



MUNICIPAL ASSOCIATION OF VICTORIA

A New Aged Care Act:

Exposure Draft

Submission to the

Australian Government Department of Health and Aged Care

February 2024



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The MAV is the statutory peak body for local government in Victoria. The MAV would also like to acknowledge the contribution of the councils who provided their comments and advice to inform this submission.

While this paper aims to broadly reflect the views of local government in Victoria, it does not purport to reflect the exact views of individual councils.

Table of contents

INTRODUCTION4

PART ONE5

Victorian Local Government’s involvement in aged care5

The ongoing value of Victorian Local Government to Aged Care6

PART TWO.....7

Broad themes for consideration.....7

PART THREE.....10

AGED CARE ACT EXPOSURE DRAFT10

Chapter 1 – Introduction10

Chapter 2 – Entry to the Commonwealth aged care system.....13

Chapter 3 – Registered providers, aged care workers and digital platform operators...15

Chapter 4 – Fees, payments and subsidies.....17

Chapter 5 – Governance of the aged care system.....18

Chapter 6 – Regulatory mechanisms19

Introduction

The Municipal Association of Victoria (MAV) welcomes the opportunity to present a submission to the Department of Health and Aged Care (the department) on *A new Aged Care Act: Exposure Draft – Consultation paper No. 2*, and the exposure draft of the Aged Care 2023 Bill (the exposure draft).

The MAV is the legislated peak body representing Victoria's 79 councils. This submission responds broadly to the *Exposure Draft Aged Care Act Consultation Paper no. 2* questions posed by the department as they relate to councils in their multiple functions as service providers, service planners and place-based stewards, and system advocates on behalf of older people and the service system.

All Victorian councils are invested in the successful implementation of the reformed aged care system to be sustainable, accessible, and equitable for those who need it. While not all councils deliver aged care services, many retain their roles as system stewards, a legacy from the repealed *Home and Community Care Act 1985* (Cth) that formalised a trilateral approach to the planning, funding and delivery of home and community care services.

This submission has been developed in consultation with Victorian councils and with local government peak bodies from New South Wales and South Australia. It draws on our member's deep understanding of the needs and aspirations of older people in their communities.

It highlights sections of the exposure draft that should be strengthened, amended, or included to realise the Objects of the new Act and calls for clarity and transparency where further information remains under development at the time of writing this submission. It is less than ideal for a considered holistic submission that sections in the exposure draft are not included, such as the service list, details regarding fees, pricing and subsidies, and rules.

This submission contains three parts. Part one outlines local government's role in aged care and how, as a level of government, councils support the delivery of quality and accessible aged care services. Part two raises broad themes for consideration. Part three speaks directly to the chapters of the consultation paper.

PART ONE

Victorian Local Government's involvement in aged care

Victorian in-home care services were historically delivered through a successful trilateral partnership between the three spheres of government. Local government in Victoria has a 70-year history of planning for, funding and providing aged care programs, services, and facilities in response to the specific needs of its ageing residents. Councils contributed over \$150 million annually to this partnership. Since the Commonwealth Government assumed control of the aged care system, the landscape for Victorian councils as a sector providing aged care services has changed. Less than half of Victorian councils continue to provide funded aged care services (including some with a service mix of Commonwealth Home Support Program (CHSP), Home Care Packages (HCP), Regional Assessment Services, and one Victorian council operating residential care).

For over 40 years, Victoria's home care system was underpinned by a place-based system at the local level, ensuring a well-planned and connected service system tailored to local communities which could engage and harness volunteer and not-for-profit services alongside high-quality funded services. The benefits of this approach should be embedded in the new Act. Local government's proximity to community means it is well-placed to serve as a key stakeholder in this endeavour.

Beyond the delivery of care, councils create supportive environments and communities to age well, building connections for older people and the services they need.

An increasing number of Victorian councils have invested in direct functions to complement the aged care system, such as community connector roles and navigational supports. The support is diverse between councils in terms of duration, financial commitments, and scope. Such roles demonstrate the depth of council commitment to supporting health and wellbeing outcomes for older residents by proactively addressing local gaps arising from the evolving aged care system.

Councils formal involvement in and responsibility for emergency management planning, relief and recovery has been and will continue to be of significant interest to the aged care sector.

The ongoing value of Victorian Local Government to Aged Care

To ensure the transformation envisaged in the new Aged Care Act is realised, the legislation must have regard for both macro (national) and micro (local) systems that promote the health and wellbeing of older Australians and support locally responsive service systems. Local government across Australia is a key driver and partner of initiatives and services that achieve this goal.

The role of local government in system governance is embedded in its legislated responsibilities. The Victorian *Local Government Act 2020* locates responsibility to provide equitable and appropriate services and facilities for the community.

Local government also has responsibilities to protect, improve and promote the public health and wellbeing of its residents under the *Public Health and Wellbeing Act 2008*. In exercising these responsibilities local government in Victoria has provided a significant and co-operative stewardship role that has directly and effectively contributed to a service system grounded in partnership and sector co-operation. Local government facilitation and leadership support the interaction and intersection of health, community, residential, and private service providers' systems and networks.

This co-operation, active at a strategic and operational level is critical to the progress and success of service system design, sector planning and effective and efficient responses to current, emerging and unmet need. The role of local government in providing reliable and contemporary demographic and service data, research and engagement can be relied upon for a detailed understanding of local service need and demand and population health insights. .

The MAV recommends that the System Governor recognise the value of councils in local service planning. Councils have strong networks and play a key role in advocacy and leadership for local population outcomes that would support system stewardship.

- The System Governor (delegate) should develop local partnership arrangements with local governments to support regional stewardship of aged care markets and workforces.

PART TWO

Broad themes for consideration

This section outlines areas of concern that the draft legislation either does not currently address and existing issues that draft legislation must have regard for, whether directly addressed or not. The strength of the legislation will be determined by its ability to balance the reality of existing system weaknesses with future aspirations for the sector.

How the new Act will facilitate or hinder processes and timelines to effectively address these matters is not apparent.

Accessibility and clarity of legislation

It is imperative that the legislation is accessible to those who are governed by it to ensure they understand their rights, the responsibilities of others and pathways to act if they consider that their rights are not being upheld. The exposure draft is not currently accessible.

- The MAV recommends that the legislation be written for accessibility by older people, their supporters, and the aged care workforce. Guidance documentation should accompany the legislation for improved access to empower people to understand their rights and responsibilities across the service system.

Harmonisation with other federally funded and legislated systems

It is important that the Act makes progress towards harmonisation of interacting systems to enable individuals and the aged care workforce to understand and navigate their rights and responsibilities as they interact across multiple systems.

- The MAV recommends that the legislation reflect shared definitions, concepts, registrations, regulations and pathways for complaints or appeals, where appropriate, with legislation that governs interfacing systems such as the National Disability and Insurance Scheme (NDIS) and health.

Existing market and data gaps in the CHSP

Victorian councils have a long history of providing CHSP services. We note that while the CHSP funds the most providers and services the most clients within the aged care system, due to a lack of reliable

data, many policy decisions are made based on the needs of residential care providers and HCP providers.

There are concerns across Victoria that there are older people who have been assessed for services and cannot access the services they need due to factors including lack of service availability, workforce shortages, sector capacity, prioritisation of needs and service types (such as long wait lists for accessing domestic assistance). Often, this situation only changes when a person's circumstances deteriorate, and they require more urgent and higher-level support.

The integration of CHSP into the Support at Home program no earlier than July 2027 was a welcomed announcement to support the sector and older people to prepare for the new system. There is, however, a risk that the shorter transition period for HCP providers may cause issues for the System Governor, who must simultaneously focus on the long-term sustainability of the aged care system while responding to contemporary systemic failures to ensure nationally equitable access.

The MAV is concerned that the data collected by the department does not accurately reflect the depth of market insufficiencies leading to a lack of data on unmet demand. The use of CHSP provider waiting lists, which are not monitored by the department, exacerbates these blind spots. Each piece of 'data' is an older person who does not have access to the aged care system in the way that the system is intended to support them.

- The MAV recommends the department or the Minister prioritise solutions that resolve existing service issues, including waiting lists for CHSP services and assessment before the integration of CHSP into Support at Home.

Workforce shortages

It is well understood that there are workforce shortages across the aged care sector (and other related sectors), that impact the availability of service access for older people.

Achieving harmonisation across workforce strategies that focus on workers delivering care to people living in their homes could form a basis for further localised planning across sectors.

- The MAV recommends that workforce strategies be aligned across jurisdictions and the care sector.

Funding disparity for CHSP

CHSP funding continues to 'bake-in' legacy issues of funding disparity for service types between providers. The department is not transparent on national funding variations regarding the quantum of providers sitting at the lower, mid or upper scales of current CHSP funding per activity type. There is an understanding that Victorian councils are rarely at the upper range of service-type funding compared to other providers nationwide. This has exacerbated cost-shifting to Victorian councils to subsidise service costs for their communities.

- The MAV recommends that funding parity is sought through new contractual agreements with providers for CHSP to extend until at least end June 2027. The (yet to be released) recommendations that the Aged Care Taskforce should also be considered with regard to funding subsidies for specialisations, geographic remoteness, and providers of last resort.

Rollout of the Support at Home Reforms - opportunities and risks

The two-phased implementation of Support at Home was welcomed by councils due to both critical concerns regarding CHSP sector readiness and the lack of detail regarding the Support at Home model.

A roadmap of milestones and commitments is required by the sector for critical information to prepare for the changes across budgets, resourcing, procurement, system upgrades, and recruitment processes.

PART THREE

A new Aged Care Act - Exposure Draft

This section responds to specific chapters of the exposure draft consultation paper.

Chapter 1 – Introduction

Ensuring the Act aspires for self-determination

The rights-based legislation is a true advancement on the current Aged Care Act, although opportunities exist to strengthen this intent. We note that when compared to the NDIS, which is underpinned by self-determination, early interventions and capacity-building approaches to achieve social and economic participation, the exposure draft does not include an aspiration to support older people to participate in their communities. ‘Care’ in the draft legislation is more narrowly defined than aspiring for self-determination, an underlying tenant of choice and control.

For this reason, the MAV recommends that:

- The legislation is further strengthened by focusing on well-being, reablement and quality of life and pivoting from the current approach that leans towards a deficit approach and a medical model of care and support extending beyond the default of ‘clinical care’ needs to activities of daily living.
- Terminology regarding care must include access to disability supports where required.
- Early access to aged care should extend beyond the cohorts currently identified to include support for people with age-related conditions, such as early-onset dementia. There is an absence of other formal supports available (such a condition is very unlikely to meet eligibility requirements for the NDIS).
- The Act includes details on how the rights of older people will be upheld as standard practice and not merely through an aspirational series of statements that can only be upheld when there is a breach in another section of the legislation.

Choice and control of older people are included in the draft Bill as principles. However, this must be strengthened within the draft Bill to ensure those principles are operationalised. Furthermore, there is no explicit provision for self-managing care and little to support co-design of support plans to incorporate personal preferences into plans. The inter-dependence of care relationships and the needs and rights of both the carer and the older person is not represented in the Act.

- The MAV recommends that:
 - choice and control be strengthened throughout the Bill to uphold the rights of the older person, including through the co-design of support plans.
 - The interdependence in care relationships is acknowledged, and the needs and rights of carers and the care relationship are considered in addition to those of the older person.

Recognising the roles of carers and professional advocates

The exposure draft is silent on the contributions and role of carers and the way that the Act will interface with the *Carer Recognition Act 2010* (Cth). The Act should aim to strengthen and build upon care relationships and acknowledge the care that is contributed by carers. Currently the Act takes a compliance approach to with reference to Supporters and Representatives and fails to acknowledge and strengthen care relationships.

The exposure draft is also silent on the role of independent professional advocates and how they formally interact with the aged care system. National advocacy programs play a critical role in supporting individuals to uphold their rights and can flag systemic issues for continuous improvement (or to avert system failure). It is imperative that this function is recognised in the Act and supported in the various chapters, such as their role in 'entry to the system', regulations, governance, and critical powers (such as an advocate being granted the power to enter premises with the older person).

The MAV recommends that the legislation:

- Defines informal carers, the essential supports they provide, and how they interact with the system regarding rights.
- Defines professional advocacy services and the responsibilities they have to interact with the various stakeholders: providers, supporters and representatives, System Governor, Regulator, Commissioners or delegates, and providers.

Enabling choice and control with supporters and representatives

Information regarding supporters and representatives needs to be strengthened and amended. Older people should have the right to have multiple supporters and/or representatives simultaneously to enable choice and control. They may choose different nominations or appointments for different matters, such as a different representative for medical decisions than for financial decisions. Some suggested areas to strengthen this concept are to consider:

- Multiples of either or both supporters and representatives

- The need to distinguish between individuals and entities (such as State Trustees)
- The system could override the rights of the individual. Someone can be appointed that they do not want, so how can this be safeguarded respecting choice and control?
- Potential for conflicting powers between federal and state/territory for enduring powers of attorney
- How is a register maintained and updated to ensure currency? What are the checks and balances in place by the Commissioner? How often is this updated?
- What is the process for change if an older person changes their mind about supporters and/or representatives?
- Needs a provision to appoint an independent professional advocate from the national advocacy program.

Balancing the responsibilities of older people receiving aged care services

The Statement of Rights lacks corresponding responsibilities for older people. Providers would like to see these embedded in the Act for clarity, which will support aged care workers and providers with consistency on matters such as occupational health and safety for aged care workers.

- The MAV recommends that responsibilities of older people accessing aged care should be embedded in the Act, alongside their rights.

Embedding flexibility within future service lists

It is disappointing that the Service List is not included in the exposure draft. Providing constructive feedback is challenging, and the MAV will welcome the opportunity to provide feedback at an alternate time when the draft Service List is available. The MAV would like to see flexibility within groupings of service types to enable older people to exercise their choice and control.

Additionally, aged care financial literacy will support older people to understand their contributions, service fees and charges. Supporting initiatives for aged care financial literacy will build the capacity for older people to exercise choice and control within the new system.

The MAV recommends that:

- flexibility is embedded within the Service List to enable older people to exercise choice and control to make informed decisions.
- Aged care financial literacy activities should be supported and resourced as a part of the service list.

Amending registration categories

Councils have raised concerns that social support group activities have been included in Category 4, which will require the next level of compliance. Councils with experience of providing these services consider this to be disproportionate for the activity type which could constitute a barrier for providers considering the delivery of community-based services.

- The MAV recommends that social support group services be realigned to Category 3.

Chapter 2 – Entry to the Commonwealth aged care system

Closing the loop for those deemed ineligible for Commonwealth-funded service

The reformed system has been designed to simplify entry into the aged care system, a celebrated concept. Unfortunately, the exposure draft does not make clear how older people who do not meet the eligibility criteria will be supported.

As such, the MAV suggests that ineligibility should trigger a referral to either a Care Finder or, in specific circumstances, an independent professional advocate (so as not to overload the capacity of the advocacy sector). This is recommended to respond to potential discrepancies between an individual's expectation of their support needs and the system's definition of eligibility. Why and whether further action needs to be taken to support the person to gain access should be considered on a case-by-case basis.

Continuation of Care Finders and ensuring informed consumers

A significant limitation, already requiring considerable effort and resource allocation, is the capacity of people seeking out aged care options to have access to information and support to assist them in making informed decisions regarding accessing services. Consumer choice and control as a principle in the Act is vital but there are complex barriers to access for many older people and their carers.

- The MAV recommends:
 - the continuation of the Care Finder model, with a process of continuous improvements to the model
 - Providing funded training, communications toolkits, and claimable funding for aged care workers and other community organisations to build individual capacity to understand the system and their options to exercise choice and control or refer the person to a Care Finder.

Ensuring older people are positioned as active participants in the aged care journey

Self-determination is currently not identified in the flow chart from the department visually depicting the process for entry to aged care. The older person appears to be a passive recipient of the process, with others making decisions about their support needs and service levels. Assessment needs to be a co-designed process for developing support plans and should be supported by an appropriately skilled and qualified workforce.

- The MAV recommends that the flowchart and the Act be updated to put the older person at the centre of the entry, review and reassessment processes.

Adequate data collection and regional collaboration as a means of addressing service system issues

Metrics are needed to measure the success of the model to provide timely and responsive supports to older people as required. There is the potential for conflict of responsibilities between providers of the Single Assessment Services, aged care service providers and the System Governor when workforce shortages create delays or bottlenecks to service access in specific areas. This should be a matter for the System Governor to collaborate with stakeholders in regions of impact to identify localised solutions.

- The MAV recommends that the timeframe from application for an aged care assessment to commencement of service access should be measured as a process outcome for an older person. Regional stewardship, including local government, should be considered to ensure systemwide responses.

Defining exceptional circumstances for expedited access to aged care

Transitional care should be an option for any older person receiving an in-hospital assessment, such as providing alternatives to direct admission into residential care (where appropriate). Exceptional circumstances may warrant immediate access to aged care services as a more appropriate and cost-effective response than an alternative, such as a hospital admission supporting an older person's safety and health. A clause is required for exceptional circumstances to provide an efficient pathway to service access that bypasses the full entry approach. The Act could provide a role for general practitioners or other health practitioners to trigger an emergency clause. The emergency or exceptional circumstances clause would require inherent flexibility to respond to unique circumstances. The response would need to be timely with respect to risk and need. The access process also requires a strengthened interface between MyAgedCare and the Carer Gateway for responsiveness to exceptional circumstances when a carer is involved.

- The MAV recommends including a clause that defines exceptional circumstances and the process to fast-tracking access to service supports across all programs/services, assurance of funding, and the follow-up process to retrospectively comply with the complete entry requirements.

Chapter 3 – Registered providers, aged care workers and digital platform operators

The MAV is challenged to provide constructive feedback on this chapter without having access to the details and draft rules such as aged care worker screening requirements, qualifications, and training requirements. Guidance is provided however ambiguity remains about registration requirements following the initial deeming process with regard to the 3-year registration process, exemptions, required lead times, and costs.

Maintain exemption for local governments from requiring an advisory body

The current Aged Care Act 1997 (Cth) s 63-1D exempts local government and State and Territory governments from governing body and advisory body requirements introduced as part of the reforms in response to the Aged Care Royal Commission.

As outlined in consultation paper no. 2, the intent of sections 100-104 of the exposure draft is to ‘replicate recent amendments made to the current legislative framework’. Notably, s 100(1)(b) of the exposure draft exempts government entities from governing body requirements, but this exemption is not extended to advisory body requirements under s 101. Therefore, the exposure draft represents a departure from existing legislative intent.

The MAV recommends that the exemption under s 100(1)(b) regarding membership of governing bodies be replicated in s 101 to exempt local government authorities from advisory body requirements.

Balancing workforce minimum requirements and screening requirements

The workforce minimum requirements must balance the need for accessible pathways for workforce entrants and the provision of high-quality care. It is unclear who will be responsible for annual aged care worker screening, and if cumbersome or expensive, this could present a barrier to engaging or retaining workforce when there are recognised shortages.

- The MAV recommends moving the aged care worker screening to a national register, and away from State and Territory registers to support safeguarding.

Amending the responsibilities of volunteers

Volunteers are currently defined in the Act with the same responsibilities as aged care workers, which would be disproportionate with regard to administrative compliance requirements and risk.

- The MAV recommends a separate definition of volunteers and separation of responsibilities, registrations, screening, etc in the corresponding relevant documents.

Addressing concerns regarding associated providers

Councils are very concerned about the definition of 'Associated Providers' and the regulatory implications for registered providers. The draft legislation shifts significant risk onto the aged care provider for compliance, who may have little or no oversight to control risks.

Associated providers are a necessary part of the aged care system to engage a breadth of providers for holistic support, for service continuity to overcome workforce gaps, and to embed choice and control into the system. Risks can be mitigated to an extent by providers, with time to set up and establish systems for compliance. This is already a recognised gap in the current system, as there have been instances of poor-quality outcomes following sub-contractual arrangements due to workforce shortages.

- The MAV recommends further checks and balances to streamline associated provider compliance for lead providers to avoid risks and penalties resulting in less engagement of associated providers that may impact service choice and continuity for older people.

Aspiring for harmonisation

This generational opportunity for new legislation cannot overlook the opportunity to aspire for harmonisation with other intersecting and similar sectors, such as NDIS, mental health and health. Aspiring for harmonisation will support the mobilisation of workforce across sectors when workforce supply is already challenged; agencies providing multiple services for communities which would support service access in small populations and geographically remote communities; provide parity between sectors for workforce with similar skills and qualifications that can support the stabilisation and sustainability of markets across essential service sectors. Harmonisation fundamentally supports people in navigating across systems with greater ease.

- The MAV recommends aligning the Act with other relevant legislation, rules, and pricing schedules to move toward harmonisation.

Chapter 4 – Fees, payments and subsidies

Once again, it is challenging for the MAV to provide constructive feedback concerning fees, payments and subsidies when the exposure draft has been released with the absence of detail and without understanding the recommendations of the Aged Care Taskforce at the time of this submission. The MAV welcomes future engagement opportunities to provide feedback on a proposed payment schedule and a contributions framework for older people accessing the Support at Home program.

Accountability for financial literacy of older people accessing care

The System Governor should be accountable for aged care financial literacy. If individuals cannot understand their contribution arrangements, the Governor either needs to improve system accessibility, develop accessible communication resources for older people to improve their understanding, or invest in supports within the system to improve aged care financial literacy.

- The MAV recommends that the System Governor has responsibility to improve aged care financial literacy of older people accessing the system.

Prioritising consistency, fairness and sustainability under the Support at Home funding model

The contributions framework for CHSP services is anticipated to shift under the Support at Home model. While awaiting the release of the Aged Care Taskforce recommendations, there is no shared understanding of what contributions are expected for access to Support at Home services. However, integrating Home Care Packages and CHSP into one program would indicate a significant shift from the current CHSP contributions framework. With the integration of these programs, the MAV supports the application of nationally consistent means testing through Services Australia to achieve rigour and independence.

Similarly, we propose that hardship applications must be nationally consistent and not disadvantage individuals or providers who support people experiencing financial hardship. This is important to disincentivise ‘cherry picking’ of individuals and service regions for an equitable and accessible system.

There have been concerns raised about claiming fees within a multi-provider system. Providers want confidence that aged care funding will not be exhausted due to services access from multiple providers during a funding period, leaving providers ‘out of pocket’.

The tyranny of distance will remain challenging for market stewardship to achieve equitable service access for all older Australians. It is vital that the pricing schedule addresses these challenges.

Furthermore, the department previously alluded to grant funding for certain service activities within Support at Home, including transport, meals, and social support groups. This approach is supported by councils as experienced providers of these supports, although it is now unclear whether this model is being pursued.

We note that research by the University of Technology Sydney found that smaller providers providing entry-level support in the HCP program are returning the poorest financial outcomes¹. This indicates potential viability issues for current CHSP providers under the Support at Home model. Action must be taken to address this system weakness.

- The MAV recommends grant funding for Support at Home service activities of transport, meals, and social support groups.

Prioritising the release of the draft pricing schedule

Without having access to a pricing schedule, it is unclear whether pricing will enable councils to develop financially sustainable business models. A pricing schedule will provide essential information for councils to make informed decisions about their future roles in service provision. As several Victorian councils will review their roles as service providers before 2027, the pricing schedule must be made available for consultation years in advance of the implementation of the second phase of Support at Home.

- The MAV recommends the department release a draft pricing schedule for consultation and as final release in 2024 to enable providers to understand the viability of continuing, entering or exiting as a registered service provider of Support at Home.

Chapter 5 – Governance of the aged care system

Councils have a legislated role and interest in accessible and integrated service systems for local communities, regardless of whether they have aged care provider status or not. While the exposure draft does not detail the levers that the System Governor may draw upon, local governments are critical stakeholders in place-based service planning.

Regional stewardship and place-based planning

The MAV recommends that a range of fundamental service design features are retained and reinstated to support the management of the aged care market, to ensure access and quality of service provision,

¹<https://opus.lib.uts.edu.au/bitstream/10453/173661/2/Australia%27s%20Aged%20Care%20Sector%3a%20Full-Year%20Report%20%282022-23%29.pdf>

to address barriers to access for disadvantaged and vulnerable individuals and communities, and to encourage a mix of service providers and service solutions continue to be available. These include;

- Investment in local government to support councils to act as effective public sector stewards at the local level.
- Plan services on a demographic and geographic basis with place-based responsibility for meeting the needs of the older population of that community (in contrast to providing individualized services to selected individuals, with no responsibility for others who miss out).
- Engage with councils as stakeholders at a regional level when seeking place-based solutions to thin markets or market gaps as stewards for health and well-being on behalf of their communities.

Independence of the Complaints Commissioner

The Complaints Commissioner should be an independent appointment and separated from the powers of the Aged Care Quality and Safety Commissioner, which would otherwise present a perceived conflict of interests and an imbalance of power.

- The MAV recommends that the Aged Care Complaints Commissioner is an independent appointment reporting directly to the Minister, and not to the Aged Care Quality and Safety Commissioner as currently proposed.

Chapter 6 – Regulatory mechanisms

Regulating high-quality care

To achieve the aspirational high-quality care defined in the Act, incentives and measures are required to lift service quality and measure the difference in quality outcomes.

- The MAV recommends that
 - providers be voluntarily audited against high-quality care systems and outcomes measures by the Aged Care Quality and Safety Commission (the Commission) to achieve a status of a provider of ‘high quality’ care that can be promoted.
 - measurable high-quality care needs to be funded to be delivered sustainably so a financial incentive is required.

Ensuring adequate resourcing and timelines for achieving compliance under the new Act

The gravity of sector preparations to achieve compliance with the new regulatory mechanisms must not be underestimated. There are significant changes to the Aged Care Quality Standards, along with

required understanding and changes for the regulatory mechanisms under the new Act. Providers require time, approximately 12 months, and dedicated resourcing for transformational change to achieve compliance. Providers will have limited capacity for transformational work whilst continuing to focus on their service delivery operations. Providers may need to engage additional non-operational staff to lead this work.

Several questions must be clarified to support providers as they work towards compliance, noting the transformational nature of this undertaking. These include:

- How will the Commission formalise the conflict between provider requirements under the new Act with the essential need for a period of grace to implement transformational change?
- If a suspected breach is reported during the period of transition, how will the Commission manage this granted the powers that it has?
- What are the milestones or critical points along the transformation path for providers to prioritise and manage whilst focussing on operations and optimal service outcomes for older people?

The MAV recommends:

- Twelve months be provided for organisations to transform their businesses to achieve compliance .
- The Commission provides clear guidance on interim expectations regarding the transition phase.

Ensure clear guidance for CHSP providers, including local government, on relevant requirements of the new Act.

- The MAV calls for improved clarity regarding the obligations of CHSP providers between the passing of the new Act and the full rollout of Support at Home.

Prioritise ongoing funding of Sector Support and Development to support transition and beyond

Sector Support and Development funding has enabled the sector to collaborate in preparation for aged care reforms. The program identifies and responds to unintended issues during implementation and addresses emerging systemic issues to support effective and sustainable operations and stabilise an evolving market.

- The MAV recommends the continuation of Sector Support and Development through and beyond the implementation period of Support at Home.

Summary of recommendations

Regarding the broad themes of the legislation, the MAV recommends that:

1. The System Governor (delegate) should develop local partnership arrangements with local governments to support regional stewardship of aged care markets and workforces.
2. The legislation should be written for accessibility by older people, their supporters, and the aged care workforce. Guidance documentation should accompany the legislation for improved access to empower people to understand their rights and responsibilities across the service system.
3. The legislation reflects shared definitions, concepts, registrations, regulations and pathways for complaints or appeals, where appropriate, with legislation that governs interfacing systems such as the National Disability and Insurance Scheme (NDIS) and health.
 - a. The department or the Minister prioritise solutions that resolve existing service issues, including waiting lists for CHSP services and assessment before the integration of CHSP into Support at Home.
4. Workforce strategies are aligned across jurisdictions and the care sector.
5. Funding parity is sought through new contractual agreements with providers for CHSP to extend until at least end June 2027. The (yet to be released) recommendations that the Aged Care Taskforce should also be considered with regard to funding subsidies for specialisations, geographic remoteness, and providers of last resort.

Regarding Chapter One of the Act, the MAV recommends that:

6. The legislation is further strengthened by focusing on well-being, reablement and quality of life and pivoting from the current approach that leans towards a deficit approach and a medical model of care and support extending beyond the default of 'clinical care' needs to activities of daily living.
7. Terminology regarding care must include access to disability supports where required.
8. Early access to aged care should extend beyond the cohorts currently identified to include support for people with age-related conditions, such as early-onset dementia. There is an absence of other formal supports available (such a condition is very unlikely to meet eligibility requirements for the NDIS).
9. The Act includes details on how the rights of older people will be upheld as standard practice and not merely through an aspirational series of statements that can only be upheld when there is a breach in another section of the legislation.

10. Choice and control be strengthened throughout the Act to uphold the rights of the older person, including through the co-design of support plans.
11. The interdependence in care relationships is acknowledged and the needs and rights of carers and the care relationship are considered in addition to those of the older person.
12. Defines informal carers, the essential supports they provide, and how they interact with the system regarding rights.
13. Defines professional advocacy services and the responsibilities they have to interact with the various stakeholders: providers, supporters and representatives, System Governor, Regulator, Commissioners or delegates, and providers.
14. Responsibilities of older people accessing aged care should be embedded in the Act, alongside their rights.
15. flexibility is embedded within the Service List to enable older people to exercise choice and control to make informed decisions.
16. Aged care financial literacy activities should be supported and resourced as a part of the service list.
17. Social support group services be realigned to Category 3.

Regarding Chapter Two of the Act, the MAV recommends that:

18. The Care Finder model is continued, with a process of continuous improvements to the model
19. Providing funded training, communications toolkits, and claimable funding for aged care workers and other community organisations to build individual capacity to understand the system and their options to exercise choice and control or refer the person to a Care Finder.
20. The flowchart and the Act be updated to put the older person at the centre of the entry, review, and reassessment processes.
21. The timeframe from application for an aged care assessment to commencement of service access should be measured as a process outcome for an older person. Regional stewardship, including local government, should be considered to ensure systemwide responses.
22. A clause is included in the Act that defines exceptional circumstances and the process to fast-tracking access to service supports across all programs/services, assurance of funding, and the follow-up process to retrospectively comply with the complete entry requirements.

Regarding Chapter Three of the Act, the MAV recommends that:

23. The MAV recommends that the exemption under s 100(1)(b) regarding membership of governing bodies be replicated in s 101 to exempt local government authorities from advisory body requirements.
24. The aged care worker screening is moved to a national register, and away from State and Territory registers to support safeguarding.
25. A separate definition of volunteers and separation of responsibilities, registrations, screening, etc in the corresponding relevant documents.
26. Further checks and balances to streamline associated provider compliance for lead providers to avoid risks and penalties resulting in less engagement of associated providers that may impact service choice and continuity for older people.
27. The Act is aligned with other relevant legislation, rules, and pricing schedules to move toward harmonisation.

Regarding Chapter Four of the Act, the MAV recommends that:

28. The System Governor has responsibility to improve aged care financial literacy of older people accessing the system.
29. Grant funding for Support at Home service activities of transport, meals, and social support groups as a funding stream.
30. The department release a draft pricing schedule for consultation and as final release in 2024 to enable providers to understand the viability of continuing, entering or exiting as a registered service provider of Support at Home.

Regarding Chapter Five of the Act, the MAV recommends that:

31. The Aged Care Complaints Commissioner is an independent appointment reporting directly to the Minister, and not to the Aged Care Quality and Safety Commissioner as currently proposed.

Regarding Chapter Six of the Act, the MAV recommends that:

32. Providers be voluntarily audited against high-quality care systems and outcomes measures by the Aged Care Quality and Safety Commission to achieve a status of a provider of 'high quality' care that can be promoted.
33. Measurable high-quality care needs to be funded to be delivered sustainably, so a financial incentive is required.

34. Twelve months be provided for organisations to transform their businesses to achieve compliance.
35. The Commission provides clear guidance on interim expectations regarding the transition phase.
36. Clarity is improved regarding the obligations of CHSP providers between the passing of the new Act and the full rollout of Support at Home.
37. Sector Support and Development is continued through and beyond the implementation period of Support at Home.