



**LASA**  
LEADING AGE SERVICES  
AUSTRALIA  
*The voice of aged care*

# LASA'S RESPONSE TO THE PROPOSED MEASURES FOR ADDITIONAL SERVICE FEES IN RESIDENTIAL AGED CARE

17 December 2019

*A strong voice and a helping hand  
for all providers of age services*

## Leading Age Services Australia

Leading Age Services Australia (LASA) is a national association for all providers of age services across residential care, home care and retirement living/seniors housing. Our purpose is to enable high performing, respected and sustainable age services that support older Australians to age well by providing care, support and accommodation with quality, safety and compassion – always.

LASA's membership base is made up of organisations providing care, support and services to older Australians. Our Members include private, not-for-profit, faith-based and government operated organisations providing age services across residential aged care, home care and retirement living. 56% of our Members are not-for-profit, 36% are for-profit providers and 8% of our Members are government providers. Our diverse membership base provides LASA with the ability to speak with credibility and authority on issues of importance to older Australians and the age services industry.

Thank you for giving LASA the opportunity to comment on the consultation paper *Additional service fees in residential aged care*. LASA consulted its Members about the proposal and the feedback below gives account of LASA Members' views with regards to the proposed measures outlined in the consultation paper.

## General statement

In responding to the proposed measures outlined in the consultation paper, it is important to note that on 1 November 2019, LASA, Catholic Health Australia (CHA) and the Aged Care Guild submitted a joint position paper on additional services fees (ASF) (**Attachment 1**) outlining key issues pertaining to the ambiguity of the additional services rules and specified care and services and what could be done to address these issues (while maintaining a flexible regulatory approach that would allow for innovation to meet consumer choice and control, provides consumer protections and minimises regulatory burden including creating a more competitive service environment).

It was noted that regulatory uncertainty around what additional services are permitted, has prevented many providers from introducing additional fees. There were also concerns that a number of providers who have chosen to provide additional services have been the subject of complaints or investigations by the Aged Care Quality and Safety Commission (the Commission) and its predecessor and that these providers and their legal advisers have reported apparent inconsistency in the approach taken by the Commission.

The joint position paper highlighted a number of key issues that are fundamental to the provision of additional services that require further clarification from the Government including:

- *Additional services* – clarification regarding what services are permissible
- *Capacity to benefit* – clarification regarding the capacity to benefit test including how often and when a provider is required to review a care recipient's capacity
- *Additional services as a condition of entry* – can fees for additional services be mandatory/condition of entry requirements?
- *Publication of information* – should residential aged care providers be required to publish information about additional services on My Aged Care and on provider websites?
- *Itemisation* – can additional services be bundled or should prices for additional services be itemised?
- *Residential aged care agreements* – what information should be included in the residential aged care agreements?
- *Payment for additional services* – how payment should be structured
- *Low-means care recipients* – what are the implications for people with low-means noting the requirements under the *Aged Care Act 1997*?
- *Invoicing* – what information should be provided in an invoice?
- *Resolution of disputes involving additional services* - uncertainty about the appropriate and proportionate remedies where a bundle has been found to have breached additional services rules
- *Collection of information* – utilisation of information published on My Aged Care to inform pricing decisions
- *Review of arrangements* - determination whether low-means care recipients are not able to access residential aged care because residential aged care providers are able to charge fees for additional services as a condition of entry requirement
- *Approval of prices* - is it necessary to require prices to be approved by the Pricing Commissioner

- *Extra services* – should Extra Service be phased out and replaced by a policy of standard fees for additional services applicable to all residents in residential aged care?

LASA is disappointed to note that, despite the joint position paper outlining a number of key issues that require further clarification, the Department has chosen to discuss and seek feedback on only a small number of the issues raised including: mandatory disclosure of ASF, low means residents, time limited ASF agreements, and reviewing ASF provided to a resident. This would mean that providers will continue to face regulatory uncertainty that will impact on their ability to provide/introduce additional services (due to the fear of non-compliance) should the other fundamental issues highlighted above not addressed.

We believe a broader consultation process is needed to address all issues highlighted in the joint position paper to minimise regulatory risk to providers who chose to provide additional services to enhance the quality of life provided to residents.

Additionally, we are concerned that the consultation paper also proposes changes that would further discourage providers from making use of additional services arrangements to better meet the needs of residents, particularly for providers that offer bundled additional services arrangements to all residents in a service.

If the Government is not willing or able to address the fundamental problems with additional services it needs to consider other alternatives such as providing flexibility in the basic daily fee or reopening extra service fee places.

## LASA's response to the four proposed measures

### 1. Mandatory disclosure of ASF

As highlighted in the joint position paper, residential aged care providers should be required to publish information about additional services on My Aged Care: whether additional services are provided and if fees may be a condition of entry requirement; and where to find more information on additional services including a link to the provider's website (if one is available).

In this context, LASA supports the publication of information about additional services on My Aged Care and providers' website. However, as per the joint position paper, LASA maintains that clearer language is needed to describe the additional services status of a facility. For many services additional services may be mandatory, but this will depend on the circumstances of the individual. Stating that additional services are mandatory would be misleading and cause some people to miss out on the opportunity to enter the service. Stating that additional services are not mandatory – because they are waived for some residents – would also be potentially confusing. Language to address this issue was proposed to the Department in the joint paper.

The proposal that a provider cannot charge a price higher than that agreed on entry is either superfluous or a significant additional regulatory constraint masquerading as a disclosure requirement.

General consumer law precludes significant unilateral increases in an agreed price without a legitimate reason. For example, unfair contract laws render a contract clause void if it would cause a significant imbalance in the parties' rights and obligations arising under the contract, it is not reasonably necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and it would cause detriment to a party if it were to be relied on.

This does not mean that prices can only increase by the consumer price index (CPI). CPI is the average price increase in a bundle of consumer goods and services that is tracked by the Australian Bureau of Statistics. Different items within that bundle increase by different amounts in response to market pressures. Different providers of the same goods also make different decisions about how much they need to increase prices in response to the pressures specific to their organisation. Accordingly, limiting indexation of prices to CPI would be a significant constraint on the operations of providers offering additional services as they would be forced to absorb above CPI increases in their own costs in other ways, such as by reducing the level of services being delivered.

In addition to providing information about whether additional services are charged, we believe disclosure regarding additional services needs to explain the difference between additional services and extra services on My Aged Care, such as through a 'tooltip' that appears when the cursor hovers over either the extra services or additional services item.

## 2. Low means residents

LASA does not support the proposal regarding low means residents in which a low means resident (fully or partially supported) could not agree to pay an ASF until they have entered care. The proposed arrangements, when combined with security of tenure rules, appear to mean that a supported resident who agreed to pay additional services fees prior to entry could change their mind but continue at the additional service indefinitely.

Many supported or partially supported residents do have the capacity to pay additional services fees, or have family that are willing to pay these fees for them and that the implementation of the proposed measure would make it difficult for providers to execute long-term planning (many of which will involve fixed costs) to deliver additional services.

It is worth noting that additional services fees and extra services fees as a condition of entry have existed for a long time. There is no evidence that this is causing access problems for low means or supported residents, or that there are areas where there are no non-additional services places available (noting that ACFA found in 2017 that there were no problems with access to services for supported residents).

All regions have been comfortably exceeding their regional low means resident ratio, which supports that the incentives and protection mechanisms for low means residents are adequate.

In addition to the requirement for facilities to have more than 40% of low means residents in order to receive the maximum accommodation supplement, providers are also required to maintain a minimum proportion of supported residents in each facility. Whilst penalties apply for non-compliance, LASA is not aware of instances when penalties were required.

We believe disclosure of additional services status on My Aged Care, will provide greater clarity on the number of additional services only facilities, and whether this is likely to pose any risks to non-additional services access. If such risks are identified, Government should develop a strategy to incentivise the provision of services for at risk cohorts rather than imposing regulatory requirements that make it difficult for providers to meet the service preferences of other residents.

However, consistent with all care recipients, low-means care recipients should not be required to pay for additional services they no longer have the capacity to benefit from.

### 3. Time limited ASF agreement

LASA does not support the proposal regarding limited term contracts. Again when combined with security of tenure rules, this would mean that a resident could continue to benefit from services without paying for them after having earlier agreed to make these payments. This is not practical and would make it difficult for providers to undertake long term planning (especially when it involves fixed costs) to ensure viability and sustainability of the service.

### 4. Reviewing ASF provided to a resident

LASA supports the requirement to review residents' capacity to benefit, given this is already effectively implied by the fact that services cannot be charged where there is no capacity by the resident to benefit from the service.

We note however that the complexity associated with applying the capacity to benefit test is a significant additional cost for providers.

There is no reason to establish a fixed schedule for reviewing capacity to benefit from services. The standards already require providers to review a resident's care plan on a regular basis and where there is a significant change in condition. This process can be used to flag whether an individual may no longer be able to benefit from some of the additional services that are provided.

However, it must be said that this review requirement is not without cost, and this is exacerbated by the fundamental uncertainty associated with the capacity to benefit test.

The real issue that needs to be addressed is for the Government to clarify the capacity-to-benefit test and the appropriate response where an individual is found to no longer be able to benefit. This issue was raised with the Department in the joint paper.