AGED CARE – DARBY AND JOAN "DEEMED" INTO PENURY

Introduction

This submission reflects the experiences of me and my late wife, following her admission to a nursing home with fronto temporal dementia, about 6 years ago, and up to her recent death.

This submission is not a criticism of the quality of care provided to my wife, and the nursing home's kindness and consideration of me. Nor is it intended as containing any implication of ingratitude for the public subventions provided to my wife over the course of her illness.

Our circumstances

I am now 75 and my wife was 74 when she died. Until the onset of her condition, my wife worked in a quite well-paid professional position. At her retirement, she had accumulated a super fund well beyond what I believe is typical for women, even well-paid ones.

I have been fortunate to enjoy good health and have worked, and still work, full-time in a professional occupation.

If either my, or my wife's, circumstances had been different, we would have been like what I imagine is the situation faced by most couples where one partner or spouse fails but the other remains fit and active. By the time my wife died, I would have been destitute.

"Darby and Joan"

It seems to me that public policy in this area is premised on a myth. I call it "Darby and Joan" – those happy couples, mutually supporting each other and living in comfortable (that is, as conceived by the public servants) but perhaps reduced circumstances. Both die – of course without lingering illnesses – within a few months of each other.

From this wildly inaccurate and idyllic idea, comes the notion of the "deemed" joint income.

“Deemed incomes”

This notion of the happy couple living in dignified but Spartan old age derives from notions of “equity”. It means in practice that a couple or a person who have actually done the Government’s bidding and

- saved for their super; or
- kept on working beyond the pension age; or
- both

is or are “deemed” to have an income massively greater than the plain reality displayed in their bank balance(s).

Throughout my wife’s time in the nursing home, the Department sent her (not me) letters stating that our income was some large figure, precise down to odd cents. I tried a few times to discover what process had been followed but was never able to find any rational process that lay behind these missives.

Of course, the letters went to my wife, by that time incapable of any kind of speech or comprehension. Why did they do this? Some phoney principle about “privacy”? There’s none of that for a dementia sufferer in a nursing home.

Paying the bills

As my wife’s condition worsened, the letters to her, eventually received by me, added more and more fancy names to the “level” of care she needed and received. And so all the nursing home bills came in every month, until in the last year or so, each one was over $4000. That is, after the Commonwealth contributions.

How was I to pay these? Either my wife’s and my combined incomes – after tax – needed to be well up where the bureaucrats “deemed” them to be, or we had to dip into capital.

What happened was I started, of necessity, to draw down from my wife’s super more income than the capital would sustain. It didn’t help, either, that the GFC took a big bite out of that diminishing capital also.

At the time of my wife’s death, her super was worth half what it was at the start of her illness. For reasons I will mention below, in relation to the “bond”, my inheritance from her estate is greatly less than she and I, when she was lucid and competent, had worked and planned for. The point, however, is not

a complaint about my situation. The point is that the combined effect of the developments outlined above could have left me destitute.

So here is the vice – we are told, indeed compelled, to arrange our super so that we can provide for our own retirement. But the sequence of events I've outlined above conspire to undo those very same policy objectives.

As I've said, our circumstances are not typical. I believe many survivors of a long stay by their partner in a nursing home could well have been reduced to dependence on the pension for the rest of their (single) lives.

Perverse incentives, indeed.

The "bond"

I do not object to the principal that aged care providers should be able to manage their finances – and to charge fees – designed to make the business viable. But the bond system is grossly usurious and it seems has been deliberately designed so to be.

When my wife was admitted to the nursing home, I – we – had to find about $200,000. Who's got that kind of money lying around?   So I had to arrange a line of credit (interest only) with the bank. Interest rates over the last few years were high – perhaps 8% on average. For me, the interest bill every month was $1,500 and our family house had a new mortgage on it.

Meanwhile, the nursing home

- gets the use of that money to invest as it sees fit (I'm paying the interest for them); and
- they take 5% every year off the capital.

Meanwhile, also, the capital value of the "bond" is further depreciated at a 2-3% p.a. for inflation.

The combined cost to my wife and me is an effective interest rate that must have been higher than 20%.

I consider this is grossly unfair. Yet it is legislated, in meticulous detail – all in the name of "equity".

Surely an unregulated, market-based system would be fairer and more efficient?

Who owns the "bond"?

But more was to follow. When my wife died, I asked the nursing home to return the remnants of the original $200,000. Well, no, they said – first show us the probate for your wife's will.

I said – that bond was paid out of a joint account of my late wife and me – secured by a mortgage on property for which we were tenants in common. All very well, said the nursing home, but the Aged Care Act says you must get probate.

I invite the Commission to look at para 57-21AA (3) (aa) of the Act (copy attached). Here is a gross example of "deeming".

In effect, property of which I was and am the joint owner has been appropriated by Commonwealth statute and deemed to belong to my late wife alone. Since when could a statute of the Commonwealth expropriate a citizen's property? What about s. 51 (31) of the Constitution?

Over many years, my wife and I took care to place all our property in our joint names. All other property passed automatically to me on her death – probate of her will was not needed. Raising the line of credit was the last action she took, with me, before she completed a power of attorney in my name.

The fact that my wife suffered from dementia meant she was of unsound mind and incapable of changing her will or otherwise dealing in property. Consider, however, what mischief this "deeming" (and I believe, unlawful) provision could do in fiduciary arrangements (and perhaps sexual re-arrangements) entered into subsequent to payment of the "bond", in respect of persons who are old but "of sound mind". The scope for Commonwealth-sanctioned injustice – not to speak of inter-family feuding – is considerable.

A lucky escape from perverse incentives

I will readily admit that my and my late wife's circumstances were such that we have avoided some of the more dire consequences that I could have now been facing.

But I would suggest that, for people more fortunate than pensioners, but whose incomes or health and fitness were not as good as ours, they must surely face a serious poverty trap. I would add that, when you lose your life partner, you are not likely to be in robust emotional good health. The various interfaces with bureaucracies, public and private, implicit in this narrative, don't really help.

The system is full of perverse incentives. They could not have been designed better to sabotage the policies of saving for your own retirement, and working as long as you can into old age.