How to approach difficult ageing conversations

Jenneke Mills

Acknowledging that those we love can no longer manage on their own is a difficult step. Raising this with other key decision makers and the person themselves can be even more challenging. We have a range of resources to help you have these client conversations and assist clients to start the family dialogue.

Overview

The best aged care advice is one that plans for the potential need for support in the future rather than an immediate need whilst emotions are heightened. In this article, we identify some useful:

- adviser tools (including a special purpose 'fact find') to assist you with the client conversation, and
- client tools to help your clients understand some important concepts and to raise key issues with their loved ones.

Where possible, it is critical that financial advice is received prior to any changes occurring, and that where appropriate, the client is also referred to other professionals, such as a solicitor or registered tax agent.

Advice needs: Issues and considerations

Advice needs and considerations associated with changing accommodation and care needs are summarised below.

Keep or sell the family home

Issues and considerations

- How are sale proceeds best invested or used?
- Is a downsizer contribution appropriate?
- What is the impact on social security entitlements and aged care (if the client is receiving government-subsidised aged care services)?
- Is CGT payable, where the home was not the main residence for the full ownership period?
- Does the Will need to be updated to account for the change in asset holdings?
- Where a large super contribution is made, do beneficiary need updating?

Establishing a dual occupancy arrangement

Issues and considerations

- Who is paying any construction costs and what are the legal implications?
- In the event of granny flat construction, will the property be subdivided?
- What are the estate planning implications where multiple beneficiaries exist?
- Should any agreement be formalised in writing under legal guidance (required for CGT relief under a granny flat arrangement)?
- What are the terms of the arrangement?
- What if the arrangement fails and parties can no longer live together?

- What expectations exist in relation to care and support, and what if these needs increase in the future?
- What are the tax and social security implications of the arrangement?

Moving into a retirement village

Issues and considerations

- What upfront costs are involved?
- What 'exit fee' is payable, and what would the impact be on the ability to fund future care costs?
- What are the potential CGT implications upon a future sale?
- How long would it take to sell the interest in the retirement village?
- What is the impact on social security entitlements?
- Are home care services also required?
- What options are available for longer term care needs? Long waiting lists may still apply for residential care even where these services are located on the same premises. Early planning is therefore critical.

Needing in-home care

Issues and considerations

- Managing the personal financial contribution, by helping the client to determine the cost to obtain service(s) required:
  - ◊ via a government subsidised program (where the care receiver may still need to make a contribution to their fees), or
  - ◊ directly from a private provider.
- Ensuring the assessment process is initiated in advance to cater for the long wait times to obtain a care package.

Estate planning considerations

It is estimated that 54% of people in residential aged care facilities have been diagnosed with dementia[1], so in many cases, the care receiver has lost the legal capacity to make decisions for themselves. Before losing legal capacity, it is important to put in place an Enduring Power of Attorney (EPoA) and Enduring Guardian (or similar depending on the relevant State). In the event of client's incapacity, this will empower someone else to make financial and/or medical decisions. An Advanced health/care directive can be used to express the client's wishes should they become seriously ill or injured and unable to make decisions.

Consider the following estate planning needs for the client, ensuring they obtain legal advice where required:

- Does the care receiver have legal capacity?
- Is an EPOA in place and what does it allow the attorney to do/not do? Are there any product limitations on what actions can be performed under an EPOA?
- Is there an Enduring Guardian and Advanced health/care directive (or similar) in place?
- The Will is amended to reflect a change in asset holdings, such as the sale of a main residence or the refund of a refundable accommodation payment or contribution and any outstanding debts.
- Super beneficiary nominations are reviewed
- Beneficiaries are provided for as desired, taking into account any changes in circumstances, and
- The implications of dual occupancy arrangements are considered, particularly where the client has transferred significant wealth to one beneficiary during the process, or where accommodation is being provided for a beneficiary in the client's family home, or where a family member has lent substantial funds to the client.

Residential aged care advice needs

Advice relating to residential aged care should be provided before the need arises and the before the client loses capacity. The nature and extent of the issues that arise when a person requires full time aged care will differ based on their circumstances. Implications will need to be considered for the person moving into care, and in some circumstances, other close family members who may be impacted by the changes.

Much of the value from providing 'aged care advice' is derived from dealing with issues and concerns beyond addressing the fees and trying to minimise costs.

Issues that may arise are summarised as follows.

Decisions relating to the former family home

Issues and considerations

- Who will continue to live in the home?
- Is there a requirement to provide ongoing accommodation for another person in the former home?
- Whether the client prefers to sell or rent the home?
- Is the home in a 'rentable' condition?
- Who can carry out maintenance and liaise with real estate agents?
- What are the implications of the ongoing use of the home on the Age Pension and aged care fees?
- Should a downsizer contribution be made, or does paying a social security exempt refundable accommodation deposit provide a better cash flow outcome?

Family members offering to pay aged care fees

Issues and considerations

- Is it better to pay a lump sum accommodation fee or a daily payment? There are several considerations when determining the best option. See our resources matrix on page 5 of our article 'Family funded aged care fees'.
- Lump sum fees are returned to the care receiver's estate[2]. Does a loan agreement need to be established, or the Will amended to ensure the money is returned to the right person? What if the care receiver has lost legal capacity?
- How will fees be paid if the person pays ongoing fees has a change in circumstances and can no longer fund the costs?

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The quote

The best aged care advice is provided before support is needed, giving families time to consider their options without the pressure of an immediate crisis.

Jenneke Mills, MLC Technical Services

Jenneke is the head of technical services at MLC. Prior to this role, she worked as a financial adviser with NAB. Jenneke's areas of expertise include superannuation, self-managed super, retirement and estate planning, taxation, social security, and aged care. She has a Bachelor of Commerce from the University of Wollongong.

The quote

Much of the value of aged care advice comes not from minimising fees, but from helping families navigate complex financial, legal and personal decisions.

Maximising social security payments and benefits

Issues and considerations

- What is the net impact on cash flow if the former home is rented – potentially increasing aged care fees and decreasing the Age Pension (if income tested) and taxable income?
- Consider changes to social security entitlements after entry to care. This could be either:
  - ◊ couples moving to the single rate of pension under illness separated couples or individual assessment if considered 'living separately and apart'.
  - ◊ two years from the date of entry, where the general exemption on assessment of the home for social security means testing is lost if the home is not occupied by a spouse, or
  - ◊ where a change in circumstances occurs (for example, where the home is sold after entry to care, or where the spouse remaining in the home decides to sell, passes away, or enters care themselves).

Understanding advice issues and starting the conversation

Starting the conversation early and understanding the key financial, lifestyle and care considerations can help individuals and families make more informed aged care decisions with greater confidence. **FS**

Notes

1. Australian Institute of Health and Welfare, Dementia in Australia, 13 September 2024 www.aihw.com.au
2. Less any amounts deducted from the lump sum (including fees agreed between client and provider)