

NATIONAL SECRETARIAT

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**Trustee
Corporations
Association
of Australia**

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Inquiry into Caring for Older Australians
Productivity Commission
GPO Box 1428
Canberra City ACT 2601

Dear Sir / Madam

Disability Care and Support

The Trustee Corporations Association is the peak representative body for the trustee corporations industry in Australia.

It represents 16 organisations, comprising all 8 regional Public Trustees and the great majority of the 11 private trustee company groups.

Traditional services provided by trustee corporations include:

- estate planning.
- preparing wills, trust instruments, powers of attorney etc.
- acting as executor or administrator of deceased estates.
- acting as trustee for various types of trusts.
- acting as attorney under powers of attorney.
- managing the estates of individuals who lack capacity to manage their affairs.

ANZ Trustees

Australian Executor
Trustees

Equity Trustees

National Australia
Trustees

New South Wales
Trustee and Guardian

Perpetual

Public Trustee for the
Australian Capital
Territory

Public Trustee for the
Northern Territory

The Public Trustee of
Queensland

Public Trustee
South Australia

The Public Trustee
Tasmania

Public Trustee
Western Australia

Sandhurst Trustees

State Trustees
Victoria

Tasmanian Perpetual
Trustees

The Trust Company

Each year our members:

- administer about 9,000 deceased estates.
- write about 60,000 wills and powers of attorney.
- manage assets under agency arrangements or Court and Tribunal orders for about 45,000 people.
- manage about 2,000 charitable trusts and 15,000 other personal trusts.
- prepare over 40,000 tax returns.

The TCA appreciates the opportunity to make a submission on the Commission's draft report on *Caring for Older Australians*.

In this submission, we would like to make some observations on aged care accommodation bonds issued under the *Aged Care Act 1997*.

Our members' interest in this matter stems from their significant involvement in the financial side of clients' access to nursing home facilities.

Inequity of Accommodation Bonds

An issue of concern to the trustee corporations industry in relation to ageing is the inequity of accommodation bonds paid to nursing facilities by residents requiring low care (or residents entering high care but on an 'extra services' basis).

The bonds demanded by nursing facilities have grown substantially in recent years, with new bonds now averaging well over \$200,000.

The amount paid can hold minimal relativity to the standard of service provided and can be burdensome, necessitating sale of family assets.

This creates inequities, with patients in adjoining beds often receiving identical services but with a huge variation in the costs respectively borne.

When seeking to secure an urgent placement at a time of ill health, the desperation of time constraints places elderly persons (and their families) in a position of weakness and nursing homes in a dominant position.

This creates a vulnerability which could be regarded as exposing elderly persons to financial exploitation.

We support the Commission's comments in the draft report:

As bonds are not capped, many care recipients who pay large bonds contribute far in excess of the cost of the accommodation that they use. In many cases, providers use this revenue to cross-subsidise high care residents who make accommodation payments that are less than the cost of providing newly constructed accommodation. These arrangements are irrespective of the resident's capacity to pay.

We agree that accommodation payments need to reflect the underlying cost of supplying the accommodation and is proposing that a person's capacity to pay for aged care be based on both their income and their assets (as assessed by Centrelink).

Further, we support the view that, to ensure that accommodation payments reflect the cost of supply and are equally attractive to care recipients and providers, the Australian Government should require that providers offer an accommodation bond that is equivalent to, but no more than, the relevant periodic accommodation charge.

Unsecured Assets

Accommodation bonds are unsecured assets of elderly persons.

There is no restriction placed on how nursing homes invest the funds received via accommodation bonds, although they are required to submit an annual statement attesting to their ability to meet their liabilities, that they are maintaining adequate insurance and are able to repay bonds when required.

They are also expected to be able to demonstrate that the funds and income generated are used to improve the quality of their infrastructure and services.

However, there is a government guarantee of the bond balance (after the allowed monthly retention by the nursing home), for which the nursing home is not charged.

In the past there have been recommendations that these bonds should be held by independent trustees to give surety and reduce potential of government liability.

We believe that this matter should be revisited.

Title to Accommodation Bonds

The *Aged Care Act* requires a bond to be in the name of the recipient of the care and involves a contract between the provider and the care recipient.

The balance must be refunded to the care recipient (or their estate).

The Act did not foresee that third parties, such as family members, might wish to provide some or all of the funds and request registration of the bond in their name.

Similarly, the trustee of a Special Disability Trust or a protected trust is currently prevented from having title to the bond registered in their name.

Wills creating life interests generally would include power for the trustee to acquire a residence for occupation by the life tenant, irrespective of the nature of the title, ie: freehold, leasehold, right of occupation bond etc.

However, the trustee could not correctly register the trust asset if a bond under the *Aged Care Act* was involved.

Further, we understand that bonds for a shared occupancy (husband and wife) are required to be as joint tenants. This should be widened to allow tenancy in common if desired, to avoid compromising possible existing testamentary arrangements, particularly in second relationships.

Annual Notices to Recipients

Under the Act, nursing homes are required to give an annual notice to bond holders.

These advices currently give minimal information and often issue fairly late in the year, usually around October/November.

Consideration should be given to ensuring that these notices are more timely and to alerting elderly persons and their carers that the amount retained each year by the nursing home is available to the resident for medical tax offsets purposes.

Yours faithfully

Ross Ellis
Executive Director