies for accommodation and care costs should be set on the basis of a transparent assessment of the costs of accommodation and care.

NCOSS is concerned that bi-annual indexation will not keep pace with increasing costs, nor is this approach to escalation of government subsidies for aged care services consistent with many other government programs. For instance, grants for delivery of the Home and Community Care (HACC) Program have involved annual indexation to keep pace with rising costs.

Furthermore, NCOSS has heard that many aged care providers are particularly facing increasing costs due to increases in energy prices. The NSW Government Office of Environment and Heritage conducted a recent audit of energy usage in a number of residential aged care facilities in NSW, finding that the majority of energy usage was for heating, cooling, hot water production and lighting.⁸ Many of these costs can only be abated to a limited extent by implementing energy saving measures. Subsidy levels which do not keep pace with increased costs may therefore result in reduced quality of care for aged care service users.

NCOSS recommends that indexation for government supplements and subsidies be applied annually, and be escalated according to movements in the Consumer Price Index.

Recommendation

5. That Australian Government subsidies and supplements for residential aged care are escalated annually, and be kept in line with movements in the Consumer Price Index.

⁸ NSW Government Department of Premier & Cabinet (2012) *Energy Saver: Aged Care Toolkit*, Sydney, available at: <http://www.environment.nsw.gov.au/sustainbus/esagedcare.htm%20> (last accessed: 19/12/2012).

Accommodation payments

In relation to Part 3 of the Overview

NCOSS supports the increased protections for accommodation lump sums that will be introduced to the Act, including setting a maximum lump sum amount, requiring that lump sums be refundable, and introducing a 21-day election period to allow the person to choose how they wish to make accommodation payments.

NCOSS notes that the draft recommendation by the Aged Care Financing Authority is to set the maximum lump sum amount to \$500,000, or the 95th percentile of all accommodation bonds charged presently.⁹ The Authority would then only review any applications for a lump sum amount higher than the maximum.

NCOSS is concerned with this methodology for a number of reasons. The proposed methodology by the Financing Authority does not take account of movements within lower percentiles, nor does the Authority give a rationale for setting the maximum according to the 95th percentile. Changes to financing arrangements for residential aged care, such as the introduction of the capacity to charge an accommodation lump sum for all types of residential care places, and the removal of the capacity for providers to draw down a retention amount from accommodation bonds, will have considerable impact on accommodation bonds/lump sums, and until these movements can be monitored, it is not sound practice to make a determination on the basis that the Financing Authority has suggested.

In addition to setting a maximum lump sum amount, it would be preferable for a threshold amount to be set for lump sum accommodation payments, commensurate with a reasonable basic level of accommodation, above which any lump sum amount would be reviewable. This rate may be commensurate with the rate of accommodation supplement for fully supported residents, or with another rate transparently set by the Commissioner or the Minister. This would allow the Commissioner to monitor overall movements in pricing, and to make recommendations about regulation and government subsidy rates.

Recommendations

6. That a threshold amount for accommodation lump sum payments is set, above which any lump sum payment amount would be reviewable by the Aged Care Pricing Commissioner.
7. That the Commissioner is responsible for ensuring that accommodation payments are commensurate with costs of accommodation.

Home Care Packages

Package design and details

In relation to Part 4 of the Overview

NCOSS is concerned that the details of the design of Home Care packages will not be made in the Act, but in the Principles. NCOSS considers the detail of changes to design elements of Home Care packages to be very significant, particularly in the

⁹ Aged Care Financing Authority (2012) *Advice on Accommodation Payments and Equivalence of Lump Sum and Periodic Payments*, Canberra, available at: <http://www.health.gov.au/internet/main/publishing.nsf/Content/ageing-aged-care-acfa-draft-accom-payments> (last accessed: 18/12/2012).

implementation of Consumer Directed Care (CDC). Consumer Directed Care involves significant change to the delivery of in-home support to frail older people. While NCOSS supports the principles of increasing choice and control for people using support services, ensuring that the person has genuine choice, in a framework decided on the basis of their aspirations and objectives, can be complex. In NCOSS' experience, many service providers are unsure about the process of implementation of self-directed approaches. The evaluation of the Consumer Directed Care Pilot demonstrated that a number of providers had taken a 'menu' approach, which limited the flexibility and choice available to consumers using CDC packages.¹⁰ NCOSS considers that some core principles relating to Consumer Directed approaches needs to be given legislative effect in the Aged Care Act as well as through the Principles and Determinations in relation to the Act.

Recommendation

8. That core principles ensuring consumer choice are embedded in the Aged Care Act.

NCOSS is also concerned that the value of packages and supplements will only be indexed bi-annually. This approach is inconsistent with that applied in other aged care programs, such as the HACC Program, as well as presenting a risk to maintaining the quality of services. NCOSS recommends that indexation is applied annually to the value of packages, and is commensurate with movements in the Consumer Price Index.

Recommendation

9. That the value of Home Care packages and supplements are escalated annually, and kept in line with movements in the Consumer Price Index.

Fees and means-testing arrangements

In relation to Part 5 of the Overview

The proposed changes to fees and means-testing arrangements for Home Care packages present a very significant shift in the approach to user contributions for in-home aged care services. Implementation of these changes needs to be carefully managed in order to ensure that outcomes are in line with the overall objectives of Commonwealth aged care programs. In particular, the objectives in the Aged Care Act of:

- promote providing a high quality of care
- help care recipients enjoy the same rights as all other people
- ensure that care is accessible and affordable for all recipients
- encourage diverse, flexible and responsive aged care services that:
 - (i) are appropriate for the recipients and their carers
 - (ii) facilitate the independence of, and choice available to, those recipients and carers
- enable effective planning for delivering aged care services and ensure that these services are targeted towards those with the greatest needs

¹⁰ KPMG (2012) *Evaluation of the consumer directed care initiative – Final Report*, Canberra, January, available at: <http://www.health.gov.au/internet/main/publishing.nsf/Content/ageing-cdc-evaluation.htm> (last accessed 18/12/2012),

- provide funding that takes account of the quality, type and level of care.¹¹

NCOSS suggests that the review of amendments to the Act have a particular focus on the implementation of means-testing arrangements for Home Care packages.

NCOSS is particularly concerned with the cultural appropriateness and affordability of fee levels and means-testing arrangements for Home Care packages. NCOSS has heard a number of concerns that implementing very detailed means-testing arrangements, likely through Centrelink, as is the case with means-testing for residential aged care, may be a deterrent to people from culturally and linguistically diverse communities needing support. With the large projected increase in older people from culturally and linguistically diverse communities¹², ensuring the cultural appropriateness of aged care services must remain a strong priority. Furthermore, since usage of community care packages is higher than the usage of residential care for people born in non-English speaking countries¹³, it is imperative to ensure that Home Care packages remain an appropriate and affordable option for people from culturally and linguistically diverse communities.

The capacity within Centrelink and in Aged Care Assessment Teams (ACATs), to communicate clearly about means-testing arrangements must be ensured, and implementation of means-testing where it is conducted by Home Care package providers must be reviewed. Cultural appropriateness does not only amount to the availability of interpreters, but also the skill of ACAT and Centrelink staff in communicating cross-culturally with people who may have particular concerns about access to their financial information. Translated written material must be available, as well as plain-English information about privacy protections for the person.

Recommendation

10. That cultural appropriateness, and equity of access are taken into account in the review of amendments to the Act.

NCOSS is also concerned that the basic daily fee, which can be up to 17.5% of the basic daily age pension amount, appears to be the same for all levels of Home Care packages. This appears to be inequitable, and would be a considerable deterrent to seeking support early, before needs escalate, in contravention of the aims of the *Living Longer. Living Better.* aged care reforms.

Recommendations

11. That a maximum basic daily fee charged to users is set for each level of Home Care package, increasing progressively by level.

¹¹ DoHA (2011) *Community Packaged Care Guidelines*, Canberra, available at: <http://www.cpcguidelines.health.gov.au/> (last accessed: 19/12/2012), p. 11.

¹² ABS (2012) *Reflecting a Nation: Stories from the 2011 Census – Who are Australia's Older People?*, 2071.0, 21 June, available at: <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2071.0main+features752012-2013>, last updated: 12/12/2012.

¹³ AIHW (2012) *Aged care packages in the community 2010-11: a statistical overview*, Aged care statistics series no. 37, Cat. no. AGE 69, Canberra: AIHW, pp. 34-35; and AIHW (2012) *Residential aged care in Australia 2010-11: a statistical overview*, Aged care statistics series no. 36, Cat. no. AGE 68, Canberra: AIHW, pp. 26-27.

Implementation of means-testing, without an adequate subsidy level that meets the true cost of services, is likely to reduce the incentive for Home Care package providers to accept clients with a low income.

NCOSS is concerned at the effect of fee levels on older people living in rental accommodation, either renting privately or in social housing, who already pay a significant proportion of their income towards housing costs. Most older people living in rental accommodation pay a significant proportion of their income towards housing costs and are at significant risk of housing stress.¹⁴ NCOSS is also aware of many older Aboriginal and Torres Strait Islander people who support family members who are not dependents of the older person, as a matter of kinship and community obligation. Determinations of financial hardship must allow for the Secretary to take into account the housing, health care, utilities, and other costs affecting the person, including costs associated with supporting other family members (who may not be dependents).

Recommendation

12. That any determinations of financial hardship by the Secretary must take into account housing, health care, utility, and family related expenses.

At present, there are a number of older people reliant on Home and Community Care (HACC) services who have either been approved for a Community Aged Care Package (CACP), an Extended Aged Care at Home (EACH), or an EACH-Dementia package, or who use a similar level of service as provided by a CACP, EACH or EACH-D package. There are currently a number of deterrents and obstacles to these people accessing community packaged care. A major obstacle that is reported to NCOSS is the inconsistency of fees and charges between HACC services and community packaged care services. Often, the higher fees for community packaged care are a deterrent to people using a more appropriate level of support. NCOSS is concerned that the additional supports available to community packaged care users, particularly case management, is not being made available due to the additional financial burden this would impose.

NCOSS is concerned that the implementation of a higher fee schedule and means-testing arrangements would create a further deterrent for older people who require a higher level of support, and would, in turn, result in further demands on HACC services (which will, after 2015, become part of the Home Support Program). The provision to not include fees paid under the Home Support Program in the annual or lifetime cap on care fees is only likely to increase this deterrent effect.

Recommendation

13. That any fees paid for services provided by the Home and Community Care Program, and the Home Support Program, are included in the annual and lifetime cap on care fees.

Furthermore, NCOSS is concerned that the dementia supplement may be included in the calculation of the care subsidy reduction. This effect would be inequitable for people with dementia, who are noted as a special needs group under the Act. If the dementia supplement is classified as an 'other supplement' rather than a 'primary

¹⁴ AIHW (2012) *Housing assistance in Australia 2012*, Cat. no. HOU 266, Canberra: AIHW pp.45-48.

supplement' and excluded from calculating the care subsidy reduction, this effect may be avoided.

NCOSS also notes that accessing a timely diagnosis of dementia is difficult for many older people, and, on average, 3.1 years pass between first noticing symptoms and accessing a formal diagnosis.¹⁵ Requiring a formal diagnosis for dementia support through the dementia supplement would be a major inhibitor of people receiving timely support. NCOSS notes that the HACC Program does not require a formal diagnosis before specialised dementia supports are put into place, and supports this approach being extended to the dementia supplement for Home Care Packages.

Recommendations

14. That the dementia supplement is classified as an 'other supplement' and is not included in the calculation of the care subsidy reduction.
15. That a formal diagnosis is not required for a person to access the dementia supplement to their Home Care Package.

Governance and administration

In relation to Part 6 of the Overview

Aged Care Pricing Commissioner

NCOSS supports the formation of an independent body to assess pricing and costs in aged care services. However, the restricted responsibilities of the Commissioner concern NCOSS, as there are a number of aspects of pricing in aged care services which needs to be subject to oversight by the Commissioner. This submission includes a number of recommendations relating to the role of the Commissioner, and areas in which the Commissioner may have an appropriate regulatory role.

The relationship of the Commissioner to the Aged Care Complaints Scheme and the Aged Care Quality Agency must be strong in order to effectively monitor pricing and costs in the aged care sector. In particular, the Commissioner must have the power to review complaints made to the Aged Care Complaints Scheme about financial matters, and be required to set prices on a transparent basis.

Recommendation

16. That the Aged Care Pricing Commissioner is required to:
 - Monitor pricing in the aged care sector;
 - Review complaints made to the Aged Care Complaints Scheme in relation to financial matters; and
 - Receive feedback directly from consumers regarding aged care pricing.

¹⁵ Phillips, Jill, Pond, Dimity & Goode, Susan (2011) *Timely Diagnosis of Dementia: Can we do better?*, University of Newcastle, Alzheimer's Australia Paper 24, available at: http://www.fightdementia.org.au/common/files/NAT/Timely_Diagnosis_Can_we_do_better.pdf (last accessed: 19/12/2012).

Aged Care Quality Agency

NCOSS is concerned that many of the details about the establishment of the Aged Care Quality Agency are absent from the Overview. The role and functions of the Aged Care Quality Agency will need to be clearly delineated, and have a focus on delivering effective outcomes for consumers. NCOSS has heard a number of reports that the Aged Care Standards and Accreditation Agency is no longer responsive to consumer feedback or to requests for information from advocates for older people using aged care services.¹⁶

Recommendations

17. That the Aged Care Quality Agency is required to respond to consumer feedback, and report transparently on its functions.
18. That the Aged Care Quality Advisory Council specifically include a representative with experience in advocacy for older people using aged care services.

Review of the Act

NCOSS supports the inclusion of a review of changes to the Act in the proposed amendments. The scope of the review is unclear, however, particularly as to whether the review will assess the entire *Living Longer. Living Better.* reform package, or only the amendments to the Aged Care Act.

It is also not clear if the proposed review will involve public consultation. Measures that will be used to assess the effectiveness for means-testing arrangements, pricing arrangements, and workforce strategies must be transparent and assess effectiveness on the basis of outcomes for consumers, rather than providers or government. The review must also include an assessment of whether the reforms have resulted in an improvement in the quality of aged care services.

Recommendations

19. That the review of the reforms is public, and independent.
20. That the review of the proposed *Aged Care (Living Longer Living Better) Bill 2013* take into account:
 - effectiveness of the reforms to means-testing, pricing arrangements, and workforce strategies for consumers of aged care services;
 - affordability of aged care services; and
 - the level of quality in aged care services as a result of the reforms.

NCOSS is also concerned about the brief consultation period for these proposed changes to the Act, and that consultation has been held in December, when many stakeholders would not have the capacity to provide comments on the possible effects of the changes. It would be preferable for all further consultation to be conducted in accordance with the Shared Principles in the National Compact with the not-for-profit sector, which state:

¹⁶ Consultation held 17/12/2012.

- We aspire to a relationship between the Government and the sector based on mutual respect and trust.
- We agree that authentic consultation, constructive advocacy and genuine collaboration between the sector and the Government will lead to better policies, programs and services for our communities.¹⁷

Recommendation

21. That consultation in relation to the *Living Longer. Living Better.* reform package is restricted to the months of February-November, and aligned to the Shared Principles in the National Compact.

Conclusion

NCOSS appreciates the opportunity to comment on the proposed changes to the *Aged Care Act 1997* and related legislation, and is happy to provide additional comments supplementary to this submission.

Acknowledgements

NCOSS gratefully acknowledges the contribution of the following organisations in preparing comments for this submission:

Association of Independent Retirees
Combined Pensioners and Superannuants' Association NSW
National Seniors Australia
NSW HACC Issues Forum
NSW Nurses and Midwives' Association
The Aged-Care Rights Service

¹⁷ Australian Government (2012) *National Compact: working together*, Canberra.