

MERRI HEALTH

Submission on Exposure Draft for New Aged Care Act

March 2024



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1. About Merri Health

Merri Health has been a significant entity of the Victorian Metropolitan North-West community for over 45 years, dedicated to creating and supporting a healthy and connected community. We are a leading non-for-profit community healthcare organisation, with strong connections to aged care support – both to our consumers and other partners in the sector.

More recently, our aged care efforts are focused on preparing to meet the expectations and requirements of the reforms set to take effect over the next five years and beyond. We aim to continue providing excellence and high-quality care to the ageing Australian community, whilst welcoming the opportunity to step in stride with the sector reforms, learning and growing alongside our community.

Merri Health recognizes the needs of our diverse community and older people in our community. This includes unique cultural needs of LGBTIQ+ individuals and works to create inclusive and affirming environments. This includes training staff in LGBTIQ+ cultural competency, offering specialized support services, and actively participating in LGBTIQ+ community events and initiatives. Additionally, Merri Health respects and collaborates with local Indigenous organizations and elders to develop culturally sensitive healthcare services. We support our Reconciliation Action Plan (RAP) and efforts towards cultural inclusion.

In addition to our efforts in providing quality care, Merri Health actively partners with other key organisations, local councils, and health and community services providers locally. Merri Health is the lead organisation on services such as Carer Gateway and we engage departmental trials wherever able. Merri Health leverages the expansive knowledge and experience obtained from such partnerships to ensure we deliver the highest level of services.

Merri Health's services and outreach efforts reflect a strong commitment to diversity and inclusion, aiming to create a healthcare environment where everyone feels seen, heard, and cared for. Through our extensive range of services, community outreach programs, and dedication to inclusivity, Merri Health exemplifies a holistic approach to healthcare, striving to meet the varied needs of our community and promote health and wellness for all. This broad-based approach not only caters to the physical health needs of individuals but also addresses mental health, social well-being, and the importance of cultural and community connections, making Merri Health a pivotal partner in the healthcare and ageing sectors.

We hope that our continued engagement enables Merri Health to provide ongoing, effective feedback to ensure the sector performs as anticipated.



2. Executive Summary

The New Australian Aged Care Act Exposure Draft represents a pivotal, positive shift towards a more rights and person-centred approach to delivering support within the aged care sector. With the effective date of 01 July 2024 quickly approaching, significant modifications must be made to comply with the emerging requirements.

With these substantial changes and responsibilities, several providers of Commonwealth Home Support Program (CHSP) and Home Care Package Program (HCP) services have voiced their concerns and potential exiting from the sector.

Merri Health welcomes the new Aged Care Act, and the opportunity to contribute feedback to the collective success of such significant sector reforms, to support sector partners to continue operating in a viable and effective system.

This submission is based on input from Merri Health key stakeholders, executives, and Aged Care staff. Our submission also leverages the experience and documentation provided by other sector bodies, such as ACCPA, COTA Victoria, OPAN, and local SSD Network. Merri Health continues to liaise with various sector partners to provide robust feedback and build towards a successful future of the Aged Care sector.

Merri Health has included 18 recommendations for review, under 5 key spheres:

- 1. Responsibilities & Obligations**
- 2. Regulation & Governance**
- 3. Financials**
- 4. Sector Timelines**
- 5. Service Delivery**

These recommendations are based on the principles of inclusivity, rights-based care, equity, and the recognition of the diverse needs of Older Australians. They are aligned with the overarching goals of the new Aged Care Act, aiming to enhance the regulatory framework for aged care services – resulting in high-quality, person-centred care.

The new Aged Care Act Exposure Draft marks a significant step towards reforming the sector, demonstrating significant modernisation and effectiveness comparable at an international level. However, for the legislation to truly meet the needs of older Australians, it must consider the detailed feedback and concerns raised by key stakeholders, sector partners and consumers. This presents a critical opportunity for further refinement to ensure the Act delivers on its promise of a more equitable, risk-proportionate, transparent, and responsive Aged Care System.

3. Feedback & Recommendations

3.1. Responsibilities

3.1.1. *Guidance on Measuring Provider Performance*

The Department must provide detailed guidance on the metrics and benchmarks for measuring the delivery of high-quality care across different service categories.

This guidance should include specific indicators of care quality, such as adherence specifics to the Strengthened Quality Standards, release of best practice standards, and client satisfaction breakpoints, demonstrating how “High Quality Care” will be tangibly assessed. This importance is further required across different services across CHSP and HCP – including allied health, maintenance, nursing, and social support.

Furthermore, the Act should more clearly outline the structure for regular assessments and public reporting, ensuring transparency and accountability within the sector. By implementing this recommendation, stakeholders will have a clearer understanding of expectations and how to achieve them. This will also support Older Australians to directly identify appropriate delivery of care within their respective service provider.

3.1.2. *Responsibilities of Service Users*

The current User Rights Principles 2014 illustrate rights and responsibilities of Older Australians. At this point, the new Aged Care Act demonstrates substantial rights for Older Australians receiving services, however there is no information included to explain their responsibilities as service users.

It is the responsibility of aged care providers to create and maintain a secure workplace. This extends to care staff entering homes, on-site services such as social groups and transport/assistance in the community. Current examples include smoke-free environments, or the restraint of dangerous animals. A commonly raised issue relates to care staff being treated respectfully and feeling safe when providing services.

It is recommended that alongside a comprehensive Statement of Rights, it is imperative to articulate a corresponding list of responsibilities for Older Australians. This list should outline expectations around compliance with care plans, communicating incidents, respect for staff, and adherence to policies ensuring the safety and well-being of all parties involved. Referencing the above in the Statement of Rights would service to balance rights

with responsibilities, promoting a cooperative and respectful environment within the sector.

It is vital to consider the rights of Older Australians – and it is also vital to maintain the safety of care staff, through appropriate responsibilities for all parties.

3.1.3. Government-Managed Collection of Income Tested Fees

We have experienced a significant delay of Older Australians accessing services due to awaiting outcomes of their income and means testing conducted by Service Australia. Often Older Australians are concerned about these client contributions amount, in addition to the potential risk of a significant debt being raised to continue accessing aged care services. Naturally, this has resulted in a significant, unintended deterrent when accessing the aged care sector, and poses a risk to Older Australians not receiving necessary services.

It is recommended that the responsibility for managing and collecting income-tested fees, or the new equivalent should be transferred from providers to Services Australia. This shift would alleviate administrative burdens on providers, allowing them to focus more on delivering high-quality care, rather than on financial management tasks that predominantly lie outside of the provider's ability to review. It would likely also increase the accuracy and efficiency of fee collections, as any changes to circumstances can be considered at the time of fee collection.

Additionally, it will simplify future facilitation of government funds to aged care providers, as the current Improved Payment Arrangement system must consider the retrieval of Income Tested Fee amounts prior to releasing funds. This recommendation would eliminate several additional work tasks for both the department and service providers.

3.1.4. Policy Changes for Income-Tested Fees

As highlighted above, the delay in financial assessments can often lead to Older Australians having to retroactively pay large amounts of income-tested fees. This has been seen to cause significant stress, financial hardship and leading to numerous formal complaints to the Aged Care Quality and Safety Commission.

Many service providers, including Merri Health realise and accept that in a home care setting, services likely need to commence before means testing can be completed – particularly when being discharged from hospital.

In line with a person-centred approach under the New Aged Care Act, it is recommended that services can proceed without such risks, by amending policies to exempt new clients from income-tested fees for the initial 30-60 days of service provision. This grace period would allow Services Australia sufficient time to process any financial assessments necessary without delaying or limiting access to needed services for new Older Australians accessing the sector.

Implementing such a policy would help streamline entry into care services, removing financial barriers and ensuring that essential support is not postponed due to administrative process. Lastly, this would allow for Older Australians to be fully informed about their actual costs for ongoing sector services.

3.2. Governance & Regulation

3.2.1. Governance for Diverse Providers

Merri Health along with many other organisations in sector provide a range of services beyond aged care. Notably, providers have indicated their intent to exit the sector, due to the disproportionately burdensome governance requirements. It is a recommendation to consider introducing flexible compliance mechanisms. These mechanisms could include tailored governance framework that acknowledge the broader operational context of these providers, while ensuring that aged care services meet the necessary quality and safety standards.

This approach would prevent governance obligations from overshadowing provider capacities to deliver quality care across all services This approach will also reduce the exodus from aged care services, preventing the risk of older Australians being left without services during the transition into the new Act.

3.2.2. Expanding Responsibilities of the Inspector-General of Aged Care

Currently across the sector partners, there are perceived concerns that the complaints commissioner lacks independence from the Quality Regulator. Further concerns indicate that there is no clear pathway for providers or stakeholders to address complaints about the quality regulator, including the complaints commissioner, the system governor, or the pricing authority. Local SSD Connect has generously advised of this feedback in their submission.

This was highlighted in the recommendations provided by the Royal Commission; however, the responsibility appears to have been excluded from this role. This risks appropriate direct oversight and safeguards for service providers.

We recommend an expansion to the scope of responsibilities of the Inspector-General of Aged Care, enabling stakeholders to lodge complaints directly about the system governor, quality regulator and pricing authority. This expansion would provide a clear, independent avenue for addressing concerns related to the oversight and governance of the aged care sector.

These recommendations ensure accountability and transparency at all levels of the system, fostering trust among stakeholders and promoting continuous improvement across all facets of the sector.

3.2.3. Implications for Governing Boards of Aged Care Providers

The new Aged Care Act draft lists the obligations and statutory duties that apply to all providers, inclusive of increased risk and compliance requirements. The new Act also lists associated penalties.

In the Not-for-Profit sector, many governing bodies and directors are volunteers, and the new level of risk and responsibility – including potential penalties potentially leads to unfavourable conditions to volunteer on such board as a Responsible Person under the new Act.

We recommend that alignment of the requirements of the Responsible Person be consistent with requirements in other industries such as health. In terms of penalties, these should be proportionate to breaches of the code of conduct and maximum of as well that some penalties should be civil rather than criminal. Additionally, we recommend that the department should commission an in-depth study and conduct a comprehensive impact analysis to understand the short and long-term implications of legislative and

regulatory changes on the governing boards of aged care providers. It is vital to evaluate the current and emerging governance challenges faced by the boards of aged care providers, particularly in light of the new Aged Care Act and associated reforms. This includes understanding the complexities of compliance, risk management, financial sustainability, and quality care delivery. Analyse the impacts of recent and proposed legislative changes on the operational, financial, and strategic functions of these boards. The analysis should consider the increased responsibility, potential for enhanced scrutiny and the need for boards to adapt to a rapidly changing regulatory environment.

This study should result in a comprehensive report that not only highlights the challenges and impacts but also offers clear actionable strategies for enhancing governance within the aged care sector. This will be crucial to ensuring that aged care providers are well-positioned to continue delivering high-quality care, under a sustainable and responsive governance structure.

3.2.4. Further Clarification on the Whistleblowers Framework

The new Act includes a list of authorised individuals to receive a disclosure under the new whistleblower provisions. However, further information is required to ensure that providers can manage such disclosures effectively within their whistleblower framework.

It is recommended that further information and guidance is released to provide clarity around providers working within the new regulations. Further collaboration and consultation is required on this whistleblower process. This includes additional provision of information relating to who can receive disclosures, processes for formal responses, protection of vexatious claims and post-disclosure management.

Additionally, many aged care providers do not solely provide aged care services. It is vital to understand how the changes in the new Act align with existing whistleblower provisions and protections outside of the aged care sector.

Lastly, there is some concern around the phrasing that “disclosures do not need to be made in good faith”. Further clarification is essential for providers to understand and implement the new Act.

It is recommended that the Government engage in additional consultations on this process, engaging and collaborating with sector providers to best provide a safe and appropriate means to make disclosures.

3.2.5. Process for Raising Concerns About Appointed Representatives

Historically, sector providers have identified situations where appointed representatives do not appropriately fulfil their duties – particularly as outlined in the new Aged Care Act. To enhance the integrity and effectiveness of the new aged care system, it is recommended that the System Governor implements a formal process enabling stakeholders, including registered providers, care recipients, and their families, to raise concerns about any appointed representative or supporter. This process should be designed to ensure that representatives and supporters act in the best interests of care recipients and adhere to the principles of the New Aged Care Act.

Clear guidelines must be implemented to ensure appointed representatives understand their obligations under the new system. Secondly, a secure, confidential, and accessible reporting mechanism is vital for stakeholders to raise concerns or complaints about representatives or supporters. A transparent investigation and resolution process to follow upon receiving a complaint.

By ensuring that representatives and supporters are held to high standards of conduct, the aged care system can provide a more supportive and transparent aged care environment.

3.3. Finance

3.3.1. IHACPA to Consider the Cost for Providers to Meet Obligations

The current unit pricing structure within CHSP, and the limited information around Support at Home Management delivery costs (with the abolishment of care and package management) currently does not sufficiently consider the necessary costs for meeting obligations, statutory duties, and management tasks under the New Aged Care Act.

It is recommended that IHACPA should urgently assess and incorporate the financial impact of providers meeting their new obligations within their costing studies. Attention is recommended to be focused on project and change management resources, rises in insurance costs (discussed further below), remuneration levels at all levels, particularly for organisation leaders due to increased risks, all on an ongoing basis to manage ongoing responsibilities.

This inclusion would ensure that the economic realities of compliance and moving to the new regulatory model are fully understood and reflected in funding models. It will also support a more sustainable aged care sector by ensuring providers are adequately

compensated for the costs associated with meeting higher standards of care, thus enabling them to invest in necessary improvements without compromising service quality.

3.3.2. Impact to Provider Insurance, Premiums & Coverage

The introduction of the New Aged Care Act presents significant implications for aged care providers, notably in how it may affect their insurance policies and associated costs. Given the changes in regulatory requirements, compliance obligations, and enhanced rights for care recipients, there is a need for a thorough examination of the Act's impact on provider insurance policies. This extends to how the new regulatory framework and associated penalties may impact premiums and coverage, with increasing costs presenting concerning risks to financial viabilities. There is also growing concern within the sector that certain risks may be deemed uninsurable under the new regulatory model.

We recommend that an impact assessment should be conducted, collaborating with insurance industry experts to assess how the new Act alters the risk profile of aged care providers. This includes examining the implications of increased compliance requirements, potential for increased litigation, and changes in operational practices on insurance premiums and coverage terms.

The results of these findings can be utilised by IHACPA to review and recommend adjustments to the unit costs allocated to aged care providers to account for changes in insurance expenses and continue operating in a sustainable financial environment. This ensures that funding models reflect the real cost of providing care under the new legislative framework, including enhanced insurance costs.

3.4. Transition Timelines

3.4.1. Transition Funding for Providers

Given the significant changes, obligations and responsibilities introduced by the New Aged Care Act, it is imperative that the department provides transition funding to providers. This funding is crucial to support the necessary resources, training, and system adjustments needed to comply with the Act's requirements. Implementing these changes

will require substantial effort and investment on the part of providers, and without financial support, the risk of disruption to care services and non-compliance increases.

Further to this, existing programs do not allow providers to directly allocate funding for change management and implementation. We have seen similar funding in the disability space in the form of Temporary Transition Payments (TTP).

It is recommended that funding is allocated across the following key areas:

1. **Training and Education:** Resources to develop and deliver comprehensive training programs for volunteers, staff, leaders, and board members on new regulatory requirements, compliance procedures, and the enhanced focus on consumer-directed care.
2. **ICT Infrastructure:** Investment in information and communication technology systems to support the documentation, reporting, and management requirements of the New Aged Care Act. This includes updating or acquiring new software and hardware that facilitate improved care coordination and communication with clients.
3. **Administrative Support:** Additional funding for administrative resources to manage the transition, including updating policies and procedures, client contracts, and compliance documentation to align with new standards.
4. **Quality Improvement Initiatives:** Initiatives aimed at enhancing the quality of care, including the development of new service delivery models, quality assurance mechanisms, and consumer engagement strategies.

This investment will not only support providers in meeting new standards but also ensure that the wellbeing and quality and continuity of care for older Australians are maintained and enhanced. The department's prompt action in allocating these funds will demonstrate a commitment to the successful reform of the aged care sector.

3.4.2. Structured Transition Timeframes

Recognising the substantial effort required to meet new governance requirements, including new Strengthened Quality Standards, and the need to include various stakeholders in the process, clear, structured transition timeframes are required. We recommend that these timelines should account for the complexities of implementation across different care settings, ensuring all parties have adequate time and resources to comply with substantial new requirements.

A phased approach – echoing that of Support at Home – with milestones and support mechanisms, will facilitate a smoother transition for providers, staff, and older Australians.

3.4.3. Collaborative Development of a Transition Plan

To ensure the successful implementation of the New Aged Care Act and its alignment with the timeline for the Support at Home program, it is recommended that the government collaborates closely with aged care providers to develop a comprehensive transition plan. This is particularly vital as the Act is intended to take effect within four months of the feedback submission cut-off date.

This timeframe poses a significant and potentially unachievable burden on sector providers, particularly without additional resources or funding – as noted our other recommendations. It is recommended to provide a staged and structured approach, considering the complexities of the sector and the need for a seamless transition that minimizes disruption to service delivery.

It is also vital to consider any ICT requirements to appropriately deliver services under the new Act. Such systems will also require a period of transition and may be impacted by the short timeframe until the new Act is in place.

With Support at Home being delayed, due to the transparency in requiring further preparation, it is recommended that the transition plan for the new Act is similarly considered. The delay to Support at Home is providing adequate time – with additional information provided – to prepare for the required changes. This would facilitate a cohesive approach to the service delivery reforms and is crucial for maintaining continuity of care.

Key milestones and deadlines for each phase of the transition will also enable providers to target operational reforms within their own organisation in line with the larger sector objectives. This will lead to facilitating greater collaboration – not only with the department, but also partners in the community – ensuring a smooth transition to the new regulatory environment.

3.4.4. Delaying the Implementation of the Decision-Making Framework

Given the substantial changes introduced by the New Aged Care Act, particularly concerning the decision-making framework for aged care recipients, it is imperative to ensure that the framework's implementation does not precede the resolution of potential conflicts between existing legal instruments and the practical impacts of these changes.

We have been given assurance that the System Governor will automatically appoint individuals as representatives if they hold legal instruments, such as an Enduring Power of Attorney (EPOA), providers may face situations where a signed health directive indicates a different decision-maker to the EPOA. We recommend that a review of all existing legal instruments related to decision-making in the aged care sector. This review should identify any inconsistencies, overlaps, or conflicts between the new decision-making framework and current instruments or regulations. These results, in tandem with engaging sector legal experts should gain insight on the practical impacts, whilst identifying legal conflicts.

Delaying the implementation of the decision-making framework until a thorough review is conducted and any conflicts are resolved will allow for a crucial holistic understanding of the new enhanced decision-making processes without inadvertently creating legal ambiguities or operational challenges. By adopting a cautious and informed approach, the department can safeguard the interests of all stakeholders and promote an effective system which can be appropriately navigated by providers.

3.5. Service Delivery

3.5.1. Timely Access to Supports

A primary concern in the aged care sector has been the significant wait times to access care services. The department should ensure the Statement of Rights includes a clear mandate for the timely provision of supports to Older Australians.

It is hoped that the integration of the Single Assessment System will effectively manage this risk, by facilitating a streamlined process for assessing and delivering the necessary care and services. It is recommended the system should prioritise the rapid initiation of assessments and support post-assessment, reducing waiting times and ensuring Older Australians receive the required assistance without undue delay.

Incorporating this into the Act and Statement of Rights will underscore the commitment to responsive and respectful care.

3.5.2. Consultation - Allied Health Services

It is recommended that the department should initiate a comprehensive consultation process with allied health providers in the sector around the inclusion of such services under Category #4. This consultation process should explore the realignment of allied health service types under the Nursing Service Category (Category #5).

Currently, allied health, personal care, social support and respite all share Category #4, and presumably similar governance requirements. This consultation should aim to identify how allied health services can be integrated more effectively within the aged care framework, ensuring they are recognised for their critical and clinical role in maintaining and improving the health and wellbeing of Older Australians.

Allied health focus into specific aspects of clinical care, such as dietetics, falls, mobility, occupational therapy, pain management, podiatry, speech therapy and wounds, which differ greatly to other services in Category #4.

Consideration should be given to how these services complement nursing care and complex care management, and how they differ from personal care and respite. The objective being creating a more cohesive and multidisciplinary care model that better services the complex needs of Older Australians.

3.5.3. Consultation – Social Support Services

There is a need for the department to re-evaluate the classification of Social Support Services within the aged care registration categories.

A targeted consultation with providers of social support services and Older Australians should be conducted to assess the current impact of the categorisation on their accessibility and delivery. This re-evaluation should aim to ensure that Social Support services are positioned within a category that accurately reflects their role and importance in promoting social inclusion, mental health, and overall quality of life.

It is understood, through other discussion submissions relating to the new Aged Care Act, that several community transport providers offer social outings and social transport. This

service would more closely align with Category 1. There is also an understanding that centre-based programs can differ quite significantly in nature from social programs.

Under the current categories, Social Support services seem to be held at the same governance requirement as clinical allied health oversight and further refinement is required. The outcome should facilitate easier access to these services for older Australians, recognising their vital contribution to overall care.