Regulation Impact Statement
Accommodation Payments

Fees and Payments Principles, Accommodation Pricing Guidelines Ministerial Determination of the Maximum Amount of Accommodation Payment

1. Introduction

This Regulation Impact Statement (RIS) has been prepared by the Australian Government Department of Social Services (the Department). It assesses the regulatory impact of options for implementing the requirement for the Aged Care Pricing Commissioner (the Pricing Commissioner) to consider applications from aged care providers to charge an accommodation payment above the threshold amount determined by the Minister (the Minister's threshold).

The purpose of this RIS is to provide Government with the information required to make policy implementation decisions regarding this commitment, and to provide the community with information about the likely impacts of the proposal.

This is a single stage RIS assessment, as no decision has been previously announced on the implementation of the subject of this RIS, and an options stage RIS was not required due to the significant consultation that has taken place on this issue. This consultation is detailed later in this RIS.

Background - Current situation
Residents who have sufficient means to do so can pay for their residential aged care accommodation as follows:

Low Care
- Residents can be asked to pay by a lump sum accommodation bond.
- Residents may negotiate with providers to pay by periodic (rental style) payments.
- The amount of the bond charged is not regulated, except that if a resident is eligible to pay a bond, they must be left with at least the minimum permissible asset value ($44,000 as at 4 November 2013).
- Providers can keep a regulated amount of money from lump sums (known as retentions) for the first five years. This amount varies depending on the size of the lump sum.

High Care
- Residents entering high care pay for their accommodation by a daily accommodation charge, the maximum limit of which is set by the Government and was $33.55 on 4 November 2013. They cannot be asked to pay a lump sum bond unless they are in extra service.
- Residents entering a high care extra service place can be asked to pay a lump sum accommodation bond, which is governed by the same rules as in low care.
- People moving from low care to high care can 'roll-over' the accommodation bond they paid in low care, even if they are not entering an extra service place.

Background – Aged Care Reforms
The *Aged Care (Living Longer Living Better) Act 2013* gives effect to the aged care reforms announced by the previous Government in response to the Productivity Commission's 2011 *Caring for Older Australians* report.

From 1 July 2014, the distinction between high and low care will be removed. This means that residents entering aged care after this date will have the same options to pay for their accommodation, regardless of the level of care they require.

From 1 July 2014, residents will also have complete discretion in how they pay for their accommodation. Residents can choose between a Refundable Accommodation Deposit (RAD) which is a refundable lump sum payment, an equivalent Daily Accommodation Payment (DAP) being a periodic rental style payment, or combination of both. In addition, residents will have 28 days from their date of entry into care to decide on the method of payment.

Aged care providers will be required to publish their maximum accommodation prices and a description of the accommodation for each different type of room. This information will be published on their own website (if they have one), the Government's My Aged Care website, and in other publication materials.

Aged care providers will require approval from the Pricing Commissioner to charge accommodation payment amounts above a threshold determined by the Minister, from 1 July 2014. The threshold is proposed to be a RAD of $550,000.

Fees and Payments Principles, Accommodation Pricing Guidelines (the Guidelines) and application forms will be developed, in consultation with industry and consumer groups. Exposure Drafts of the Fees and Payments Principles, the Guidelines and a Ministerial Determination of the maximum amount of accommodation payment (Minister's threshold) were released for public consultation by the previous government. These can be found at www.livinglongerlivingbetter.gov.au.

2. Problem

Problems identified with the current system through the Productivity Commission's *Caring for Older Australians* inquiry, industry and consumer representations, and public consultations include:

- information asymmetry with a lack of information available to residents when choosing accommodation;
- price determination according to residents' means rather than the value of the accommodation; and
- inconsistency across the sector in how accommodation is valued and priced.

An information asymmetry exists with respect to accommodation prices in aged care. Information regarding aged care accommodation bond prices and features is not readily available to either Government or consumers in a way that facilitates comparison. This makes it difficult for potential residents to compare bond amounts and value for money with a price not being made available for consideration until after the resident has disclosed their means to the provider.

While providers may take into account the quality, amenity, cost and value of the accommodation when determining their pricing framework, there is no regulation of this and bonds can be charged that may not reflect those factors. This means that it is possible for accommodation prices to reflect a resident's means rather than the value of the accommodation. In a market environment, competition is expected to control prices. However, supply constraints exist in aged care and it has been identified that demand can exceed supply.

Risks

The risks associated with these problems are of particular concern with respect to high accommodation prices. This is because in this price range there is a greater risk of:

- residents being asked to pay an amount that significantly exceeds the value of the accommodation; and
- given that lump sum accommodation payments are exempt from the age pension means test, residents may deliberately pay significantly inflated amounts in order to be eligible for, or increase an existing amount of, the age pension.

Objectives

This RIS considers the process for the Pricing Commissioner to follow when considering applications from aged care providers to charge prices above the Minister's threshold. The objective of this price approval process is to support the approval of prices that reflect the value of the accommodation offered so charges are reasonable while still allowing higher prices to be charged where appropriate, encouraging ongoing investment in the sector.

These objectives can be measured through examination of:

- prices paid above and below the threshold and the accommodation provided for those prices;
- the level of investment in the residential aged care sector; and
- the impact on consumers.

3. Options

As the regulatory framework for accommodation prices above the Minister's threshold has been enacted, a status quo option of maintaining the level of regulation applied under the current aged care system is not applicable.

Option one - Formula based pricing process

Under this option, all approved providers who wish to charge an accommodation price above the threshold amount would need to:

1. Provide detailed information on costs associated with the accommodation they are offering that they believe is likely to require a price above the Minister's threshold.
2. Complete an application to the Pricing Commissioner seeking to have a price above the threshold amount for a room (or part of a room), or rooms, in their facility, providing detailed information on the cost of the accommodation including factors such as land value, construction, maintenance, amenities.
3. The Pricing Commissioner assesses this application and using a forumula calculates the cost component of a price.
4. Using a published formula, the Pricing Commissioner adds a set rate of return to the costs amount, resulting in an approved price for the accommodation.

The application and decision process would focus only on financial factors when approving prices.

The Pricing Commissioner would convert the costs relating to construction and provision of accommodation to a price using a set formula, incorporating a return for the provider. The consultations conducted by the Department on accommodation payments indicated that the rate of return expected in the aged care industry varies widely, however the majority of respondents nominated the weighted average cost of capital (WACC) as their preferred or usual expected rate. The WACC represents the cost of capital sourced from equity and debt investments by the ratio of debt to equity in the capital structure. There is however no single WACC applicable to the industry, with different providers having different structures and different reliance on funding sources.

Option two – Prices based on consideration of all factors

Under this option, all approved providers who wish to charge an accommodation price above the threshold amount would need to:

1. Complete an application to the Pricing Commissioner seeking to have a price above the threshold amount for a room, or rooms, in their facility. This would:
    a. Propose a price for the accommodation; and
    b. Address all factors they consider relevant to support the price proposed.
2. The Commissioner assesses the application and determines if the price proposed aligns with the information provided about the accommodation.
3. The provider could give further information in response to requests from the Pricing Commissioner.
4. The Pricing Commissioner makes the decision.

This model proposes the following type of information be supplied by providers and considered by the Pricing Commissioner in relation to prices above the threshold:

- the location of the service;
- the quality, condition, size and amenity of the room/s;
- the proposed occupancy of the room/s;
- whether the room/s have access to a shared bathroom or have a private ensuite;
- the quality, condition, size and amenity of the common areas;

- whether the service or room has any specific accommodation or design features;
- the cost and nature of any additional care or services offered by the service; and
- additional supporting information or evidence that the Pricing Commissioner requires, or that the provider wishes to submit in support of their application.

Both Options

The following important points relate to applications under both options:

- the Pricing Commissioner would be able to approve higher accommodation prices for proposed rooms or services that have not yet been constructed. Approvals for proposed rooms would be made subject to the conditions that the approval does not take effect until the Pricing Commissioner is provided with evidence that the room is complete, and that it was constructed to a standard equivalent to or better than that described in the proposal.
    - This provision aims to minimise the impact of uncertainty regarding accommodation prices for new aged care developments and encourage investment in aged care through new construction and upgrade projects.
- the relative wealth of an individual person cannot be considered when determining an accommodation payment amount.
- providers would be able to submit one application form per service, which could include different types of room or accommodation at different prices.
- the Pricing Commissioner's decisions are reviewable decisions under the *Aged Care Act 1997*. This means that a reconsideration of a decision can be sought firstly through the decision maker, then through the Administrative Appeals Tribunal if required.

4. Impact Analysis

This section of the RIS examines the costs and benefits to stakeholder groups of the proposed options. The Department does not have sufficient data at this time to support a detailed analysis of the potential impact on accommodation payment prices of the Pricing Commissioner's role. Therefore the analysis below is based on data about accommodation bonds under the current arrangements.

The Aged Care Financing Authority (ACFA), an independent statutory committee, has been tasked with closely monitoring the effect of these reforms on industry and reporting to Government on a regular basis. This monitoring program is detailed under "Review". It will be supported by enhanced data that will be available from 1 July 2014.

Six million dollars will also be provided to assist businesses to prepare for and transition to the new accommodation payment arrangements. In addition to this, the reform legislation requires a review of the measures, including changes to accommodation payments, to commence in July 2016.

Both Options
This section initially considers the impacts of the Pricing Commissioner's role that are common to both options. Individual discussion of the impact of each of the options commences on page 11.

Scale of Impact
The requirement to seek approval for prices above the Minister's threshold is only likely to affect a small section of the aged care industry. The Survey of Aged Care Homes (SACH) records the value of agreed accommodation bonds for people entering residential aged care. Data on new bonds agreed in 2012-13 is used to assess the likely impact of the requirements by ownership type, location and size of the service. Facts to note:

- There were 2,718 aged care facilities across Australia in 2012-13[1].
- Only 1.4% of all aged care facilities had more than 50% of their new bonds over the threshold amount.
- Of the 10.96% of facilities (n=298) that received a bond equal to or greater than the threshold amount:
    - less than 1 in 5 of new bonds accepted by these facilities was above the threshold amount.
    - 50% of these facilities had less than 12.2% of their new bonds above the threshold amount.
    - only 10% of these facilities had more than half of their total new bonds above the threshold amount.
    - The median new bond amount in these facilities was $370,000 and the average new bond was $390,000.

These figures indicate that whilst relatively few facilities (298, being 10.96% of all aged care facilities) accepted new bonds in 2012-13 that were above the proposed threshold amount, very few of these accepted enough bonds to consider it likely that this price point constitutes a significant part of their business operations. These providers are not likely to seek approval to charge accommodation payments in this price range if these bonds have only been collected because of individual circumstances. In this way, the reforms may also reduce the number of accommodation payments that may be above the Minister's threshold in comparison with the current system which is not subject to regulation of these prices.

[1] '2012-13 Report on the Operation of the *Aged Care Act 1997*'; Department of Social Services, Canberra

Organisation type comparison
Of the 10.9% of homes that agreed to bonds that were greater than the threshold amount, 46.2% were privately owned, 52.3% were not for profit, and 1.5% were Government owned.

Table 1: Proportion of new bonds agreed, and proportion of services with at least one agreed new bond over the threshold amount, by organisation type, 2012-13

Organisation Type	Proportion of new bonds agreed over the threshold amount	Proportion of services with at least one agreed new bond over the threshold amount
Government	0.9%	1.6%
Not for Profit	4.5%	9.6%
Private	6.9%	16.6%

Regional comparison
The results from the 2012-13 SACH indicate that services located in major cities are more likely to be impacted by the requirements for approval of prices above the threshold amount (Table 2).

Table 2: Proportion of new bonds agreed, and proportion of services with at least one agreed new bond over the threshold amount, by remoteness area, 2012-13

Remoteness Region[1]	Proportion of new bonds agreed over the threshold amount	Proportion of services with at least one agreed new bond over the threshold amount
Major Cities	6.9%	15.5%
Other regions	0.9%	3.6%

1. Based on the Australian Bureau of Statistics ASGC Remoteness Area.

Facility size comparison
Larger aged care homes are more likely to apply for approval (Table 3). In 2012-13, 1 in 5 of the largest homes received at least one new bond over the threshold amount, compared to 1 in 20 for homes that had less than 50 beds.

Table 3: Proportion of new bonds agreed, and proportion of services with at least one agreed new bond over the threshold amount, by facility size, 2012-13

Facility Size	Proportion of new bonds agreed over the threshold amount	Proportion of services with at least one agreed new bond over the threshold amount
1-19	1.6%	1.5%
20-49	4.6%	5.6%
50-99	4.9%	10.6%
100 +	6.2%	22.1%

Compliance costs for aged care providers
Under both options proposed in this RIS, providers will be required to apply to the Pricing Commissioner for approval of accommodation prices that are above the threshold amount. It is estimated that this process could be undertaken by up to 10.9% of aged care homes, based on the value of accommodation bonds received in 2012-13 (though some portion may choose to no longer charge higher bonds). The accommodation payment reforms only apply to new residents from 1 July 2014, with

all existing accommodation payment arrangements (bonds or accommodation charges) grandfathered.

The reforms will allow providers to set a price for their accommodation in what is currently high care, from 1 July 2014. Extra service places in high care, offering a higher standard of accommodation and additional services, already charge accommodation bonds and are included in the Department's current bond data.

Cost to Government

The Pricing Commissioner has been established under the *Aged Care Act 1997* to consider applications for accommodation payments higher than the threshold amount.

The options described in this RIS are expected to be largely equivalent in terms of cost to the Government. Both options will require the Pricing Commissioner to consider applications received from providers and issue an approval or rejection. Under option one, the Pricing Commissioner will need to consider in detail the costs provided and add a rate of return to determine the price. Under option two, the Pricing Commissioner will need to consider the factors described by the provider and weigh these against the price proposed.

Requiring the Pricing Commissioner to approve accommodation prices above the threshold amount, rather than every accommodation price as originally announced in the reform package, represents a considerable saving in terms of cost to the Government and to providers by reducing the expected number of aged care homes who are likely to need to seek to have prices approved from 2,7183 (number of homes 2012-13) to the low hundreds (298 homes held accommodation bonds above the threshold amount in 2012-13).

Price impact for aged care providers

The Government does not currently collect information on the type of accommodation being provided for given accommodation bond amounts. As a result, the impact on prices resulting from of either of the options proposed is not known.

Advice to Government from consumers and industry is that some rooms are being charged at amounts significantly in excess of what may be a fair price for the particular accommodation. If this is the case, the providers of those rooms may need to charge a lower price for new residents entering those rooms after 1 July 2014. This may be as a result of the requirement to advertise prices and features, and/or a decision by the Pricing Commissioner on a price application.

Neither option proposed in this RIS has an impact on the vast majority of aged care homes, which (based on current accommodation bond holdings) will not seek to charge an accommodation price higher than the threshold amount of $550,000.

Several public consultations have been undertaken regarding accommodation payments as part of the aged care reform process. These are detailed in the "consultation" section of this RIS, however can be summarised as follows:

- Public consultation on accommodation payments reforms – September 2012

- Public consultation on ACFA's draft recommendations on accommodation payments – November 2012
- Public consultation on draft Accommodation Pricing Guidelines – April 2013
- Senate Community Affairs Committee Inquiry on draft reform legislation – May 2013
- Public consultation on the draft subordinate legislation regarding accommodation payments and the next draft of the Accommodation Pricing guidelines – August 2013.

In the early consultations, providers advised that they believed the requirement to have accommodation payment prices approved:

- Would be restrictive of their freedom to charge (and allow a consumer to pay) any amount that is agreed between them; and
- Constitutes an additional administrative burden in terms of formally pricing their accommodation, publication of this and needing to seek approval from the Pricing Commissioner.

These considerations were taken into account in policy announced in December 2012 to limit the requirement for Government approval of accommodation payments to only those priced above a threshold set by the Minister.

In response to concerns raised by some providers and the finance industry through Departmental consultation and the Senate Inquiry into the aged care reform Bills, ACFA commissioned consultants KPMG in May 2013 to examine the likely impact of the reforms on aged care providers.

KPMG's modelling indicates that the reforms will have a positive impact on the sector at the aggregate level. Positive impacts are likely to arise from the removal of regulatory restrictions on charging for accommodation in high care places (lump sum accommodation payments will be allowed and caps on periodic payments removed) and the increase in the accommodation supplement for new or significantly refurbished homes.

This modelling did not anticipate a regulated cost plus return pricing model such as that proposed in option one. Modelling was conducted on the basis of current accommodation bond values, which aligns more closely with the model proposed in option two.

The modelling estimated that the combined impact of these changes, including the accommodation payment reforms, at the aggregate sector level in year one is a net $3 billion increase in new RADs and a net $25 million dollar increase in income for providers.

A second consultation on the draft Accommodation Pricing Guidelines and Exposure Draft consultation on the Fees and Payments Principles was held in August 2013. The new draft version of the Guidelines was developed in response to comments received during the consultation on the original version in May this year.
The Senate Committee Inquiry's recommendation that subsidised transitional business advisory services be made available to assist industry transition to the new

accommodation payments reforms was accepted. It was announced that $6 million will be available to help industry in this way, and ACFA has been asked to closely monitor the impact of the reforms on industry, initially reporting monthly to the Government after 1 July 2014.

Financial impact on consumers

Whilst the Government collects information through the annual Survey of Aged Care Homes on accommodation bonds held by providers across Australia, no detail is collected about the accommodation (ie standard and size of room and the facility) that consumers receive for these bonds. Given this, the Department is currently unable to identify whether the prices charged reflect the accommodation.

In 2012-13, 10.9% of aged care homes accepted new bonds that were over the proposed threshold.

Given the absence of data on what is being provided for given prices, it is not possible to estimate any impact on prices. It is expected, however, that the reforms will ensure consumers pay a price for their accommodation that reflects the accommodation provided rather than their individual means, and that they will know the maximum amount they can be asked to pay for each particular type of accommodation and be able to make comparisons between facilities easily.

Those people with low means will continue to have their accommodation costs met in full by the Government. For people on whose behalf the Government pays some accommodation supplement (partly supported residents), their maximum accommodation payment will be capped at the maximum amount of the Government's accommodation supplement which will be $50 per day (2012 figures) for new or significantly refurbished homes from 1 July 2014 or $32 per day (2012 figures) for other aged care homes.

The potential for consumers to negotiate with providers a lower price than the published amount remains under either option.

Impact on access to care

Given the absence of data on what is being provided for given prices, it is not possible to estimate any impact on prices, on the market or on access to care from these options.

It has been acknowledged that there needs to be greater investment in aged care into the future in order to ensure that sufficient residential and community places exist to meet the projected needs of the ageing population. Strengthening residential care is one of the key objectives of the reform package and KPMG's modelling referred to earlier indicates that the reforms will have a positive impact on the sector.

Furthermore, the amount of the accommodation supplement that the Government pays on behalf of people with low means is being increased for significantly refurbished facilities and means testing arrangements are being strengthened to ensure that those who can contribute to the cost of their care do so.

The accommodation payment reforms will improve transparency on accommodation prices for consumers and ensure that there is a link between the amount paid and the accommodation provided. The provisions in the draft Fees and Payments Principles for approval of higher accommodation prices for proposed aged care facilities or rooms based on plans for constructions or upgrade will allow new developments to proceed with confidence on pricing.

Impact Distribution

While it is possible to identify the types of homes that currently have prices above the threshold amount, the absence of information on room types being provided for particular prices prevents any analysis of the impact on prices, on the market or on individual providers.

Option one – Formula based approach

Providers

Using the OBPR's Business Cost Calculator, option one is costed at $145,185.60 per year or $487.20 per aged care facility. This cost assumes that affected facilities will have two room types priced above the Minister's threshold and accounts for the fact that approvals will be valid for a period of four years. This costing includes tasks such as identifying the cost of the accommodation and applying to the Aged Care Pricing Commissioner for approval.

It should be noted that these costs only apply to those businesses seeking approval for higher maximum accommodation prices (estimated to be 298 aged care facilities).

These costs are based on internal staff carrying out the work required and do not include the engagement of specialist assistance in determining pricing such as a valuer or an external accounting service. The recruitment of specialist assistance in determining accommodation prices and seeking approval if over the maximum accommodation payment amount is not required as part of this proposal.

The formula based approach proposed in this option allows providers to calculate and predict likely price approvals, as it would apply a set rate of return to the provider's costs of providing the accommodation. This would provide a greater level of certainty to providers than option two, however they would need to keep and retain detailed historical records on costs.

Its more rigid design does not, however, allow prices to take into account other significant factors such as need and design, for example. Generally speaking, there is also higher risk involved in developing new aged care homes than there is in operating or extending existing homes and this would not necessarily be properly rewarded with a cost-based approach. The return that providers would consider acceptable varies between new developments and upgrade or expansion of existing facilities as well as between locations. This may provide a disincentive for providers to develop new aged care homes if a set return formula were imposed that did not vary to reflect the different risks of each project.

Similarly there may be a particular need for a certain type of facility, or a facility in a particular location, and a cost only approach may not provide sufficient incentive for those facilities to be built or operated.

There may be disagreement under this option about what costs can be submitted to the Pricing Commissioner when seeking price approval. Consideration of costs in isolation from the value of the accommodation may reward inefficiency. A higher cost does not necessarily mean a better product and accordingly should not automatically translate to a higher price. Further to this, a pricing model where a set return is always added to costs does not encourage innovative business practices as there is no incentive from the pricing perspective to reduce costs.

A complicating factor would be determining the appropriate rate of return to use. There is no industry wide or standard WACC, as each provider has its own debt and equity structure, with its own required rates of return for each source of funding. Determining a standard rate to use would be complex. From consultation with industry and on the advice of consultants, it lies between 8.5% and 14%. Using the WACC that is specific to each provider would be inconsistent and will reward inefficient financing structures.

Due to the wide variety of rates of return currently used by the industry, and the lack of data on each home's accommodation type and cost, it is not possible to predict the impact of this option on aged care providers. It has the potential to reward inefficient providers, who could be expected to submit high costs, and have these costs awarded along with the addition of a return on investment. It may result in lower accommodation prices for some providers if the rate of return allowed under this option is less than a provider is currently receiving. Under this pricing model, non-financial factors such as risk and need are not necessarily recognised or compensated. This may deter investment in more difficult areas such as rural or remote locations.

Both options explored in this RIS are likely to result in some accommodation prices that are higher, and some that are lower, than those currently charged. This is because of the high degree of variability that exists with the providers' current ability to nominate an accommodation bond based on the care recipients' wealth rather than the value of the accommodation offered. As it establishes a maximum price only, there remains the opportunity for providers to agree to a lower amount for any given room with the individual care recipient.

Consumers

The overall impact of the accommodation payments reforms on consumers will be greater transparency in accommodation pricing with clear statements of a maximum price, along with details of the accommodation that is available for that price, compulsorily published by all aged care providers.

The impact of this option on consumers is expected to be that they pay a price that is related to the accommodation itself as the maximum amount they can pay will be based on the costs of providing the accommodation, plus a specified rate of return for the aged care provider. Under the current system, consumers can be asked to pay any amount at all, as long as they are left with the specified minimum level of assets. The price under option one may be higher or lower than the amount that they would have been asked to pay under the current system, dependent upon their individual wealth and the accommodation that they are entering. As this is a maximum price, the provider and consumer may negotiate a lower amount. The publication of prices along with statements detailing what is included for the accommodation price will enable consumers to be better informed about the options that are available to them.

Under this option, there is the risk that consumers may be asked to pay higher prices by inefficient aged care providers due to the 'cost plus return' nature of this model of pricing approval.

Government
This option will require administrative resources from the Government as applications to charge prices above the threshold amount must be assessed and the decisions of the Pricing Commissioner processed. This option involves the Pricing Commissioner and their staff assessing the reasonableness of the costs proposed by each provider in their pricing approval application. Once the costs proposed have been agreed, the specified rate of return is applied to determine the accommodation's price.

It is proposed that the Pricing Commissioner will have up to 60 days from receipt of the application to make their decision. Providers may also be asked to give the Pricing Commissioner further information in respect of their application. The Pricing Commissioner then has a further 60 days from the receipt of this information in which to finalise their decision.

Option two – Price justification based on all factors

Providers
Using the OBPR's Business Cost Calculator, option two is costed at $114,074.40 per year or $382.80 per aged care facility. This cost assumes that affected facilities will have two room types priced above the Minister's threshold and accounts for the fact that approvals will be valid for a period of four years. It accounts for time taken by staff to consider the factors relevant to the proposed price of the accommodation and applying to the Aged Care Pricing Commissioner for approval.

It should be noted that these costs only apply to those businesses seeking approval for higher maximum accommodation prices (estimated to be 298 aged care facilities).

These costs are based on internal staff carrying out the work required and do not include the engagement of specialist assistance in determining pricing such as a valuer or an external accounting service. The recruitment of specialist assistance in determining accommodation prices and seeking approval if over the maximum accommodation payment amount is not required as part of this proposal.

This option allows providers to submit to the Pricing Commissioner a broad range of information about the accommodation for which they are seeking approval to charge a price, and to nominate the amount that they are seeking to charge. Feedback received from providers suggested a preference for the flexibility of this option.

This option benefits providers by allowing scope for the price approved to consider a wider range of factors than cost. Prices proposed by providers under this model, can reflect other factors such as the risk of operating facilities in remote regions or the provider's willingness to accept a lower than usual return on a particular facility or room. However, there is less certainty for providers regarding the level of prices that will be approved under this option as it relies on the Pricing Commissioner's agreement that their proposed price is reasonable.

Overall it is expected that this option will have a low impact on providers. Its aim is to moderate prices primarily through increased transparency in allowing both consumers and Government to observe prices in aged care accommodation and link them to information about the accommodation offered. The application process for prices above the threshold amount is not intended to significantly restrict prices charged, but to strengthen accountability and ensure that accommodation prices are relevant to the value of the accommodation offered.

Consumers
From the consumer perspective, this option allows the potential approval of a wide range of accommodation prices as the Pricing Commissioner can consider a broad range of factors when determining if a price is reasonable under this option. Prices approved under this model may represent better value for money than those under option one as its costs plus return model allows for inefficiency to be reflected in prices.

The accommodation payment measures increasing price transparency will allow consumers to have greater ability to compare and consider all options available to them and understand what they would be receiving for a proposed accommodation payment before they enter care. As the approved price is a maximum price, the provider and consumer may negotiate a lower amount.

Government
From the Government's perspective, this option will have a similar level of administrative burden to option one. Both options require that prices above the threshold amount be assessed by the Pricing Commissioner. The anticipated number of applications is the same, as this is determined by the number of accommodation payments sought above the threshold.

This option allows for broader assessment of the reasonableness of the price proposed for particular accommodation by the Pricing Commissioner.

It is proposed that the Pricing Commissioner will have up to 60 days from receipt of the application to make their decision. Providers may also be asked to give the Pricing Commissioner further information in respect of their application. The 60 days does not include any period where the Pricing Commissioner is waiting for requested information.

Quantification of Regulatory Costs

The following costs have been calculated for businesses affected by this proposal using the OBPR's Business Cost Calculator.

Average Annual Change in Compliance Costs (from BAU) (per year average over 10 years)				
Sector/Cost Categories	**Business Option 1**	**Business Option 2**	**Total Cost Option 1**	**Total Cost Option 2**
Administrative Costs	$145,000	$115,000	$145,000	$114,000
Substantive Compliance Costs	$0		$0	
Delay Costs	$0		$0	
Total by Sector	$145,000	$114,000	$145,000	$114,000

Annual Cost Offset (per year average over 10 years)				
	Agency	**Within portfolio**	**Outside portfolio**	**Total**
Business	Dept of Social Services	$895,000	$0	$895,000

Proposal is cost neutral?	Yes	~~No~~
Proposal is deregulatory	~~Yes~~	No
Balance of cost offsets to be banked	Yes	~~No~~

The cost offset identified above is a calculation of the regulatory costs of the accommodation payment reforms as announced by the previous Government. These costs are significantly higher than the options in this proposal because the previously announced price-setting process applied to all aged care homes (more than 2,700) and the lower Minister's threshold proposed would have resulted in an estimated 17% of aged care homes seeking approval for prices from the Aged Care Pricing Commissioner, rather than the 5% in this proposal.

The previous Government had committed to introducing a prescriptive price-setting process that providers would have to follow and document for all rooms in the facility. Following consultation the Government has decided not to implement this process. This results in a significant reduction in red tape and regulatory costs for aged care providers.

5. Consultation and statement of compliance

In addition to wide public consultation undertaken by both the Productivity Commission and Government as part of the development of the reforms, there has been extensive consultation on the details of implementation, including the changes to accommodation payments. The objective of the consultation on accommodation payments has been to work with industry, financiers and consumers to ensure that the reforms can encourage investment in residential aged care whilst remaining sustainable for residents and government.

In September 2012 ACFA released a public discussion paper on the methodology to govern the level (or levels) of the accommodation payments that an approved provider can levy on care recipients for entry to an aged care home from 1 July 2014, including advice on acceptable rates of return, efficiency, how the level/s of accommodation payments should be set and how equivalency between a refundable lump sum and a daily payment should be ensured.

In addition, independent consultants were engaged to provide advice on these issues. There were 38 unique responses received from this consultation. ACFA conducted a subsequent consultation on its draft recommendations on accommodation payments in November of 2012.

A predominant theme from submissions was that Government should not have a detailed role in setting accommodation payments and that the approved provider is best placed to determine the level of accommodation payments, as they can best take into account a range of factors including the facility's location, amenities and condition alongside factors relating to the resident's individual circumstances and preferences. Submissions predominantly put forward the view that market forces should play the key role in determining the level of accommodation payment with prices accordingly negotiated between the provider and resident. Consumer representatives supported the introduction of accommodation pricing transparency and control.

ACFA's consultation on their draft recommendations on accommodation payments included a recommendation "That guidelines apply for approving amounts above the maximum". In response to this, several respondents suggested criteria for the guidelines, and most respondents expressed their desire to be consulted with on the development of guidelines. Providers were keen for the guidelines to be developed as soon as possible to give certainty. There were some views expressed that requiring approval of prices would impose an unnecessary regulatory cost and burden. Consumer groups supported the development of guidelines and viewed this as necessary to ensure transparency.

The then Government's announcement on accommodation payments was made on 21 December 2012 and included the establishment of three levels of accommodation payment pricing, a requirement to publish prices and the requirement for accommodation payments above the threshold amount to be approved by the relevant Government authority (the Pricing Commissioner).

This announcement reflected concerns raised in consultation by restricting the need for price applications to those above the threshold amount (which would have affected less than 17 per cent of homes in 2011-12), by setting a maximum, rather than a fixed price, allowing for negotiation between provider and consumer, and including a commitment to develop accommodation pricing guidelines for providers and the Pricing Commissioner to use when considering their accommodation prices.

Consultation on the draft aged care reform legislation early in 2013 has also resulted in feedback from industry and consumers regarding accommodation payments. Key themes regarding the accommodation payment reforms discussed in this RIS from this consultation were:

- Industry is concerned about having to set prices for accommodation and publish these prices in advance, and is concerned about not receiving approval from the Pricing Commissioner for accommodation they wish to market in this price range. As a result industry has actively sought guidance from Government on what factors should be considered when determining an accommodation price, and what the Pricing Commissioner will be looking at when assessing their applications;
- Consumers and consumer groups have reacted positively to the proposals for the significant improvement in accommodation pricing fairness and transparency.

The Community Affairs Senate Committee Inquiry into the Living Longer Living Better Bills provided a further opportunity for public consultation. This inquiry received 112 written submissions and conducted public hearings in most capital cities. The Committee's report recommended that Government support providers through the transition to the new accommodation payment system by closely monitoring the impact of its implementation and by providing targeted assistance to businesses that require it.

The previous Government's response to this inquiry agreed to closely monitor the impact of the reforms to accommodation payments and the Minister has asked ACFA to perform this function, reporting to Government monthly on this during the first six months after implementation then quarterly. Additionally, the previous Government committed $6 million over three years to support providers with transitional business advisory services. It is expected that these services will commence in early 2014. The Department released draft accommodation pricing guidelines for public consultation on 9 April 2013. This consultation closed on 1 May and 28 submissions were received.

Most submissions were from approved providers and commented on the accommodation payments policy rather than the guidelines, particularly on the topics of loss of retention payments, the choice of payment method period of 28 days, daily payments being the default and published amount, and the financial equivalence and role of MPIR volatility leading to cash flow issues.

Some submissions raised concerns about the administrative burden of developing key features statements and the publication of prices. Many submissions from providers sought that the prices should be based on:

- their incurred costs
- their facility size
- their viability
- their cashflow
- their operational costs and
- their historic bond sizes.

In response to industry's desire for increased certainty, it is proposed that legislation and guidelines be developed that assist industry in considering the relevant factors to be considered when determining a price and when applying to the Pricing Commissioner. The draft Fees and Payments Principles also include a provision for the Pricing Commissioner to consider applications to charge higher accommodation prices for new facilities or rooms that are yet to be constructed. This approval will be subject to the completion of the facility to an equivalent or better standard than that described in the application.

It is also proposed that application processes will be capable of dealing with more than one room type at a time from one provider to remove the duplication of information that is relevant to a number of different rooms in a facility.

The previous Government released exposure drafts of the Fees and Payment Principles on accommodation payments and the Minister's Determination on the maximum amount of accommodation payment, as well as the next draft of the Accommodation Pricing Guidelines on 2 August 2013.

Submissions received were entirely from providers and provider peak bodies, relatively few in number, generally seeking clarifications on the principles and pricing guidelines and requesting further details on the application process for Pricing Commissioner-approved prices. The key issue raised was that the prescriptive price-setting process to set prices below the Minister's determination would be excessive regulation and not proportional to the risk to consumers.

The Government subsequently announced that there would not be any requirement to follow or document a prescribed price setting process resulting in a significant reduction in regulatory burden from the previous Government's commitment which is quantified on page 14.

6. Conclusion

Based on the information available, it is not possible to quantify the impact of either option on accommodation prices. However, as discussed earlier and further detailed in "Review" below, Government has put in place several measures to closely monitor the impact of this reform with reports commencing one month after implementation. The preferred option is option two – price justification based on all factors.

This approach better aligns with the intent of the accommodation payment reforms, that is, to increase pricing transparency and accountability, and manage outlying high accommodation prices, while allowing providers a broad range of factors with which to demonstrate the relevance of the price to the accommodation. It is expected to have a lower regulatory burden on providers as they will not be required to demonstrate their costs, as proposed in option one.

Option two allows providers and the Pricing Commissioner flexibility to determine prices that can reflect all of the various factors that apply to each individual business situation. This option encourages efficiency, in contrast to option one, and also allows providers to innovate and respond to the market and propose prices accordingly.

With regard to option one, it is worth noting that ACFA attempted in 2012 to identify an acceptable industry-wide rate of return for aged care. This process demonstrated that there is in fact no standard or agreed rate. As well as nominating a wide range of returns and factors they felt needed to be considered, providers strongly advocated that they needed the freedom to determine an individual rate that was appropriate to their business. ACFA considered these views and did not nominate an 'acceptable' industry rate of return.

Option two allows the Pricing Commissioner to consider a broader range of factors against the price proposed and it is expected that this process will result in prices being charged that reflect the value of the accommodation offered. This is expected to better protect consumers when compared to the current system.

Option one's approach would be more suited to an environment that seeks to closely regulate prices in an industry and ensure a uniform rate of return is earned by providers operating in that space. That approach is not considered ideal or necessary in the aged care environment, where timely access to appropriate care and services for all Australians remains a key objective of the program. This necessitates a flexible approach to encourage investment in a wide variety of locations and environments.

KPMG's recently conducted modelling indicates that the accommodation payment reforms will have a positive impact on the sector at the aggregate level. It is also important to bear in mind when considering the impact of this proposal that the price approval requirements are restricted to a relatively small group of aged care providers and only 1.4% of all facilities have more than half of their bonds in this price range. Within those homes that do choose to seek approval to charge a price above the threshold amount, current data indicates it is likely to be mainly larger providers in major cities affected. It is expected that very few small providers or those in regional, rural and remote areas would seek to charge prices at this level.

The vast majority of aged care homes will be charging accommodation prices at or below the threshold amount which was set at the 95th percentile of new bonds in 2012-13 and therefore not subject to the approval process.

7. Implementation

The Department proposes to prepare a number of communication and transition documents to support providers in transitioning to the new arrangements. These are expected to include a guide to the process, frequently asked questions, fact sheets and updates to the Residential Aged Care Manual.

The Government has also announced up to $6 million to support aged care providers prepare for and manage the transition to the new accommodation payments system through the provision of business and financial advisory services.

8. Review

The effectiveness of arrangements for regulating prices in aged care accommodation will be reviewed as part of the five year aged care reform review specified in the *Aged Care (Living Longer Living Better) Act 2013*. This review will commence as soon as practicable after July 2016, two years after the implementation of the accommodation payment reforms.

Government has asked ACFA to monitor and report to Government on the impacts of implementation of the aged care reforms. The reporting on the impact of these changes will commence from 1 July 2014, initially on a monthly basis.

Specifically, ACFA has been asked to report on:

- The impact of the accommodation payment reforms on aged care providers;
- The impact of changes to means testing arrangements in home and residential care;
- The impact of transitional support arrangements; and
- The impact of these changes on rural, regional and remote aged care providers.

Data on residential aged care accommodation and its prices will be gathered by the Government and the Pricing Commissioner as these reforms are implemented. This data will help inform the review in 2016.