

A New Aged Care Act: the Exposure Draft

Northern Territory Feedback Submission

1. Introduction

Thank you for the opportunity to provide feedback on the second consultation paper of the Exposure Draft of the new Aged Care Act (the Exposure Draft).

In accordance with the findings of the Royal Commission into aged care quality and safety, the Northern Territory (NT) Government supports a new Aged Care Act that puts people first, through simplicity, accessibility, choice and inclusion. In September 2023, NT Health submitted feedback on the *Foundations of the new Aged Care Act*. It is heartening to see that most of NT Health proposals have been included in the Exposure Draft.

This document has been prepared in consultation with other NT Government agencies and has formed an NT Government's views on the Exposure Draft of the new Aged Care Act.

2. Background

The NT Government supports the development of the new Aged Care Act that is based on the aged population accessing aged care services and what they require, shifting the focus from providers and how to fund them.

Older Territorians, regardless of where they live and their culture background, must be able to access safe, timely and culturally appropriate high quality aged care services. The NT Government is eager to ensure the new Aged Care Act supports a system to create safe, high-quality and equitable services across Australia.

Compared to the rest of Australia, the NT has a young population. However, the number of Territorians over 65 is projected to increase from around 20,000 in 2021 to around 35,000 in 2041 (NT Department of Treasury and Finance 2020). The NT is now Australia's fastest ageing population. With a larger number of older Territorians requiring care, the cost of care will rise as the sector adapts to this rapid growth.

NT Health are not providers of residential aged care, and all residential aged care in the NT is operated by non-government providers.

NT Health conducts aged care assessments and provides allied health and assistive technology and memory support services that can be accessed through the Commonwealth Home Support Packages (CHSP). In addition, NT Health provides flexible aged care services such as multi-purpose services, short term restorative care and transitional care programs.

On 30 June 2021, there were 559 operational residential aged care places in the NT. Nationally, the total operational residential aged care places exceed 250,000. The NT comprises 1% of the Australian population, but has less than 0.2% of residential aged care places.

At 30 June 2022, there were 71 per 1000 aged people using Home Care Package (HCP) and 347 per 1000 using CHSP in the NT. Both above the national average of 69 and 260, respectively. Many providers of HCP and CHSP across the NT are unable to provide clinical nursing services, with numerous communities in regional and remote areas having no, or limited access to, nursing as a part of these programs.

The NT's small population, lack of economy of scale and vast geographical area creates considerable barriers to achieving equitable delivery of aged care.

Older people live in the major urban centres of Darwin, Alice Springs, Katherine, Tennant Creek and Nhulunbuy as well as rural and remote locations; 70% of people who live remotely are Aboriginal and reside in one of 600 communities and remote outstations. There are significant barriers to accessing hospital and specialist clinical services in these areas. In urban locations there is a greater need to meet

aged care service demand for people who are: homeless or at risk of homelessness; culturally and linguistically diverse populations; and non-Aboriginal males. Contrary to the national trend, the NT is the only jurisdiction with more men than women in the >65 age cohort.

Data from the 2016 census identified that the NT accounts for 12% of Australia's homeless population and has 12 times the national rate of homelessness (599.4 and 49.8 per 10,000 persons respectively).

It is imperative that every older Territorians has equitable access to high quality care regardless of their ethnic background, the place where they live and their socio-economic level.

Aboriginal Territorians

Aboriginal people in the NT experience high rates of social disadvantage, poverty, and low levels of health literacy; these factors contribute to higher rates of poor health and mortality compared to non-Aboriginal people. Chronic conditions are estimated to contribute to 77% of the life expectancy gap between Aboriginal and non-Aboriginal populations.

Aboriginal people are more likely to require aged care earlier in life than non-Aboriginal people. In recognition of this, Aboriginal people aged from 50 years and over can access Commonwealth aged care programs.

The longer-term care and management of older Aboriginal people is an increasing challenge. With the ageing population and improvements in life expectancy, there is also significant growth projected in the older Aboriginal age groups (50 years and over). By 2041 the proportion of Aboriginal people in the older age groups is projected to nearly triple, increasing from 3.1% to 8.7%. It is estimated that the dementia prevalence in Aboriginal and Torres Strait Islanders is 3-5 times higher than rates Australia wide. This presents additional challenges for a range of services including dementia care, aged care, opportunities to age 'on country' and access to palliative care services.

Many of our remote aged care services fall within the National Aboriginal and Torres Strait Islander Flexible Aged Care Program (NATSIFACP) provided by private providers. HCPs and Community Home Support Packages are often provided by local councils in remote areas. In 2022 the NT accounted for 468 of the 1,310 national NATSIFACP places; 146 of these places were high care residential places.

We would expect the new aged Act offers flexible delivery of services, particularly in rural and remote locations, to ensure timely access for older people who are eligible to access aged care services.

3. Consultation Questions

The Exposure Draft

The findings of the report from the Royal Commission into Aged Care Quality and Safety (Royal Commission) is large in volume and complex in nature. The NT Government understands and supports the Australian Government's phased approach on aged care reform to implement the Royal Commission recommendations. We also support the review time being 5 years to provide enough time in order to understand the usefulness/effectiveness of the new Act.

However, the current content of the Exposure Draft is incomplete, as there are many missing aspects of the Bill that are currently being drafted, for example: the Rules (subordinate legislation), fees and charges, proposed new critical powers of the Aged Care Quality and Safety Commission, etc. Therefore, it is unclear as to the Australian Government's plan to seek feedback on those missing aspects of the Bill noting the plan to commence the new Aged Care Act on 1 July 2024. Whilst its understood older people have been waiting a long time for changes in aged care systems and would like to see the new Act to commence on 1 July 2024, it appears to be an unrealistic timeline noting the missing aspects of the Bill still need to be finalised, released and commented on by general public.

Throughout the Exposure Draft the word 'Rules' appears multiple times. In this consultation, the Australian Government is asking for feedback/comment about the operation of draft provisions in the Exposure Draft and what is proposed for the Rules. The NT Government is not in a position to comment on certain aspects of the Exposure Draft due to lack of information about the Rules; this is concerning noting the Rules provide context to the subject matter being questioned.

The NT Government proposes for the draft Rules be made public for comment prior to the Australian Government's decision on submitting the draft Bill to Senate/Parliament.

Chapter 1

Are the revised Objects, Statement of Rights and/or Statement of Principles clear and do they achieve their intent? If not, what changes are required?

Most of the suggestions put forward by NT Health in its previous submission have been included in the revised Objects, Statement of Rights and/or Statement of Principles. The word 'racism' has not been included in either the revised Statement of Rights or Statement of Principles. However, within the Objects, Statement of Rights and Statement of Principles, detailed descriptions to address racism have been included.

In NT Health's previous submission, 'thin markets' in the Northern Territory was mentioned, as a situation which could risk equitable access to services by older Territorians; while the words 'flexible delivery of services' have been included, it is not clear how this has addressed thin markets. We welcome the inclusion of 'emergency provision' enabling access for older people to aged care services without assessment, however this has not sufficiently addressed 'thin markets'. The NT Government proposes that the Rules for emergency provision be strengthened to address thin markets ensuring access for older people who are eligible to access aged care services in a timely manner.

Some First Nations stakeholders indicated that they would also like to see a right to remain connected to Island Home (in addition to 'Country') included in the Statement of Rights? Do you agree?

The NT Government supports the calls from Aboriginal stakeholders to add 'island home' in addition 'to country'. While we believe the language in the current Act would include the connection to island country such as the Tiwi Islands and Groote Eylandt in the NT, inclusion of 'island home' would make this clear to Aboriginal people, providers and other readers.

Do you consider the revised definition of high quality care will encourage providers to aim higher? Does it align with your future vision for aged care?

Embedding high quality care into the Act is very much supported and the inclusion of inclusive policies being implemented in partnership with Aboriginal people in this standard directly meets Priority Reform One of the National Agreement on Closing the Gap section 19(c)(viii).

It is acknowledged the revised definition is aspirational, however it could encourage providers to aim higher. Of note, for a provider to simply market their service as providing a high quality care would not guarantee them delivering such care without the support of strong governance and regulatory mechanisms including complaint mechanism and committed and highly skilled workers. We would like to see how the Australian Government will support innovation to foster change within the sector to achieve high quality care.

Do you think a single service list will increase clarity of the services that the Commonwealth aged care system provides to older people?

The NT Government supports the grouping of services as each group relates to a specific program, for example the Home support service group relates to the current CHSP. The NT Government suggest the new Act could have a list of services that are available within each group to increase clarity (sub-categories).

Associated providers.

Funded aged care services are delivered by registered providers. However, in the event when a registered provider has no capacity to deliver one or more services within one or more service group/s, that registered provider can make arrangements with one or more associated provider/s to deliver services. The Exposure Draft places accountability solely on the registered provider about the conduct of its associated provider/s. However, it is unclear the new Act will provide a robust process for the registered provider to ensure its associated provider deliver safe and high quality services. The NT Government proposes for the Rules on the relationship between registered provider and associated provider be clearly drafted to ensure accountability and provision of safe and high quality services for older people.

Are you comfortable that an older person is only able to have representatives or supporters? Are there situations where an older person, or their families and support networks, might want both a representative and a supporter?

The NT Government welcomes the inclusion of supporters and/or representatives in the Exposure Draft as a way to promote an older person's cognitive capabilities and support their right to autonomy and self-determination. There will be situations where an older person or their families might want both a representative and a supporter; for example, when an older persons needs have changed, his/her supporter can help the person to navigate the system on how to access re-assessment, followed by the representative to make decisions on his/her behalf. The NT Government proposes for an older person to be able to have supporters and representatives – these two groups of people have different roles and responsibilities.

We understand service types must be delivered in an approved residential care home or a home or community setting, or both, and these are new concepts in terms of how aged care services are delivered, funded and regulated. Our interpretation is Multi-Purpose Services is included in the definition of a residential care service. It's requested the Rules provide further clarity on defining specialist arrangements and specialist aged care programs.

Chapter 2

A key feature of the new Act is a single entry point to make access to the aged care system easier.

The consultation paper #2 states that “people can make a single, simple application for funded aged care serviceconsistent with the single entry point for access to the aged care system recommended by the Royal Commission (Recommendation 25)”. However, Chapter 2 of the Exposure Draft does not provide readers with an understanding that it is intended to be a simple, single entry point. Furthermore, there is no explanation on the *new single assessment system*, which will be operationalised from 1 July 2024.

Delegates.

The draft Bill has not described who the delegates are, which has led to uncertainty among NT assessors' workforce. Most 'assessors' in the NT are also 'delegates'. The new Act has included an additional roles

of 'delegations' i.e. to approve peoples' eligibility and to approve assessment outcomes and access to care; this is problematic in relation to the NT in relation to insufficient level of the current aged care workforce.

Should this understanding be correct, the role and responsibility of a delegate/assessor would be significantly increased in comparison with the current process. The NT Government proposes the Rules for 'delegate' be drafted to avoid uncertainty among assessors.

Places to people.

The NT Government supports provision in the new Act for places to older people as opposed to a registered aged care home (the current Act). However, the Exposure Draft states that, "*many people approved for funded aged care services will immediately be able to find a registered provider and access those services*", this is not the case with the NT; one of the reasons is due to thin markets. Furthermore, the number of places for home care service groups are much less than current demands, particularly in the Darwin Aged Care Planning Region (ACPR).

Whilst its agreed that 'places to people' may provide an opportunity for residential aged care home providers to improve quality of care and accommodation offerings across the sector, it is unclear how this would impact the NT in addressing thin markets.

Prioritisation of places.

The Exposure Draft does not describe the new prioritisation algorithm. The current prioritisation does not provide an optimal fit for NT clients, most of whom would be prioritised as 'urgent' due to their health (with complex chronic conditions) condition, low socio-economic status and remoteness. The NT Government proposes to be given an opportunity to provide feedback on the draft new prioritisation methodology.

What transitional arrangement would you like to see put in place to ensure there is a smooth transition to the new eligibility arrangements and to manage any impacts on people who do not meet the eligibility criteria?

NT Health is currently re-negotiating its agreement with the Australian Government ahead of the commencement of the new Aged Care Act. This has presented uncertainty in relation to workforce level that has been decreasing overtime. In the NT, transitional arrangements should include the provision of:

- a) an approved extension/new funding agreement with the Australian Government on aged care arrangements;
- b) an appropriate level of workforce and systems to ensure older Territorians receive timely assessment and access to the care they need;
- c) staff training to ensure they possess clear understanding of their roles and responsibility under the new Act; and
- d) a sufficient transition time.

In relation to impacts on people who do not meet the new eligibility criteria, the Rules must be clear when describing 'special arrangement', for example MPS¹.

¹ MPS: Multi Purpose Service.

Do you consider there are alternative services that can, or should, be made available for Aboriginal or Torres Strait Islander persons aged 45-49 who are homeless or at risk of homelessness? Does aged care currently meet the needs of this particular group of individuals?

MPS and NATSIFACP² may be used for this purpose. Currently in the NT, Aboriginal people aged 45-49 may access services provided by MPS, however at present the NT has only one (1) operational MPS (in the East Arnhem ACPR), which is not enough to provide demands by younger Aboriginal across the NT. Whilst a new MPS is currently under development in the Barkly ACPR, the NT needs more of this type of service to ensure equitable access for other younger Aboriginal Territorians who do not live where the current MPSs are (Gove and Tennant Creek).

The NT Government would like to advocate for a policy change to enable the allocation of NATSIFACP funding to services based in MMM2 (Greater Darwin). This would enable organisations such as Larrakia Nation and Danila Dilba Health Service to deliver flexible residential and home care services to First Nations residents in addition to NATSIFACP service recipients visiting Darwin on a temporary basis from other regions of the NT.

Chapter 4 - Fees, Payments and Subsidies

Fees, payments and subsidies are not included in the Exposure Draft due to the Aged Care Taskforce's report being currently under consideration by the Australian Government; as such, the NT Government is not in a position to comment on aspects of the Bill in this chapter, particularly in understanding 'means testing' within the complexity of subsidy provisions of the Bill. In the NT, there is a large number of ageing Territorians on concessional and have not paid for their aged care services. An important focus in this Chapter should be about fairness and equity for all, particularly 'means testing' for user contributions.

The NT Government proposes for this part of the Exposure Draft to be made public for comment once the Aged Care Taskforce recommendations are finalised.

Chapter 6 - Regulatory mechanism

Do you have any concerns about the new powers for the Commissioner to enter a residential care home without consent or a warrant? Are there any additional safeguards you think should be put in place?

These specific new powers of the Commissioner should be subject to the Rules that are clear in prescribing the reasons for the Commissioner to enter a residential care home without consent or a warrant and that it is absolutely necessary to exercise this authority due to potential severe risk to the safety, health and wellbeing of a resident.

The NT Government noted that a variety of new 'action warnings' have been included in the Exposure Draft to address non-compliance. It is imperative to stress the importance of implementing robust monitoring mechanisms to avoid and to safeguard the need for entering a residential care home without consent or a warrant.

Does the new Act provide sufficient clarity regarding the role of the Department in managing the integrity of the aged care program? Is there anything you would like to see included in the new framework to ensure program assurance is maintained?

The NT Government supports the regulatory framework proposed in the new Acts, which provides a range of mechanisms to address non-compliance in a risk-proportionate way. However, in relation to the

² NATSIFACP: National Aboriginal and Torres Strait Islander Flexible Aged Care Program

use of 'restrictive practice' there is concern that the use of an informed consent model rather than authorisations model for the use of restrictive practice will have potential impact on guardianship practices. Such a model could give rise to guardians being appointed to provide authorisations for the use of restrictive practice for a person who would otherwise not require guardianship. As guardianship should always be considered the option of last resort, the implementation of an authorisations model, similar to that utilised within the National Disability Insurance Scheme (Authorisations) Act 2019, should be considered.

There is a call by a few jurisdictions for harmonisation between disability and aged care legislations.

The NT Government requests for Australian Government to ensure the drafting of the Rules pertaining to 'informed consent model' to include a recognition of any current or future authorisation models that may be developed by states or territories.

Chapter 7

MPSs and NATSIFACPs are situated in remote areas of the NT. There may be a situation where residents of these Programs require to communicate confidential information – directly - to a person in an urban area, for example someone in a government department.

The NT Government proposes for the new Act to include the provision of direct liaison between a resident and a representative of an entity via a secure line.

What challenges could there be with the proposed whistleblower framework, and do you have any proposed solutions?

The NT sees no issue with the proposed whistleblower framework. Of importance to NT is the inclusion of whistleblower protections. Whistleblower provisions are important because they will apply to matters related to aged care outside the scope of Independent Commissioner Against Corruption (ICAC) investigations. Similar to the *Independent Commissioner Against Corruption Act 2017*, whistleblower provisions will apply to disclosures made to police. Police should therefore expect to receive protected communications and will need to ensure appropriate action is taken in the event of a whistleblower. The provisions are complemented with appropriate offence provisions.

The NT notes the Exposure Draft also includes infringement notice ability, but only two positions have the ability to issue infringements. This appears similar to the infringement provisions for other Commonwealth regulators such as the Civil Aviation Safety Authority. There is no perceived issue with this, from an NT perspective.

The Exposure Draft proposes better drafted investigation powers for the Commission, significantly higher civil penalties, and whistleblower protections. These are positive steps to providing better protection to persons in aged care.

Chapter 8 – Miscellaneous

Review of decisions and appeal process. These aspects of the Bill are not included in the Exposure Draft. However, in the new Act, all reviewable decisions and appeal process should be clearly written. The NT Government also propose for the Rules to include easy to navigate appeal system, noting residents or clients of aged care providers living in remote or very remote areas.