SUBMISSION

21 October 2024

AGED CARE ACT – RULES CONSULTATION #1

Preamble

It is intended that the Rules to the new Aged Care Act (2024) “will be released in stages, with each stage open for a four week consultation period.”[1] The first release of these Consultations coincides with the release on 1 October of the Service List. This new Service List outlines the care and services that will be available to older people in the new Australian aged care legislative and regulatory framework. Consultation on this Service List is due to close for feedback and submissions on 31 October 2024.

Flexible Residential Retirement Village Accommodation as a Service

Over the past half dozen years or so there have been recurring criticisms of escalating costs to, and detrimental financial outcomes for residents of retirement villages throughout the nation.[2] The most recent of these was in late September/early October 2024 with an ABC 7.30 series on retirement living and the often excessive exit fees charged to residents exiting from their retirement living accommodation.[3]

Depending on whom one prefers to listen to, this negative press may or may not be accurate or comforting. But it does undermine, we believe, the intent of the Department of Health and Aged Care to support an increased role for delivery of care services to frail elderly people living in their retirement homes within the bounds of a retirement village, whether or not that village also includes a residential aged care as we know them today. One presumes that this desire to service frail elderly in their home in such an environment might be because of an expected greater economy of scale with delivery of services and care to more people within closer proximity, for non-care costs such as travel, care management, and so on.

Immediate national consistency amongst aged care service provision to retirement villages has the potential to fail as:

- Retirement village legislation is currently the purview of respective States/Territories and is not consistent;
- There is therefore no harmony amongst the jurisdictions around, for example, how retirement village residents can access current residential or support at home

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1 Personal email from the A/g Assistant Secretary, New Aged Care Act Transition Branch, Quality & Assurance Division, Ageing & Aged Care Group, advising the Submission broad details and timeline for this first Consultation.

2 Ferguson Adele, Toft Klaus and Danckert Sarah, 'Aveo: Exploitation of the elderly rife in retirement villages' *ABC News, 23 June 2017*. Accessed 18 October 2024.

3 Ferguson Adele et al, 'Retirement villages accused of gouging older Australians in 'corporatised elder abuse'' *ABC News, 30 September 2024*. Accessed 18 October 2024.

programs, what levels of frailty lead retirement village operators to require "independent living" residents to leave their village accommodation;
- How retirement village residents facilitate their residents to stay at home with supportive programs; and
- Unlike residential aged care services that over the past two decades have had to be constructed with a specific fire and safety standard to building class 9c, not all retirement village units will meet these fire and safety standards for support at home clients, meaning that perhaps not all retirement village dwellings are entirely suitable for provision of an equivalent contemporary residential aged care service into one's own home.

We understand that the complexities of including retirement villages into the Bill for the Aged Care Act 2024 likely raise more questions than answers. We know that the Bill only speaks to retirement villages in the Introduction to the *Act > Chapter 1 > Definitions and key concepts > Part 2 > key concepts > Division 1 > Section 10 (3) and Section 10 (4)*. Similarly, the Explanatory Memorandum (EM) commentary on this matter in the Bill only speaks to retirement villages on pages 63 and 64 of that document.

Notwithstanding some of the complexities briefly discussed above, at Grandton Limited (Grandton) we believe this is such an opportune time to include aspects of flexible accommodation as a service type in the Rules, even if that definition requires more discussion to be fully fleshed out.

Growing Incapacity to Fund and Build Additional Aged Care Places

Whenever we hear in the media about the struggles of the aged care sector in Australia it is most often either around the inability of timely access to a care package, or the extent of operational under-funding in the sector. There is a third financing issue that has concerned the sector for almost three decades, being the ability to receive adequate income to fund the construction and maintenance of residential aged care facilities. UTS believes that the raising of adequate capital to provide care for the growing population of older people in need is a considerable challenge.[4]

During the middle of the 20th century in Australia there were significant improvements in the care and accommodation of retirees and frail elderly people. The *Aged Persons Homes Act* 1954 (Cth)[5] (APHA) was implemented at a time of post second World War housing crisis in Australia, ostensibly to encourage lower income recipients to relocate from their suburban home to more suitable (size-wise) cottages in multi dwelling communities, thereby freeing up suburban housing for returned service men and their families. This APHA enabled mainly church and charitable, and not for profit defence housing organisations (what became known as the voluntary care sector) to develop early forms of retirement villages throughout most metropolitan areas in our capital cities. Often funding from the Australian Government was as high as a 4:1 ratio[6], that is, $4 from the Commonwealth to every $1 from a provider.

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4 Sutton Nicole et al, 'Australia's Aged Care Sector: Mid-Year Report (2023–24)', (UTS Ageing Research Collaborative, 2024), 34.

5 *Aged Persons Homes Act 1954* (Cth).

6 Dargavel Ricki and Kendig Hal, 'Political rhetoric and program drift: House and Senate debates on the Aged or Disabled Persons' Homes Act.' *Australian Journal on Ageing*, 5(2), 23

The subsidy arrangements of capital development for independent living slowly diminished until the mid 1980s when funding capital for independent living units was phased out. The capital contributions were now being channelled to residential aged care. Further, the then typical contribution that residents may have made to access previously Australian Government construction funded independent unit living, and hostels was, well into the 1990s and beyond for low level care, a form of interest free loan paid at entry, subject to an annual retention, and the balance refunded to the resident or their estate at exit from that accommodation.

Retirement villages in Australia were once in the DNA of the Australian Government in terms of provision of supportive aged care programs! And they might yet be again!

Progressively through the 1960s and 1970s adding nursing home benefits to the *National Health Act 1953* in 1962[7] and commencement of personal care subsidies in 1969 saw the rapid development and growth of nursing homes (high care facilities – then C class hospitals), and hostels (low care facilities). Contemporaneously, in the 1960s the first regulatory arrangements around donations and contributions towards the capital cost of aged care built form were introduced. In his review of the capital funding system for nursing homes in Australia, Gregory expressed “The current system of nursing home funding in Australia does not seem to provide sufficient incentive for the maintenance of the buildings and the replenishment of nursing home capital stock over time.”[8] With the introduction of the *Aged Care Act 1997* (Cth) on 1 October 1997, new regulation provided for an accommodation bond to be payable by residents entering care across both low and high level care (and all care to be known as nursing homes). This was the first time provisions for accommodation bonds had been permitted in high care services. Following significant community lobbying and pressure just some six weeks following the commencement of the Aged Care Act 1997 the Commonwealth reversed its decision about accommodation bonds in high care and just six weeks after introduction those high care bond provisions were repealed, with a daily accommodation charge for those who had been assessed as being able to pay were permitted as an alternative. In 2014, following the 2012 Living Longer Living Better legislative review[9], Refundable Accommodation Deposits (RADs) were introduced across all residential services for those assessed as having the means to contribute, finally bringing a consistent form of capital contribution to residential aged care in Australia.

Although there has been regular tinkering around a theme, these regulatory arrangements around (loan or refundable deposit) contributions towards the cost of aged care capital by residents have essentially been in place for some sixty years. It has proven to be a compromised system, with characteristics of a Ponzi scheme whereby for many residential aged care providers, the RAD reimbursable to a departing resident ideally will be replaced with the RAD from an incoming resident. Only a small proportion of all RADs owing to residents are maintained in liquid form by many providers, with the balance having been paid to reduce debt incurred for the development of additional new facilities. By 2022-23 some $38.1 billion and growing is owed to residents/resident estates, that is, debt to the residential aged care sector and most of its care providers.[10]

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[7] *National Health Act 1953* (Cth).

[8] Gregory Robert, 'Review of the Structure of Nursing Home Funding Arrangements' (Report, Department of Human Services and Health, 1994), 1.

[9] *Aged Care (Living Longer Living Better) Act 2013* (Cth).

[10] *Senate Community Affairs Legislation Committee Estimates*, (Proof Committee Hansard, Thursday, 6 June 2024), 82.

Whilst there has not been a failure in the sector requiring a call on the sector 'insurance' cover of the prudential arrangements via the Bond Guarantee scheme for RADs that can be called upon by the Department of Health and Ageing, that is not to say that failures haven't occurred. So far the Australian Government has either carried the cost of these failures itself or brokered an amiable solution between liquidator/administrator and a white knight provider. However, with the average RAD at $332,000 on 30 June 2020[11], and the cost of just the construction of each residential aged care place estimated at being between $400,000 and $500,000[12], and noting that a residential aged care place, along with community spaces such as dining and activity rooms, provides approximately 30m^2 of personal living space (including an ensuite bathroom) one wonders if the RAD/accommodation bond system passes today's pub test of both value for money and space per person.

This lack of appropriate capital funding for the sector is a problem magnified when both the Aged Care Financing Authority and Grant Thornton have estimated the future capital funding needs of the sector for new facilities and substantial refurbishment of current services will be between $100 and $120 billion by 2030.[13]

The RAD system is based on an outdated model for funding of capital in Australia's aged care sector. The debt burden of the sector growing, not provisioned for repayment, and there is little hope of the sector having the capacity to repay debt in and of its own resources. In addition, RAD payments do not reflect contemporary value for money. The Aged Care Taskforce Recommendation 12 suggested that the current RAD system be next scheduled for review by 2030[14], by which time the premise on which RADs and previous resident paid interest free loans/contributions appears to have been based will itself be above pensionable age. Whilst at Grandton we believe the RAD system should be retired and replaced with a fit for purpose system now rather than reviewed by 2030 and replaced in the mid 2030s, we have a stronger view about an alternatively developed and funded form of accommodation that could be part of the solution to aged care capital funding and that assists in solving the housing crisis we currently are experiencing nation-wide.

What is this way in which no (additional) capital contribution, howsoever called, needed to be paid by an entrant into a form of residential aged care? What if, for example, the price of a person's retirement village residential accommodation, the ongoing cost of their utilities and common area charges, were accepted as part of their entry to a residential aged care place? And what if other flexible payments for non-clinical care services and hotelling charges were accommodated in an agreement with the individual requiring residential aged care services in their own home?

With a significant shortage in general housing availability, aged care providers should well consider development of co-located residential aged care and retirement housing within the same building that can offer a flexible delivery of care accommodation to seniors as they age

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11 Aged Care Financing Authority, 'Review of the Current and Future Role of Refundable Accommodation Deposits in Aged Care' (Appendix A - A short history of accommodation payments in residential aged care, March 2021), 5.

12 Broomham Lauren, '$575K to build an aged care bed - if you can find a builder, as big players say 'no' to sub $50M developments'(75) *The Weekly SOURCE, 10 May 2024*. Accessed 18 October 2024.

13 Aged Care Financing Authority, 'Annual Report on the Funding and Financing of the Aged Care Sector – 2021' (Report, ACFA), 111. and Price Darrell, 'Key considerations for a capital model to support sustainability in the aged care sector' (Report, Grant Thornton, October 2023), 22.

14 Aged Care Taskforce, 'Final report of the Aged Care Taskforce' (Report, Department of Health and Ageing, 2023), 30.

and become increasingly frail without the senior having to leave their community simply due to advancing frailty. It is possible and really is worth considering.

Grandton Limited and Flexible Accommodation as a Service

At Grandton, we believe we have developed a part solution to diminishing the relentless demand for capital development programs for residential aged care places, through the development of a vertical high rise (15 levels) over 55s residential accommodation development that contains some 100 apartments and a 10 bed care suite. Eight of the single bedroom apartments are dedicated to being a part of the overall care providers “bed allocation”, and the entire complex has achieved a 9c building classification meaning that in time the entire facility could itself be a 100 plus place aged care service.

Any resident aged 55 years and over can purchase their apartment on a strata basis with no exit, refurbishment, or deferred management fee payable, and the right to sell on their accommodation to the next purchaser, provided that purchaser is aged over 55 years. Inherently, while the individual resides in their apartment, it will be only in very limited circumstances that the apartment resident will ever need to leave their home for their aged care, if their partner and/or family cannot quite manage to support them with the attending services being provided. When a vacancy arises, the smaller care suite in the facility will make that transition to aged care a little easier and the resident remains in the community with which they are familiar.

This model of care and service has recently opened in Perth for the first time. In future developments we are aiming for a twenty place care suite, with a similar number of apartments, each of which will again be classified as a 9c class place, potentially becoming in time an aged care place for the occupant. Whilst the operator of the care suite can admit people from outside of the Grandton facility, we believe that in time, exiting Grandton residents will occupy care suite places and apartments around the Grandton building, fulfilling the Grandton Model’s aims – a purpose that we will be happy to elaborate upon if the reviewers of this submission choose to follow up.

We leave our recommendation with you and discuss following some of the rationale as to why we believe this recommendation of flexible accommodation ought to be welcomed and strongly encouraged.

Recommendation

Similarly to the power of the System Governor to allocate priority places under the authority of the proposed Aged Care Act we recommend that:

1. The System Governor be able to allocate individual dwellings in a retirement village as a flexible place for purposes of residential aged care;
2. Such approved flexible care places be facilitated where the proposed level of Support at Home services exceed the capacity of Support at Home service arrangements but can be met within the scope of residential aged care programs;
3. The financial arrangements at entry will require adequate flexibility to accept that neither a RAD nor DAP, and other non-clinical payments might usually be payable by

the resident where the resident already has an Agreement around the tenancy of their dwelling, however that Agreement is structured;

4 The care provided in such circumstances will be provided by the residential aged care facility at that retirement village without diminishing the existing regulatory requirements to service of each other resident in that aged care service;

5 Effectively, these flexible care places become outplacement places for the residential aged care service on site; and

6 The amendment to the proposed Rules that are the subject of this first Consultation can be as shown in the following italicised and highlighted section of “Division 8 – Residential care service types, 58 Residential accommodation” below.

Division 8—Residential care service types

57 Residential accommodation

Each service listed and described in the following table is in the service type residential accommodation.

Services in the service type residential accommodation		
Item	**Column 1** **Service**	**Column 2** **Description**
1	Accommodation	The following: (a) all capital infrastructure costs and depreciation; (b) communal areas for living, dining and recreation, as well as personal accommodation in either individual or shared rooms; (c) refurbishments and reinstatements of fixtures, fittings and infrastructure; (d) maintenance, of buildings and grounds used by individuals, to address normal wear and tear
2	*Flexible accommodation*	*Allocated by the System Governor upon request of the registered residential aged care provider following reassessment of the resident living in a retirement village environment. The retirement village living environment has the capacity to, and reflects the design, clinical care and non-clinical resourcing of a residential care facility and can be provided to the resident without the need for leaving their own home, and where Support at Home services may not meet the care needs of the individual.*
3	Accommodation administration	Administration relating to the general operation of the residential care home, including accommodation agreements, service agreements and other documentation relating to residents

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WLB:WLB [2410]

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