



**Kate Chaney MP** FEDERAL MEMBER  
FOR CURTIN

# Aged Care Act Exposure Draft Consultation

## **Curtin Community Submission**

**Kate Chaney MP**  
**Federal Member for Curtin**

29 February 2024

# Introduction

In December 2023, the Department of Health and Aged Care released an exposure draft for the new Aged Care Act. The development of a new Act was one of the recommendations of the Royal Commission into Aged Care Quality and Safety undertaken between 2018 and 2021.

I am pleased to see the Government acting on 33 recommendations of the Royal Commission in this draft Act, which will form the foundation for a new aged care system. This is an important issue in my electorate with many constituents concerned about their future, or the future of their loved ones, in this vital system.

This submission contains feedback from an Aged Care Act consultation session held in my community in Curtin. The workshop was attended by 50 community members comprising older Australians, unpaid carers, and advocates. I am grateful to Mark Kinsella, CEO of the Council on the Ageing WA, for his very useful input in the session.

People in my electorate are chiefly concerned with the humanity of the system. They want people to be treated as individuals with connections to their communities which continue into later life. They also want to have self-direction as they get older, with the ability to choose their preferred living arrangements and the manner of their death.

I urge the Minister and the Department to consider the comments provided in this submission as a way of achieving these goals in the aged care system.

I look forward to the next stage of these important reforms.



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Federal Member for Curtin

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# Act Care Act exposure draft consultation

## Meeting details

**Meeting host name/ organisation:** Kate Chaney MP, Independent Member for Curtin

**Meeting host contact details [phone or email]:** kate.chaney.mp@aph.gov.au

### Meeting host

- Member of Parliament
- Local government
- Non-government organisation
- Business
- Academic
- Community group
- Individual
- Other [Click or tap here to enter text.](#)

**Meeting date:** 30/01/2024

**Meeting location:** Mount Claremont Community Centre, Mount Claremont, WA

### Participants attending:

- Member of a community organisation
- Businesses
- Academics
- Union members
- Individuals
- Advocacy groups
- Other

**Number of participants:** 50

Mr Mark Kinsella, the Chief Executive Officer of COTA WA, addressed the group. Mark provided some background on the process which has been undertaken to draft the Act. He summarised the key changes to the aged care system represented in the draft Act including:

- the Statement of Rights and the strengthened Aged Care Standards;
- the proposed new complaints process;
- the new access pathway; and
- enhanced choice and control for consumers.

The group provided feedback on these four areas. This feedback is summarised below. A copy of all feedback on the draft Act is included in Appendix A.

## **1. The statement of rights and the strengthened aged care standards**

Attendees expressed support for the enhanced focus on a person-centred system rather than a provider-centred system. They generally commented that the rights and standards are clear and fair.

Many attendees felt that the standards should be expanded to include reference to community inclusion. Constituents felt older people should be recognised as citizens and members of their communities and not just as consumers or care recipients. They want social connection, access to community and access to nature to be clearly addressed in the standards.

Four other areas were suggested for inclusion in the standards.

- The standards should be linked to best practice in aged care.
- The standards should mandate a minimum standard of training required for care workers. The standards should ensure the attraction of care workers who are able to communicate and build relationships with the older people they work with.
- The standards should include reference to continuity of care.
- A standard about choice and control or self-direction should be included.

It was also suggested that the standards be supplemented by real life examples to show system users how a standard would be upheld by a provider.

## **2. The complaints process**

The transparency and timeliness of the complaints process was particularly important to attendees. People want resolution of complaints in a specified timeframe. They also want a clear pathway for enforceable consequences when that timeframe is not achieved. Some attendees would like to see this timeframe set in legislation.

Further suggestions to improve the complaints process included:

- An ability to bypass the provider and go straight to the Commissioner, to avoid the negative impact of a complaint on a resident of an aged care facility;
- The creation of separate categories of complaints including simple, complex and serious in order to improve timeliness;
- A requirement that the Commission audit and publicise complaints;
- A role for the Commission in systemic oversight, keeping track of trends in complaints in order to make the necessary systemic interventions;
- Making the complaints process accessible by ensuring a mailing address is provided should a person not have access to a computer or smart phone; and
- That administration of complaints should take place at a state level in order to improve efficiency.

### **3. Choice and Control**

Many attendees were concerned about the role of supporters and representatives compared with those of Enduring Powers of Attorney (EPOA) and Enduring Powers of Guardianship (EPOG). People recognise that the roles of EPOA and EPOGs differ in each state and support a national approach in this area to avoid the current confusion.

Attendees suggested that, in the meantime, the legal powers of supporters and representatives need to be clarified. Information documents should be prepared setting out the different powers of EPOAs and EPOGs, or their equivalents, in each State. Clear guidance and training for carers, particularly those supporting a person with dementia, is required.

Other suggestions around enhancing choice and control included:

- Allowing flexibility in funding so that people can choose innovative living and care options in the community; and
- An obligation on providers to be transparent about the right of individuals in their care to receive Voluntary Assisted Dying (VAD).

### **4. Access Process**

Attendees were supportive of the move to one simplified, integrated system of access. However, there was some concern about the timeliness of a single point of entry and attendees reported that wait times are already a barrier to receiving services. There was also some concern that the system would become automated with only phone lines and websites as points of contact. An alternative to online and automated telephone processes must be offered.

It was noted by many that there is a step prior to the start of the current access process. The Act does not clarify how a person makes the initial approach for assistance. The process is currently often initiated by GPs, or a hospital visit, yet these professionals (including allied health professionals) are not mentioned in the draft Act. GPs and allied

health staff need to be consulted in the process design to ensure they understand when and how to refer people for aged care services. If self-referral is an option, this should be made clear.

Some attendees felt that people should automatically be registered or referred for support at a particular age, while others suggested there needs to be enhanced, face-to-face support to initiate the process.

Feedback on the current services list identified some gaps, including lack of oral and dental care and access to palliative care. More broadly the feedback suggested that the list was too specific and does not allow for innovative services, utilisation of existing community group services, or self-management of funds.

### **Other**

A list of suggestions which do not fit into the above categories is contained in Appendix 1.

## **Appendix 1**

### **The Statement of Rights and the strengthened Aged Care Standards**

Feedback – attendees provided feedback on each question via individual post-it notes. Other attendees then ticked the comments/ideas that they supported. The number in brackets is the number of ticks for each suggestion.

#### ***What do you like or dislike about the standards?***

- Person centred instead of provider centred is great (6)
- Like the standards but feel there should be more reference to evidence-based best practice – this includes de-institutionalisation of residential care (4)
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- Encouraging and supporting the benefits of staying socially connected as well as being in nature (3)
- Standards seem clear and fair (3)
- Important that standards are related to social connection and staying in contact with the community and nature – needs to be prioritised and enforced (2)
- Very residential aged care focussed. Need more focus on home care (2)

#### ***Are the rights clear?***

- Clear but not a massive list (2)
- After the listing of rights and principles it says “nothing in this division creates rights or duties that are enforceable in a court or tribunal. The rights should be included in the contract between the provided and the client (2)
- Clear in theory but in practice ignored – in a retirement village ‘asking’ is called ‘bullying’
- Devil is always in the detail
- Lots of charters of rights in every folder/booklet on provider care – people don’t read them
- A disclaimer that says if the individual does not have capacity that the supporter expects these standards to be maintained.
- Need a lot of clarity with real life examples of how the standards are met at different ACFs

#### ***What changes are required?***

- More specificity about what the commission does not consider a right to be (5)
- Standard 2 – a great gap is very obvious in aged care homes. There is a lack of training for care workers – this needs to be ongoing and supervised (5)
- It is unclear how to measure if a standard is met. Are surveys done regularly and reported on? (4)

- Ensure supporters can contribute and have rights to speak for their loved ones as required (3)
- Trained people with excellent English (2)
- Bringing poorly paid aged care workers with inadequate or heavily accented English is not acceptable (2)
- We are citizens and members of a community not just consumers or care recipients
- Minimum standard of training required for care workers especially in residential care
- The Act currently says the provider should not act in a manner incompatible with the rights but it should state that the provider **MUST** uphold the rights.
- Person-centred communication to include access to supported decision-making process.

### *Are any rights missing?*

- As far as possible continuity of providers is maintained (8)
- Need a standard about community inclusion (7)
- Please make providers tell future clients if they don't allow "dying with dignity" before they accept a place (4)
- No rights for retirement villages
- Self-direction and self-management need to be strengthened as a right
- Strengthen with a standard about choice and control
- My personal right to choose an activity that may put another at risk

### **The complaints process**

#### *What is important to you about the complaints process?*

- Ability to submit anonymously and avoid feeling the repercussions (8)
- Will a timeframe to resolution be legislated? (6)
- A satisfactory resolution in a timely manner (5)
- Separate categories of complaints – simple, complex, serious (5)
- Will the commission audit and publicise complaints (5)
- Are you able to bypass the provider and go straight to the Commissioner? (3)
- Decentralisation of the complaints process (3) Each state should deal with their complaints locally and more efficiently (3)
- Transparency on the process and outcomes (2)
- Keep an overall tally of providers and complaints so there is a systematic oversight of breaches
- Who looks at patterns of complaints? (2)
- My experience is I said they responded with no real resolution. (2)
- Good that it is a separate Commissioner



- To avoid the Commission being swamped with complaints the Act needs to require a person lodging the complaint to first deal with provider
- In annual report – complaints and lack of adherence to rights should be transparently documented and available to the community

### *What are your concerns?*

- The length of time it takes to resolve (10)
- The complaint commissioner should be outside the commission (8)
- How will the commission manage the volume of complaints (6)
- Supporter has the ability to make complaints (4)
- Access to make a complaint timely (4)
- Commission must be transparent about what a resident can complain about (4)
- Clear process for dealing with vexatious complaints (3)
- What about individuals who do not have a supporter – who advocates for them? (3)
- Clarity about what is realistic within the facility so that supporters can understand limitations in services
- Enforceability of consequences
- I would like a postal address so a letter can be written
- The psychology of making a complaint - the current older generation do not like to complain

## **Choice and control**

### *Views on supporters and representatives*

- Should make EPA/Guardianship a national process – adds another layer of complexity and burden (7)
- Clarify an POA Enduring Guardianship – what is required without duplication (4)
- Connections for supports/carers to share knowledge and support (2)
- Will create problems and conflict between reps and guardians. Surely Guardian /power of attorney would override legally the representative/supporter (2)
- Conflict of scope and duties of EPA/Guardian and supporter/representative role - elder manipulation is a big risk.
- My concern is that a fragile or anxious person could be easily convinced to name someone that isn't family or close friend to act as a representative and family will have trouble reversing that
- Need to clarify legal position of supporters/representatives
- Prepare documents to guide people with each State's legislation
- Supporter/representative may be more than one person – info can be shared between them

- How does the Act cope with dementia clients who are non-verbal and not of capacity if there is a POA and guardianship in place?
- Education for carers living at home. Formal training for carers
- What rights do the next of kin have?
- Ability to easily transition from supporter to representative when required

***Any other comments regarding choice and control?***

- Choice versus risk – who has the final say? (4)
- There is no real choice to use funds for creative community options (4)
- Need more people self-directing their support and care (3)
- How to ensure people without access to technology are informed and able to demonstrate control
- Legislation should oblige providers to be completely transparent about what rights they do not recognise (e.g. VAD)
- Ensure supporters and representatives are making choices with the individual

**Access process**

***What is important to you in the access process?***

- User friendly process with alternatives to IT access (8)
- Automatic registration at 65 or 75 with baseline established, preventative care and annual reviews (7)
- Assessors should be independent of providers (5)
- Timely assessment (5)
- A step prior to assessment – early support to initiate access (4)
- Supportive of 1 integrated system when people tell their story once (3)
- Inclusion of oral and dental services (3)
- Good quality of delivery (2)
- Lessen the long wait times (2)
- Anxiety about a single point of entry and the timeliness of that – how can we guarantee it doesn't become a social security type system which is difficult to access.
- Continuity of service people
- No mention of GPs or allied health professionals in this system
- Inclusion of rapid process if circumstances change quickly

### ***Views on single service list***

- Community provided support services missing - finding for community groups to deliver some services (6)
- Will this limit flexibility and innovation (3)
- Is it comprehensive enough? (3)
- Self-management to include services outside the service list (2)
- How is AI going to be used in this process?
- Good access to palliative care where the person wants it.
- Allow user to choose and flexibly in combining existing resources efficiently.
- Too specific – need other options for individual services

### **Other**

- GPs are absent in the Act – must be consulted to help their patients (4)
- Learn from NDIS – need a strategy about community support/involvement (2)
- 70% of providers are losing money – how can sector be provided with better funding?
- A good death – don't want to die in care alone
- Funding for services versus enabling a dynamic flexible system
- Can families or communities build their own services outside the system of providers?
- Anonymous visits to nursing homes

**End of Curtin feedback**