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Royal Commission into Aged Care Quality and Safety
Submission on capital financing arrangements
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Commissioners,

Thank you for the opportunity to contribute to the discussion on capital financing requirements.

My submission below uses the paragraph numbering from the Call for Submissions on capital financing, however I do not offer comment on all the paragraphs so the numbering below is not sequential

1. Whether the current capital financing arrangements are appropriate to the aged care sector as it exists today and as it is likely to evolve into the future.

It is extremely difficult to address this question without first addressing the question of demand for Aged Care.

To assist in understanding the scope of the potential liability for Aged Care, Australian Government financed aged care should only be available to individuals who meet particular residential requirements.

For consistency it is recommended the same residential requirements that apply to the National Disability Insurance Scheme apply to aged care.

On that basis the criteria for entry to Australian Government funded aged care would become; persons must be an Australian citizen or hold a permanent visa or special protected category visa.

The other age-related criteria that apply to the general population and indigenous Australians should continue.

The reason why this is so important is that with so many of the Australian population born overseas it is quite reasonable that they would try to bring parents or older relatives to Australia to enjoy the benefits of this country.

Unfortunately, in what is becoming an increasingly uncertain world older persons arriving in Australia with this intent could become a significant percentage of our Aged Care population.

Instead of ignoring the possibility until it becomes a problem, we should address it now to ensure that our capital financing is target is based upon demand that we can reasonably forecast.

The current capital financing arrangements are too fragmented and opaque to be useful for long term planning by both the aged care sector and the government.

Significantly, much of the current capital financing arrangements rely upon a government guaranteed Refundable Accommodation Deposit.

The current complexity of the aged care sector is a major issue that needs to be resolved before finalising new financing models.

The BDO report says

".....Providers are also allowed to utilise group structures to maximise their returns and minimise risks. This is a perfectly legitimate model, however it does reduce transparency over the financial transactions within the aged care sector. For example, Approved Providers may transfer RADs received from clients to another entity in the form of a related party loan and that entity can use the funds to buy the property or other investments. Approved providers are not required to have priority over secured creditors or employees on this related party loan. This creates a possible situation where, if the provider were to become insolvent, the Government may have to refund the underwritten RADs to the care recipients (or their estates) and the property may remain with the related entity. The group structures can also be leveraged to optimise operational activities within a group. In such instances, related entities may be used to provide services to the provider at a fee (e.g. management fees). We have not come across any information in relation to the governance of this process during the course of our work...."

[BDO Report on the Profitability and Viability of the Australian Aged Care Industry 21 July 2020. Executive Summary page 1]

BDO says the structures are "perfectly legitimate.". That could be true in most cases.

However, from the point of view of the Australian taxpayer; they may be legal and widely used, but totally unsatisfactory if providers have the opportunity to shield assets from the liabilities that may arise from the operation of their Australian taxpayer funded business, manipulate profit and surplus by related party payments.

The Australian Government has a duty to taxpayers to ensure all funding is backed by legally binding contracts that minimise the risk to taxpayers.

This is most important, particularly where taxpayers are guaranteeing the return of RAD's if the provider cannot.

It is important that we have a legislated commitment to reshape the aged care sector before we try to develop detailed financial arrangements which can survive into the future.

The best way to resolve the complex issues is to design the ideal funding model by starting with a blank sheet of paper and then managing the changes to that target over a period of years.

New aged care service providers could commence on the new system as early as perhaps a couple of years. The current providers may need 10 years to change over full, but it must be negotiated in the interests of the taxpayers and aged care consumers.

Experience with new providers would provide the testing ground to ensure the new structure works correctly before transferring all existing providers to it.

The reshaped Aged Care sector needs to prioritise the following key issues:

Transparency, meaning total disclosure, including related party transactions and taxation
Simplified and meaningful reporting, regardless of corporate structure
Outcome based standards rather than process based standards
Standardised minimum qualifications for particular roles within the sector
Staff to resident ratios for particular staff specialities
Australian Government finance for Aged Care should attach to individuals as distinct from service providers
Regulators should be required to include consumer, carer, and taxpayer representation of all levels of decision-making.

Of course there will resistance to change, however by standardisation and transparency we can confidently invest taxpayers money in Aged Care.

Legislated agreement to very significant change is required before more money is available for capital financing.

2. How the capital financing arrangements might need to change to support a progressive shift in the balance of care from residential to home care.

Australian Government finance for Aged Care should attach to individuals as distinct from service providers.

This would allow a consumer to take their funding elsewhere if a service provider is providing substandard care and it also allows maximum flexibility in a sector-wide move toward home care.

4. The appropriate role for the Australian Government in capital financing for the residential aged care sector.

The Australian Government currently has an outstanding unfunded liability of more than 30 billion dollars for RAD's.

This is likely to grow substantially on current projections.

If the government chooses to continue the use of RAD's then the Australian Government guarantee should be limited in the same way that it is for Bank deposits.

The guarantees for consumers should be for a specified limit, perhaps like Bank deposits, $250,000.

The approved providers who have the RAD's should be required to provide specific security for the RAD's held.

All approved providers who hold RAD's must be required to agree to a level of transparency in their accounts for related party transactions, conflicts of interest and be subject to regular audit.

A level of transparency equivalent to the Australian Stock Exchange would provide readily accessible standards without "reinventing the wheel".

All security for new RAD's needs to be held in Australia.

The Australian Government has no role in providing capital financing for foreign owned corporations, some RAD's are be held by foreign owned corporations and that needs to be resolved.

It would be preferable if those providers identified assets within Australia to secure their liabilities for existing RAD's.

Limits on foreign ownership need to be placed on all organisations which currently benefit from Australian Government capital financing for Aged Care. Such limitations can be implemented over time.

7. Whether there should be reforms to the existing capital financing arrangements for residential aged care, and if so, the policy rationale for these reforms. Examples of reforms could include:

The better model of capital financing would be to phase out RAD's and capital Grants of all types.

The Australian Government could then lend to aged care providers, at the cost of funds to government, to provide for capital works.

The Australian Government would then have security in the same way as any other lender.

If the lending is for particular purposes that the government wished to support, then the interest charged could be adjusted down to zero, however government would still hold security for the loan.

9. Whether the current accountability and reporting arrangements around the use of capital grants from government and contributions from care recipients are sufficient.

The current reporting arrangements are so inadequate as to call into question the whole policy development process and whether or not the interests of taxpayers and consumers were ever considered. This is a perfect example of why the taxpayers and consumers interests need to be heard at every policy development level.

10. Whether investment of capital grants from government and contributions from care recipients should be restricted strictly to aged care activities.

Yes all capital grants need to be tightly tied to a fit purpose and the product of those grants should be transparent and verifiable.

12. Whether there should be different capital financing arrangements for specialist facilities such as for people who are homeless or at risk of homelessness, or Aboriginal and Torres Strait Islander people.

I do not see a need to change the levels of accountability and justification for these particular groups.

However, we need a substantial, and separate allocation of capital, to ensure their needs are not passed over in competition with better resources representations.

Signed 2 Oct 20

Max Vardanega