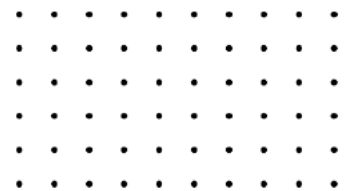


March 2024



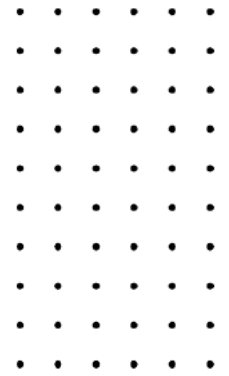
NEW AGED CARE ACT CONSULTATION



Submitted by
NSW Community Aged Care Forum



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NSW COMMUNITY AGED CARE FORUM (CACF) SUBMISSION

Dear Hon. Mark Butler MP,

Please find attached a joint submission from the fifty-plus organisations represented at the NSW Community Aged Care Forum (CACF) to the New Aged Care Act Consultation.

In May 2018, the CACF was re-focused to enable NSW member organisations to work more collaboratively for better outcomes for older Australians in the community and home support sector. It is from this perspective that the CACF welcomes the opportunity to contribute to the development of the new Aged Care Act.

Since the release of the exposure draft for the Bill in December 2023, we have come together to discuss how all older Australians are empowered with rights and voices to strengthen through the Act. We have recommendations for your consideration which are intended to provide older Australians the best possible quality of life by supporting community organisations that provide services to them.

If you require further information, please do not hesitate to contact:

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Yours sincerely,

The NSW Community Aged Care Forum (NSW CACF)

ACKNOWLEDGEMENT

We acknowledge the Traditional Custodians of country throughout New South Wales and their continuing connections to land, sea, water and community. We pay our deepest respect to Australia's First Peoples, to their unique and diverse cultures and to Elders past, present and emerging.

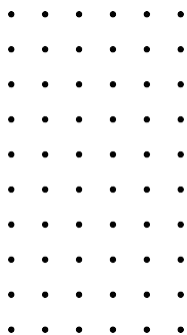


INTRODUCTION

On 14 December 2023, the Department of Health and Aged Care (the Department) released an exposure draft of the Bill for the new Age-Care Act for public consultation. Since then, the Department has accepted submissions and survey responses as a part of the public consultation process.

We know it is imperative to ensure that older Australians receive adequate care and support focused on quality services and choice. Projections indicate that by 2057, the country will be home to 8.8 million older individuals, comprising 22% of the population. Providing sufficient support, especially during the earlier years of older later life stage, is crucial. Enabling older Australians to remain in their own homes not only promotes their comfort and health but also aligns with preferred living arrangements, ultimately reducing the strain on government resources.

We would collectively like to thank the Department and all those involved for providing an opportunity to come together to comment on the desired inclusions for this Act affecting older people and acknowledge the expertise that formed the draft. We look forward to future opportunities to progress the consultation process.



ABOUT THE NSW COMMUNITY AGED CARE FORUM (CACF)

This submission represents the views of the NSW Community Aged Care Forum (CACF). The submission is part of the Forum's on-going input into the development and support of the community and home-based supports for older Australians.

The CACF plays a key role in Aged Care sector support and development by bringing together a range of stakeholder representatives involved in community and in-home supports for older people across NSW.

THE CACF'S PERSPECTIVE

The NSW Community Aged Care Forum (CACF) actively represents the community perspectives in the development of all its work including our views regarding this submission. The NSW CACF's engagement ensures that the voices of older people and their carers are heard and prioritised in decision-making processes. This community-driven approach is essential for crafting policies and initiatives that truly meet the needs of those they intend to support.

The CACF has provided responses as below, for those questions where input was believed necessary.



CHAPTER 1: KEY CONCEPTS, AGED CARE RIGHTS AND PRINCIPLES, SUPPORTERS AND REPRESENTATIVES

Overall

The CACF supports the proposed Statement of Rights as proposed. However, The Act should stipulate responsibilities as well as rights. For example, a general obligation on service users to respect others in individual and group situations, and as much as they can take responsibility for the impact of their choice and behaviour on others.

Protections for whistle-blowers

In the proposed framework for whistle-blowers the removal of an ‘in good faith’ requirement will make it difficult to prevent vexatious complainants. “In good faith” should be restored to ensure there is a better balance in the system and support towards workers within it.

Q1 Are the revised Objects clear? Do they achieve their intent? If not, what changes are required?

The NSW CACF endorses the human rights and person-centred principles embedded within the proposed Act. This approach reflects a commitment to diversity, acknowledging and respecting the unique needs of individuals within our communities. We recognise the expertise and time invested in developing this Bill, as well as the extensive consultation process that ensures inclusivity and thorough consideration of diverse perspectives.

The Act must ensure that individuals from all walks in life are considered and included, for example but not limited to those:

- ♦ who identify as Aboriginal and/or Torres Strait Islander.
- ♦ who come from a culturally or linguistically diverse (CALD) background;
- ♦ are living with a disability.
- ♦ from rural and regional communities.

We recommend that the legislation explicitly incorporates human rights and strength-based person-centred principles. This will guide all policies and practices concerning older people and their carers.

CHAPTER 1: KEY CONCEPTS, AGED CARE RIGHTS AND PRINCIPLES, SUPPORTERS AND REPRESENTATIVES

Greater support and understanding across the various layers of the broader aged-care sector, will more effectively enhance the lives of older people. Therefore, we strongly encourage collaboration between government agencies, non-profit organisations, and community groups to leverage resources and expertise to better address the diverse needs of older people and carers.

Q2 Should connection to Island Home also be included in other parts of the new Act?

We suggest that connection to Island Home and other ancestral lands are specified in the Act.

We strongly suggest including Island Homes in the definition for Aboriginal / First Nation Peoples for greater clarity.

Q3 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?

Yes, noting that many providers already aim high.

The definition of high-quality care states 'keeping staff'. To maintain high standards of care, we propose investing in continuous professional development for aged care providers and professionals, including incorporating the latest research and leading practices in the field.

The aged-care sector must be supported in this process. For example, having access to the key contact points to engage with, should they require support. Any support and assistance must be provided in a timely and effective manner.

CHAPTER 1: KEY CONCEPTS, AGED CARE RIGHTS AND PRINCIPLES, SUPPORTERS AND REPRESENTATIVES

Q4 Do you think a single service list will increase clarity of the services that the Commonwealth aged care system provides to older people?

More clarification is required on where and how the list will be accessed. Any list of services must remain relevant and up-to-date.

Q6 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?

Restricting older individuals to selecting either a representative or a supporter is ineffective. For instance, an elderly individual might require a representative for financial matters while also desiring support from someone, whether family or not, for other aspects, such as daily assistance, potentially from someone who lives nearby.

The process to nominate representatives and supporters needs to be clear with the older person, making a fully informed decision and if unable being at the centre of any decision-making process.

We recommend greater consultation with older people on this question to explore kinship relationships and extended families and what representation and support means to them. This is specifically significant when working with First Nations Peoples.

We support the inclusion of a clear process for appointment of representatives and supporters. Limiting older people to a choice between having either a representative or a supporter appears counter-productive. For example, an older person may need a representative to make decisions but want another family member (who may live closer) to be a supporter. Older people should be able to nominate someone to act on their behalf at any stage.

Providers will need clear guidance on how the Commonwealth system intersects with State/Territory guardianship and powers of attorney. We support the recognition of this system in the draft Act with a requirement on the System Governor to default to a guardian or power of attorney as a representative.

CHAPTER 1: KEY CONCEPTS, AGED CARE RIGHTS AND PRINCIPLES, SUPPORTERS AND REPRESENTATIVES

It will need to be clear for providers to know who is authorised by the Commonwealth as a representative or supporter.

Q7 Registered Providers will need to interact with supporters and representatives about a range of decisions that people using their aged care services can make.

What support will providers need to move to these new arrangements?

Providers will need clear guidance on how the Commonwealth system intersects with State/Territory guardianship and powers of attorney. Currently it is unclear how providers will know who has been authorised by the Commonwealth as a representative or supporter.

Q8 What sort of penalty should apply to supporters and representatives who don't carry out their duties, if any?

Clarification is required on what is the penalty. If stipulating penalties it is highly unlikely that supporters and representatives will engage.

The CACF supports the COTA Key Issues Paper on the Draft New Aged Care Act – Reference page 11.

Q9 Representatives must always try to help a person to make their own decisions. But sometimes the older person might not want to make the decision, even if they are able to. Should an older person be able to choose to have a representative, if they are still able to make their own decisions? Please tell us why or why not.

Older people should be able to nominate someone to act on their behalf at any stage, in accordance with the principles of person-centred approaches, rights and choice.

We raise the importance of values and principles of the right to independent advocacy for and with older people. Ensuring access to independent advocacy services is crucial for safeguarding the rights and autonomy of older individuals.

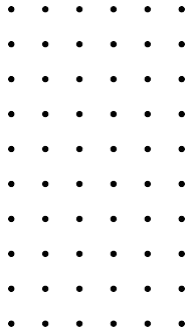
CHAPTER 1: KEY CONCEPTS, AGED CARE RIGHTS AND PRINCIPLES, SUPPORTERS AND REPRESENTATIVES

Strengthened independent advocacy and access to it is imperative for upholding rights of older persons. Strengthening and enhancing community engagement mechanisms will ensure ongoing input from older people, carers, and relevant stakeholders throughout the design and implementation process of this legislation. It is vital to ensure that there is a system which is reflective of community needs and is of high-quality and leading practice.

Communication, access to service pathways and self-determination across all pathways is necessary for the older person – especially for those who are displaced or at risk of displacement e.g. those without a place to live, those disconnected from family, home and country whatever their backgrounds and circumstance.

We ask for clarification on how the proposed legislation will uphold the fundamental rights of older Australians to ensure they have the support they need to make informed decisions and easily navigate the complexity of the health systems effectively.

Connecting support systems is imperative for such as the Public Health Network services and welfare connectors are paired to specific services. For example, on the NSW North Coast a cultural pathway for First Nation Elders, include accessible links to General Practitioners, allied health including home modifications and clinical supports. This is effective when developed in consultation with local providers of First Nation services.



CHAPTER 2: ENTRY TO THE AGED CARE SYSTEM

Q1 Are you comfortable with the proposal to maintain flexibility to vary services that a person can use under the Commonwealth Home Support Programme (CHSP) when the Act is introduced? Note: these changes won't affect Home Care Package

Maintaining flexible access to CHSP services is highly recommended.

Q7 Do you believe there are clear arrangements in place under the new Act for a classification decision to be reviewed and changed if required.

We suggest a review process within the next 2–3 years, and then at five-year intervals.

Q8 Do you have any views on when emergency entry to aged care would be required that you would like to see included in the new Act.

More detail around the 'emergency' definition is required. It should be possible and easy for older people to access support at home urgently and then have their needs and eligibility for ongoing services assessed after the event. For example, if a family carer becomes ill, it may become critical to provide meals and transport quickly.

CHAPTER 3: OVERVIEW

Q3 Do you believe the statutory duty on responsible persons will ensure accountability in the unlikely event of a death or serious illness or injury to an older person in aged care?

There is a risk that penalties for breaching responsible person duties may lead to difficulties in attracting staff, volunteers and board members, especially in regional areas.

From the community perspective penalties for breaching responsible person duty may present difficulty in procuring Board, staff and volunteers especially in rural, regional and remote areas.

There is an opportunity to ensure service providers implement tiered responsibilities and accountability leading up to an event. Such as education and upskilling opportunities for staff, volunteers, including Board members, about responsibility and accountability.

Q4 What information should be displayed on aged care digital platforms to help protect people receiving services within the Commonwealth aged care system?

Overall participants should have choice about the communication methods used to receive information. Any information someone receives should contain advice on how to respond if the user is uncomfortable / threatened in any way.

Q7 Can you identify any practical issues with operators validating the proposed information?

Digital operators need to take into consideration the expertise, accessibility and capacity needs of smaller providers to use, and benefit from, their digital platform/s. Taking into consideration that call centres can be disengaging.

We support a funding model focused on local registered providers as the avenue to support the needs of older people in metropolitan rural, regional and remote areas.

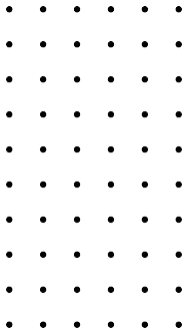
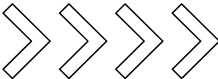
CHAPTER 3: OVERVIEW

System governance and regulation will only work for smaller providers if a relationship is established and equitably managed with local connections and acknowledgement of learnings gained. That is, a go-to place where people can understand practical issues.

For ‘mob’ we know it is important to see an understanding and respect for kinship which embodies the physical and emotional, cultural context of wellness, health and community supports. Community spaces and local relationships are trusted and valued over larger organisations.

Q8 Do the proposed additional obligations on digital platform operators address the key risks and areas of oversight for online platforms?

Consideration of the role of artificial intelligence (AI) in making decisions or supporting someone to decide in their care and how any risks from the use of AI will be managed.





CHAPTER 4: FEES, PAYMENTS AND SUBSIDIES

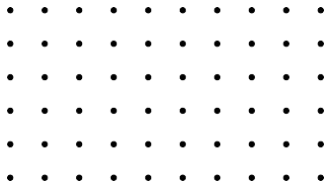


Q1 Do you think the structure of Chapter 4 is sufficient?

At this stage there is not enough information in Chapter 4 to comment.

Q6 Doyousupportregisteredprovidersbeinggivenaccesstospecificadditional Commonwealthfundingwhichmustbeusedforaparticularpurpose,ratherthan to deliver specific aged care services?

Yes, providers should have access to adhoc funding for a particular purpose as in the past. For example: COVID, severe whether events, new initiatives, service delivery gaps. Clarification and examples of how the funding could be used would be useful.





CHAPTER 5: GOVERNANCE OF THE AGED CARE SYSTEM

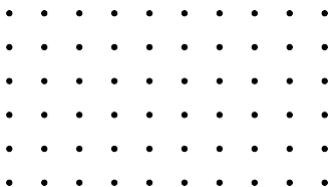
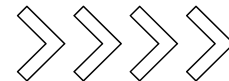


Q3 Is it clear how the roles of the System Governor and Commissioner differ, but also fit together, as regulators of the aged care system?

There needs to be clear legislated timeframes for the Department and the Commissioner to action decisions.

Q6 Do you think it is appropriate to have one Commissioner as the head of the Aged Care Quality and Safety Commission, and the Complaints Commissioner as a Senior Executive Services officer handling complaints?

Yes, there is a need to make the Complaints Commissioner independent of the Aged Care Commissioner.



CHAPTER 6: REGULATORY MECHANISMS

Q1 Do you consider that the expanded powers made available to the Commissioner will ensure they can take a pro-active and risk-proportionate approach to the regulation of the sector?

Yes, the expanded powers will enable the Commissioner to respond quickly, based on the risk profiles.

Q4 Does the new Act provide sufficient clarity regarding the role of the Department in managing the integrity of the aged care program?

No. The Act needs to stipulate, as a goal, the need to ensure the provision of aged care services equitably, and to support communities to provide care services which meet local needs.



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