

# aged care reform

a summary of the Government's Living Longer Living Better aged care reform package



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## about PKF

PKF is a major chartered accounting and business advisory firm in Australia, with 12 capital city and regional offices located across Australia. Nationally PKF has over 90 partners and 700 professional staff working together to provide seamless services to our clients.

Our professionals offer a full range of technical services, including audit and assurance, business risk solutions, corporate advisory, corporate recovery, enterprise advisory and tax consulting services.

In addition, we have a number of established cross-service industry teams that comprise senior staff members with extensive knowledge and experience in the chosen industry sectors. This includes our Senior Living Team.

Julie Hough is the co-author of this document and a lead partner in PKF's Senior Living Team acting in a professional accounting and business advisory capacity to aged care providers and retirement village operators, from acquisition or development phase to divestment.

PKF's services to the Senior Living industry are delivered Australia wide, and we count businesses from both the profit and not-for-profit sectors amongst our valued clients.

PKF is also an active sponsor of the Senior Living industry through direct sponsorship and ongoing involvement with industry peak bodies and events.

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## about Hynes

Hynes Lawyers is a specialist commercial law practice. We focus on providing legal services to a limited number of industries, including the aged care and retirement village industries.

Julie McStay heads our aged care and retirement village team and is acknowledged as a leading provider of legal services to the aged care and retirement living industries.

Julie is a member of the Elder Law Committee of the Queensland Law Society and the Queensland Regional Committee of the Retirement Village Association of Australia. She is at the forefront of legislative developments in both the aged care and retirement living industries. Julie was recently selected by her peers for inclusion in Best Lawyers International 2012 as a leading lawyer in Australia in 'Retirement Villages and Senior Living Law'.

Hynes Lawyers act for a wide range of aged care providers and retirement living operators. We also act for the major industry bodies including Leading Age Services Australia (LASA) (Hynes Lawyers advised on the recent establishment of LASA), Aged Care Association Australia and Aged Care Queensland.

Hynes Lawyers provide advice to aged care and retirement village operators on all aspects of their business including the sale, purchase, redevelopment and operation of aged care and retirement village assets, regulatory compliance, workplace relations, workplace health and safety and major incident investigations.

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## introduction

On 20 April 2012, the Government announced its much anticipated aged care reform package – Living Longer Living Better.

The Government has announced the package in response to uniform calls for reform by the aged care industry which is an industry under significant stress due to inadequate government funding, limited opportunities to obtain contributions to funding from consumers, major workforce challenges and over regulation.

The package involves some very significant reforms. There is much detail yet to be released but this detail will no doubt be provided as each element of the package is explored through continued consultation between government and industry stakeholders.

As a starting point, the concepts proposed by the package do seek to address the principle issues and have (mostly) been welcomed by the industry.

The reforms provide significant additional government funding in the form of additional Home Care Packages and increased accommodation payments for concessional residents. The reforms will also allow providers some freedom to negotiate accommodation payments with those residents who can afford to pay, within the boundaries to be set by the new Aged Care Financing Authority, acting as the industry's funding and pricing watch-dog.

For the much needed reform of capital funding in the residential aged care sector, despite the removal of the distinctions between high care, low care and extra services places, the Government's package arguably provides less incentive for consumers to pay lump sum accommodation bonds. In future, consumers may instead favour periodic rent- style payments or a combination of both periodic and lump sum payments for their residential aged care accommodation. Considered in tandem with the Aged Care Funding Authority's intended powers over the pricing of bonds, a shift away from interest free, resident sourced capital funding to bank debt funding can be expected.

The package does however provide significantly increased opportunities for providers to obtain recurrent contributions to funding from consumers as changes to means testing should give providers access to more user-pays revenue. The family home will remain exempt from the calculation of co-contributions. The new means tests will mean some people will pay more for their aged care than they currently would but this is an unfortunate reality as government and the taxpayer do not have the capacity to meet the cost of demand without these co contributions.

A very large bundle of funding has been allocated to provide some immediate relief to attempt to achieve parity in wages with the acute sector. This funding is also intended to at least start to address long-term workforce issues.

The reforms also include the establishment of a number of new government bodies and there will be significant new regulation for providers at least in the short term. It is not clear at this stage whether the new package will ultimately reduce the regulatory burden on providers. Uncertainty about the extent of the powers of some of those bodies (including the new Aged Care Finance Authority and the new Gateway that is lauded as the 'one stop shop for aged care') is critical detail that must be provided as soon as possible.

Some other aspects of the package will cause concern for providers, not the least of which is a proposed rationalization of funding under the ACFI. It will remain to be seen whether any proposed 'modification' demonstrates that expenditure has exceeded estimates because of 'frailty growth', inappropriate claiming behavior or budget underestimation.

In this report, and in the presentation that accompanies it, Hynes Lawyers and PKF will consider each of the reforms proposed and identify the legal and financial implications of those reforms as well as highlight the areas where more detail must follow.

## summary of reforms

### YEAR 1: 2012-2013

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#### Summary

- Laying the groundwork for reforms, while also rolling out initiatives that will have immediate benefits for consumers.
- \$955.4 million over 5 years to provide older Australians and their carers better access to aged care with a greater emphasis on home care.
- Funding is to be offset by redirected funding from residential care (net additional funding \$426.1 million over 5 years).
- No significant changes to HACC service delivery until 2015.
- Increase home care package coverage over 10 years from 27:1000 to 45:1000.
- Residential aged care sector will also significantly increase over 10 years but by 25,350 places less than previously planned for, saving \$454 million over 5 years which has been redirected to Home Care Support.

#### Implementation process

- Transition Office and Aged Care Reform Implementation Council established.
- This will include work to commence set up of the Aged Care Financing Authority.
- Integration of National Respite for Carers Program, Day Therapy Centre and Assistance with Care and Housing for the Aged into a single Commonwealth Home Support Program. (CHS) (\$75.3 million over 5 years).

#### Gateway

- Introduction of the My Aged Care website and national call centre early 2013.
- Design of Gateway commences.
- Increased advocacy services and community visitor services.

#### Capital funding

- Object is that investment and building activity in residential aged care sector will begin to increase to capitalise on future capital income streams.
- User pays charges to yield \$378 million over 5 years to support other aged care reforms.
- Second round of extended Zero Real Interest Loans (ZRILs) – (\$150 million still to be allocated).
- ZRIL and Rural and Regional Building Fund combined in to Rural, Regional and Other Special Needs Building Fund (\$51 million per annum).
- Services providing for rural, remote, homeless and indigenous aged persons have certainty that viability supplements will continue and an extra \$108 million over 5 years will ensure sustainability, prevent closures and maintain consumer access to residential aged care.

## YEAR 1: 2012-2013

### Recurrent funding

- ACFI modifications will be introduced to address alleged provider claiming behaviour that is not attributable to 'frailty growth' in the residential aged care population.
- From 1 July 2012 scores and payment levels within ADL (Activities of Daily Living) and CHC (Complex Health Care) domains of ACFI will be modified (redirecting \$1.6 billion over 5 years).
- Work will commence to adapt/revise ACFI to be applied by independent assessors and for it to be applied in both residential and home care settings.
- The Commonwealth will have full funding, policy and operational responsibility for HACCC except in Victoria and Western Australia from 1 July 2012.
- From 1 July 2012 Consumer Directed Care (CDC) pilot packages will be mainstreamed (\$65.4 million over 5 years for embedding CDC).
- Commencement of CDC pilot in residential care.

### Workforce

- \$1.2 billion Workforce Compact to provide funding for wages (to be overseen by Fair Work Australia).
- The Workforce Compact will provide increases to CAP funding and will be paid subject to providers:
  - becoming a signatory;
  - entering an Enterprise Bargaining Agreement that takes into account additional CAP funding; and
  - taking part in DOHA Census and survey.
- CAP introduced for Home Care and funding paid subject to same conditions for residential care.
- Funding will be available through Aged Care Service Improvement and Healthy Ageing Grants Fund for organisations who offer services to improve the skills of aged care workers in caring for special needs groups.

### Places

- ACAR continues.
- Approximately 4,900 new Home Care Packages and 5,690 new Residential Care packages - offered through 2012-13 ACAR (likely to be issued early in 2013).
- Review planning regions to ascertain current and future priorities by 30 June 2013.

### Other

- Work will begin on rating systems and quality indicators for residential and home care services.
- Commencement of staged expansion of national ATSI Aged Care program (200 beds and 7 services).
- Commencement of expansion of funding for older Australians who are homeless or at risk of homelessness.
- Increased places for Rural and Remote Indigenous aged community under Flexible Care program.
- Long Stay Older Patients Program supporting long stay older patients in hospitals whilst awaiting alternative care or appropriate long term care will be discontinued. The objectives of this program are largely addressed by other National Health Reform initiatives and additional places in the reform package.

## YEAR 2: 2013-2014

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### Summary

- As well as continued implementation of the Year 1 initiatives, Year 2 would see more direct improvements to access for consumers, with new Home Care Packages coming on line and more homes being built in areas of need.

### Implementation process

- Aged Care Financing Authority will review the schedule of specified care and services to determine single set of requirements.
- Development of Commonwealth Home Support (CHS) complete.
- A pilot and evaluation of two new levels of Home Care Packages.
- Evaluation of CDC in residential setting.
- Initiatives to support diversity, strengthen the health interface and tackle dementia will be fully implemented.

### Gateway

- Partly functional Gateway established.
- Additional functionality added to the My Aged Care Website.
- Work will commence to standardise assessment processes for basic home support and comprehensive assessments delivered by ACATs.

### Capital funding

- Aim for more homes to continue to be built in areas of need.

### Recurrent funding

- For residential care monitoring of ACFI modifications continues, to ensure claiming behaviour is in line with 'frailty growth' expectations.
- From 1 July 2013:
  - a new 'very high' level of funding to the behaviour domain of ACFI (\$5,800 per annum funded partly by reduction in existing high behaviour domain of 1%);
  - new dementia supplement to Home Care Package providers to assist them to deliver better care to people with dementia; and
  - a new funding supplement under Home Care Packages for veterans with an accepted mental health condition.
- Two new levels of Home Care Packages to be trialed:
  - Level A (new low level services)
  - Level B (existing CACPs)
  - Level C (new intermediate level of care)
  - Level D (existing EACH).
- EACHD packages will be abolished as at 30 June 2013 and existing recipients will transfer to a Level D Package with a new behaviour supplement available.

## YEAR 2: 2013-2014

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### Means testing and co-contributions

- Work will continue to develop nationally consistent approach to user contributions for CHS.

### Workforce

- New conditional adjustment payment will be introduced to support higher wages and complement the Workforce Compact.
- 1% increase to CAP.
- Training for primary care professionals in dementia diagnosis.

### Places

- ACAR.
- 1/7/2014 - 3600 Home Care Packages and 5980 Residential Care Places to be accessible.

### Other

- All new Home Care Packages offered after 1 July 2013 must be offered on a CDC basis.
  - Funding initiatives to support projects that promote innovation, improved outcomes and business sustainability in priority areas of care e.g. palliative care, dementia and special needs groups.
  - Services providing for rural, remote homeless and indigenous aged persons have certainty that viability supplements will continue.
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## YEAR 3-4: 2014-2015 TO 2015-2016

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### Summary

- In addition to continuing the controlled expansion of home care and work to build a Gateway to the aged care system and integrated funding arrangements across community and residential care, years three to four will see the implementation of stronger means testing arrangements in Home Care Packages and residential care and more sustainable financing arrangements for capital funding in residential care.'

### Implementation process

- Change to capital funding arrangements, continued review of ACFI payments, current ES arrangements cease, user pays for additional services requested.
- User pays care contributions yielding \$183m over 5 years to support other aged care reform initiatives including the expansion of CHS.
- 'Business as usual' approach to HACC ends.
- CHS Program will commence 1 July 2015 (consolidation of HACC with National Respite for Carers Program, Day Therapy Centres program and Assistance with Care and Housing for the Aged Program).
- A single set of care and service requirements will be operational from 1 July 2014.
- New cooling off period. Residents will not have to choose how they pay for their accommodation until after they have entered care and are protected by the security of tenure arrangements.

### Gateway

- Early 2014 – linking service to be established to help people with complex, multiple needs to access services.
- Further Gateway functionality.
- My Aged Care website will be expanded to include self-service functions and include information about service availability.
- National aged care quality indicators and a rating system to be finalised for residential care and results for providers to be published on the My Aged Care website.

### Capital funding

- More sustainable capital financing arrangements:
  - high/low distinction removed;
  - single accommodation payment system across residential care – lump sum, periodic payment/rent equivalent or combination;
  - prices regulated by Aged Care Funding Authority;
  - maximum level of accommodation supplement increased to \$52.84 per day from 1 July 2014 on new or significantly refurbished premises built after 20 April 2012;
  - providers to insure lump sum bonds;
  - lump sum bond fully refundable – no retentions;
  - maximum accommodation payments published on My Aged Care website.
- Providers cannot choose between residents on the basis of their choice as to how they pay for their accommodation.



## YEAR 3-4: 2014-2015 TO 2015-2016

### Recurrent funding

- ACFI monitoring will continue for management of fiscal risk to government in frailty growth of aged population.
- Single set of care and services adopted so high care/low care distinction can be completely removed.
- Consumers will have right to purchase higher standard hotel services by choice.
- Current extra service arrangements cease for new admissions after 1 July 2014.
- New arrangements for optional extra services and dedicated extra services to be transitioned.
- Places for dedicated extra services to be capped and controlled by Aged Care Financing Authority on a regional basis.
- Current ES clawback ceases.
- Residents cannot be targeted on the basis of willingness to pay additional charges.

### Means testing and co-contributions

- Stronger, fairer means testing will be applied to both home care and residential aged care settings.
- Income testing will be extended to home care fees by way of an income tested care fee on top of the current basic fee.
- For home care fees new income test for contribution to costs of care will be the same as Centrelink income test:
  - full pensioners - \$0;
  - part pensioners maximum \$5,000 pa indexed (average \$2,200 pa);
  - self-funded retirees maximum \$10,000 pa. indexed (average \$8,800 pa).
- A hardship supplement will apply to Home Care Packages for special circumstances.
- Persons in receipt of Home Care Packages on 30 June 2014 will not be income tested whilst their current episode of care continues.
- Assets testing on care will be introduced into residential aged care services in addition to income testing. However, the treatment of the family home remains unchanged i.e. exempt if occupied by a protected person.
- From 1 July 2014 care fees will depend on assessable income and assets using the same rules as Centrelink.
- Below minimum income and asset thresholds no means tested fees are payable.
- Above these thresholds, maximum means tested contribution is:
  - 50% income above income threshold; plus
  - 17.5% of value of assets between \$40,500 and \$144,500; plus
  - 1% of value of assets between \$144,500 and \$353,000; plus
  - 2% of value of assets over \$353,000;
  - directed first to accommodation and then to care fees but care fee cannot exceed the cost of care.
- Annual cap of \$25,000 (indexed) on care fees to protect residents with higher than average care needs.
- A life time cap of \$60,000 (indexed) across all settings will protect against high care costs over an extended period.
- At the higher levels of income or assets the maximum accommodation fee is \$19,235 pa and the maximum care fee is \$25,000 per annum.
- Grandfathering of income tested fees applies to pre 30 June 2014 residential aged care recipients.
- Respite care recipients continue to be exempt from means testing.

## YEAR 3-4: 2014-2015 TO 2015-2016

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### Workforce

- 2% increase to CAP 2014 – 2015.
- 3% increase to CAP in 2015-2016.

### Places

- ACAR
- Continued pilot of two new levels of Home Care Packages to be undertaken.
- 5,196 Home Care Packages and 5262 residential packages to be allocated in Year 3.
- 18,212 Home Care Packages and 4684 residential packages to be allocated in Year 4.
- By the end of 2016, an additional 26,400 Home Care Packages will have been released relative to current projections.
- Number of places for dedicated extra services will be capped and controlled by ACFA on a regional basis.

### Other

- 1 July 2014 - Australian Aged Care Quality Agency (accreditation and monitoring) will be established. Will replace the Aged care Standards and Accreditation Agency.
  - National aged care quality indicators will be operational for residential care from 1 July 2014.
  - The Aged Care Commissioner will have increased powers.
  - Before 2015 a review of service types will be undertaken to consider value and whether services are targeted to minimise transfer to high care services by emphasis on prevention and reablement.
  - Current respite programs will be consolidated from 1 July 2014. Intended result:
    - expand support for carers.
    - increase counselling component of NCR program
    - establish a network of carer support centres
    - streamline current respite programs
    - research flexible models of respite delivery for greater choice and control by care recipients.
  - Assistance with Care and Housing for the Aged (ACHA) will come under new CHS Program and will receive growth funding each year for services to those at risk of homelessness or are homeless.
  - Further investment in advocacy services, initiatives to strengthen the aged care/health interface and dementia care.
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## YEAR 5-10: 2016-2017 TO 2021-2022

### Summary

- Continue to work to develop the key building blocks for further reform, ongoing monitoring and evaluation.

### Implementation process

- Monitor and evaluate need to transition to a less regulated system that delivers more choice.
- Issues to be reviewed/monitored:
  - if demand is not met consideration should be given to removing controls of the number and mix of places;
  - stronger means testing arrangements;
  - arrangements for regulating prices for accommodation;
  - workforce strategies, including education, recruitment and retention, and funding and indexation issues.

### Gateway

- All providers input into a capacity database on My Aged Care website to enable consumers to access information on available services.
- Fully functional Gateway based around the national call centre and the website but with capacity for in home assessments by health professionals.

### Recurrent funding

- Better alignment of charges across home care and residential care.
- Gateway will determine consumer's funding entitlements independently of providers allowing greater control over Government expenditure.

### Workforce

- 3.5% increase to CAP in 2016-17.

### Places

- 43,435 Home Care Packages and 43,597 residential care places to be allocated in Year 5 to Year 10.
- By 30 June 2022 64,200 additional Home Care Packages will have been released relative to current projections.

### Other

- From 1 July 2016 national aged care quality indicators will be operational for home care services.

## REFORM PACKAGE TIMELINES

Date	Initiative
1 July 2012	Funding for better health care connections commences
	Additional funding for respite and carer counselling
	Changes to ACFI commence, four-year implementation
	Residential viability supplements commence
	Additional dementia funding commences
	Appointment of Aged Care Reform Implementation Council
1 March 2013	Aged Care Financing Authority Committee established
1 July 2013	Commencement of the 'workforce compact' subsidy
2013	My Aged Care website commences
2013	National Call Centre for consumers, families and carers launch
1 July 2014	New accommodation payment options commence (high care/low care distinction removed)
	Higher government accommodation supplement commences
	Introduction of new means-tested home care fees for new recipients; no change for current home care recipients, unless they permanently move to another facility
	Aged Care Financing Authority to provide initial advice to Minister
	Extra Service Clawback discontinued
	Rating system for residential and aged care published
2014	Aged Care Quality Agency established
1 July 2015	Commencement of new 'home support' program (consolidated various existing home programs)
1 July 2016	Rating system for home aged care published

## REFORM COSTINGS, OVER 5 YEARS AS FROM 1 JULY 2012

Spending	A\$ m	% of spend
Workforce	1,200.0	32.4
Home Care Expansion	880.1	23.7
Increase in Accommodation Supplement	486.9	13.1
Dementia	268.4	7.2
Gateway including My Aged Care Website	198.2	5.3
Diverse Backgrounds	192.0	5.2
Rural / Remote Viability Supplements	108.0	2.9
Hospitalisation Prevention; Palliative Care	80.2	2.2
Home Support Program	75.3	2.0
Removal of ES Clawback; other service choice initiatives / CDC	65.4	1.8
Carer support	54.8	1.5
Consumer support and research	39.8	1.1
Aged Care Financing Authority	26.4	0.7
Aged Care Quality Agency; Complaints Scheme Enhancements	16.6	0.4
Aged Care Reform Implementation Council	15.2	0.4
	<b>3,707.3</b>	<b>100.0</b>
Savings	A\$ m	
Home Care Means Testing	(183.0)	
Residential Care Means Testing	(378.0)	
ACFI 'Refinements'	(1,600.0)	
Lower Growth in Residential Care Bed Numbers	(454.0)	
Non-renewal of Long Stay Older Patient Initiative	(187.5)	
	<b>(2,802.5)</b>	
<b>Balance</b>	<b>904.8</b>	

Note: Some of the spending figures are gross amounts, i.e. they are not netted by savings offsets. For example, the \$800 million for home care expansion is offset by the \$454 million RACF growth constraint, giving a net additional spend of \$426 million.

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