

Aged care review: Spring 2017



October 2017

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The review of the Living Longer Living Better Reforms introduced in 2014 has now been completed with a comprehensive report, including 38 recommendations recently being tabled in Parliament.

The review report which spans the industry, including the financial arrangements and sends a clear message that consumers will need to pay more.

In relation to home care the recommendations include:

- Making the basic daily fee compulsory and proportionate to the value of a home care package
- Standardising fees and charging people based on a means assessment for Commonwealth Home Support Programme Services, ensuring that operators charge these fees.

For residential aged care, the recommendations have a similar flavour – consumers should pay more. Here the recommendations include:

- Removing the current cap of \$162,815 applied to the former home for means testing - assessing the full value unless a protected person is living there.
- Removing the annual and lifetime caps on Income Tested Care Fees and Means Tested Care Fees
- Removing the current Basic Daily Fee cap of \$49.42 per day for market price payers, with providers needing approval to charge more than \$100 per day.
- Increasing the accommodation market price cap from \$550,000 to \$750,000 before requiring approval from the Aged Care Pricing Commissioner.

While Ken Wyatt has said that the government won't support uncapping income tested and means tested care fees or the value of the former home consumers shouldn't breathe a sigh of relief just yet – uncapping the Basic Daily Fee and increasing the market price cap haven't been ruled out.

It could be argued that removing the caps would have been fairer, given that to reach the home care cap requires income of at least \$46,500p.a and for the Means Tested Care Fee financial assets of \$1.26M. But very few people would exceed the cap – adjusting the Daily Care Fee and accommodation cap will ensure more people pay more for care and that's what this is about.

Our new "Understanding the cost of Aged Care" booklet is out now call 1300 855 770 or email asktheguru@agedcaregurus.com.au to order your copies.

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Major intestacy upheaval

Troy Palmer, Special Counsel, Mills Oakley and Isobel Feben, Lawyer, Mills Oakley

An intestacy commonly arises when a person dies without a valid will, or has a will which does not distribute the estate in its entirety. A strict legislative formula dictates how an intestate estate must be distributed – for someone who leaves a partner and children the partner would receive the first \$100,000 and 1/3rd of the balance with 2/3rds going to the children.

Intestacy means that you have no control over who benefits from your estate or the proportions in which they benefit; however it also means that you cannot control who administers the estate, how they administer it (providing no protection nor tax effectiveness for beneficiaries) and it can involve significant cost. Important wishes, such as who you wish to be guardian of your children will not be known.

The Administration and Probate and Other Acts Amendment (Succession and Related Matters) Act 2017, which comes into force on 1 November 2017, significantly overhauls how estates will be distributed on intestacy in Victoria, particularly where there is a surviving partner.

Under the new provisions where a deceased person leaves:

- a) one partner (with or without children of the relationship), the partner takes the whole of the estate.
- b) one partner, with children born of a different relationship, the partner will receive all personal chattels, the 1st \$451,909 and 50% of the balance with the remaining 50% to the children.
- c) no partner, the estate is divided equally amongst children and if a child of the deceased has already passed away, that deceased child's children take equally.
- d) no partners or children, the estate is divided equally between parents and if no parents then equally between siblings and if none there is a pattern of distribution "down the line".

Issues often arise where someone claims to have been a de facto partner and family members deny this, or there is more than one person claiming to be the partner of the deceased. Such contest can result in the diminishing of estate assets in establishing the claim as well as broken relationships.

The disadvantages of an intestacy are best avoided by having a properly constructed will.

Need assistance?

Mills Oakley provide a complete range of estate planning services, from standard "husband/wife" wills to complex testamentary trust wills. Our Wills and Probate team assist in the administration of deceased estates, ranging from small to large and complex estates, and trust administrations phone (03) 8568 9574.

Important note: this information is current as at 1 October 2017, and does not constitute legal or financial advice. You should seek legal or other professional advice before acting or relying on any of the content.

Don't wait for the OMG letter

We are seeing an increasing number of people coming to see us only AFTER they have received the “OMG letter” from Centrelink. What is the “OMG letter”? I hear you say.

Well the OMG letter is the letter that Centrelink and the Department of Veteran's Affairs (DVA) send out 2 years after someone moves into aged care, letting them know that their former home is now included in their assets, that they are now considered a non-homeowner for pension purposes and advising of their new pension entitlement – often zero.

Which is the point at which they exclaim “OMG!”

The situation normally comes about when a protected person (other than a spouse) is living in the home, often a child who was a carer. When Mum or Dad move into aged care they are told that they are a protected person and that the home will be exempt from aged care means testing. But what should be underlined here is aged care, the pension exemption is different.

From a pension point of view your home is exempt from the asset test for 2 years from the date you (or your partner) move out – you don't need to have a protected person (or in fact anyone) living there. The exemption is designed to enable people to move back home if they can.

You can imagine the confusion and panic these family's face when the letter arrives normally a matter of days before the pension is cancelled.

But here's the good news. The residents that are coming to see us with their “OMG letter” today entered aged care in 2015 – before the changes to the assessment of the home and rent that occurred on 1 January 2016. These residents are in the unique position of being able to keep and rent their former home with the asset and rent being exempt for as long as they pay a DAC or DAP and rent the house.

Of course whether or not this is the best course of action will depend on a range of factors unique to the resident and their financial situation. It is a good example of how quality advice can ensure that aged care is affordable and in the future.

To make an appointment, contact one of our representatives:



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