

February 2024

Aged Care Act exposure draft: Submission from the Victorian Healthcare Association

About the VHA

The Victorian Healthcare Association (VHA) is the peak body supporting 113 Victoria's public health and community health services to deliver high-quality care. Established in 1938, the VHA represents Victoria's diverse public healthcare sector, including public hospitals, aged care, and community health services, which is valued at \$26.8 billion.

As well as providing a unified voice for the sector, the VHA advocates on behalf of its members on sector-critical issues by engaging and influencing key decision-makers involved in policy development and system reform.

Executive Summary

The Victorian Healthcare Association (VHA) welcomes the opportunity to make a submission to the Department of Health and Aged Care on the Aged Care Act exposure draft (the Act) released for consultation on 14 December 2023.

Like many Australians who participated in or observed the findings of the Royal Commission into Aged Care Quality and Safety, the VHA is supportive of the Commonwealth Government's efforts to design and implement a more fit-for-purpose care system for older Australians, including the enabling legislation required to support a sector reform that places individuals at the centre.

In particular, the VHA believes that the aspirations of this reform are sound and admirable; however, feedback from our members have raised enduring concerns about the pace of reform, as well as the lack of detail currently available to support services to anticipate and respond to the exposure draft. We believe that this is, in part, a result of its ambition to strengthen and articulate new practice. It is important to note that the greatest implementation risk resides with the latter.

The pace of change currently occurring across the aged care sector is both unprecedented and intense as services seek to navigate their way through the anticipated regulatory changes, prepare their workforce and maintain the growing expectations of a high-quality service that follows a period of public and judicial scrutiny. This submission has been developed in consultation with the VHA's members including chief executive officers and clinical leads providing services across a continuum of care, as well as Board Directors with significant governance experience in aged care.

This submission highlights the key concerns raised by public health services who deliver aged care services in Victoria. These are: the introduction of statutory duties, the critical gaps in the exposure draft which create challenges to anticipating the future system, and the limited information about implementation, which is frustrating the change management process.

Aged care services in Victoria

To place the issues raised in this submission in context, it is important to outline the landscape of aged care services in Victoria.

Across our membership, **residential aged care services** are delivered by 172 public sector residential aged care services (or PSRACs), which are either:

- Delivered as part of a broader health service offering. These health services are governed by a Board of Directors appointed by the Victorian Minister for Health, or
- ‘Standalone,’ or not connected to a health service.

Most PSRACs are in regional and rural communities across Victoria.

Unlike most other states and territories, PSRACs are a unique service option in Victoria. As of 30 June 2023, 172 public PSRACs operated 4,814 residential beds across Victoria. This equates to about eight per cent of all operational residential aged care beds in the state, compared to zero to four per cent across other states and territories.¹ In an environment of growing complexity for health services seeking to discharge medically well-aged Australians from acute care, PSRACs offer an important means for low-income Victorians to access an alternative to home-based aged care.

In addition to PSRACs, VHA also represents 79 **community health services**. These services are either:

- Integrated with a broader health service offering. These health services are governed by a Board of Directors appointed by the Victorian Minister for Health, or
- Independent and registered community health services.

Almost all community health services deliver community aged care services as part of the Commonwealth Home Support Program (CHSP) and Home Care Packages (HCP) program. Much like their PSRAC counterparts, community health services providing aged care are increasingly being seen as the ‘provider of last resort’ for highly complex service delivery or in thin geographical markets. Community health services’ strong clinical governance structures are a critical element to a sector otherwise dominated by non-profits and private providers whose clinical capabilities may vary. Their inability to grow or maintain their services to older Victorians would have a critical impact on accessibility and continuity of care across the state.

Local government also plays a significant role in funding and providing aged care programs, services, and facilities. As has been highlighted by the submission from the Municipal Association of Victoria, the landscape for Victorian councils as a sector providing aged care services has and continues to change. 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). This is in addition to direct complementary functions, such as community connector roles and navigational supports, that “proactively address [the] local gaps arising from the evolving aged care system.”

¹ Australia Institute of Health and Welfare, 2023. Accessed https://www.gen-agedcaredata.gov.au/www_ahwgen/media/ROACA/22506-Health-and-Aged-Care-ROACA-2021-22-Web_May2023.pdf

The introduction of statutory duties

The VHA raises concerns regarding the introduction of new statutory duties for services. While this measure is intended to complement the Work Health and Safety Act (2011), our members have highlighted that the penalty provisions (both civil and criminal) are more punitive than regimes that oversee other care industries, including disability, public health, and early childhood education services. Concerns were raised about the potential for workers who are not meeting the required standards to be targeted, as opposed to those wilfully behaving in an unlawful manner. Members also questioned the policy benefits of the proposed penalties, highlighting that the sector is already regulated under existing legislation and common law.

While current responsibilities under the existing legislation lack clarity, the exposure draft does not offer sufficient guidance on how the proposed penalties for responsible persons will be applied under the Act. The omission of quality principles that accompanied the original 1997 legislation was noted. Other members raised questions about the potential impact this may have on insurance premiums, further contributing to the financial viability challenges for publicly funded aged care service.

Importantly, the definition of responsible persons to mean “executive decision-makers” as well as any registered nurse responsible for the overall management of the nursing services or any person responsible for the day-to-day operations is regarded as presenting a significant risk to the recruitment and retention of the aged care workforce, as well as the governing entities who oversee their operations. This was raised as a particular concern amongst our regional and rural members, where recruiting and retaining a skilled workforce has become increasingly difficult over time.

For those services that operate under the *Health Services Act*, Board Directors are appointed by the Minister for Health. They queried whether potential Board Directors would be aware of their obligations as a responsible person under the new Aged Care Act and how this might inform, impact, or compromise the appointment process.

Recommendation:

The VHA recommends that the Commonwealth Government review the appropriateness of the penalty levels, considering the comparable arrangements in place for other care sectors. Penalties should be better targeted to address misconduct, in contrast to those responsible persons who do not meet an expected standard.

The VHA also recommends that the Commonwealth Government develop guidance material to accompany the new Act, to provide further insight into how new aspects of the legislation will be applied in practice. This guidance should be outlined and embedded in all aspects of the legislation, statements of intent, sub-ordinate legislation, and regulatory frameworks.

Critical gaps in the exposure draft create challenges to anticipating the future system

Just as Australian households need to manage their budgets with the rising cost of living, Victorian public healthcare services must also consider the cost of delivering services within tightening budgets. This requires clear information about the price a service may expect to be paid to provide high-quality care to older Australians, considering what is already known about the cost of staffing and other operating requirements of the aged care system.

Several VHA members have raised concerns about the lack of information related to key features of the proposed Act, most particularly in relation to the fees, payments, and subsidies. This leaves some services uncertain about their future within the market of aged care services, which in turn impacts their ability to assess, at face value, the implications of the provisions of the new Act as outlined in the exposure draft.

Some members have highlighted other gaps that impact their ability to engage with the substantive matters within the exposure draft, in particular, the 'rules' not further described within the exposure draft but frequently referred to within the legislation.

Restrictive interventions and substitute decision-makers

Victoria does not currently have a legal framework to identify restrictive practices to substitute decision-makers in residential aged care (public, private and not-for-profit). Following changes introduced by the Commonwealth Government in 2021 to the regulation of restrictive practices in residential aged care settings, Victoria has been utilising a temporary hierarchy that provides an interim solution to identify substitute decision-makers where there is no applicable state or territory law. The VHA understands that this hierarchy will be repealed on 1 December 2024. VHA members have expressed concern that the exposure draft does not address how substitute decision-makers are to be determined in these jurisdictions where there is no legal framework to provide consent on behalf of a care recipient who does not have the capacity to provide consent.

Provider registration

VHA notes that the exposure draft outlines the provider registration process (pgs. 76 - 77) and the registration and audit requirements (pgs. 78 – 81) but our members have expressed concerns about the practical application of the registration process and its application to state entities.

While the Commonwealth Department of Health has advised that services will be deemed according to the new Act, there remains considerable uncertainty with respect to how the three-year registration period will impact future operations. Some VHA members have raised questions about the nature of staggered registrations and how re-registration will be prioritised and determined at a future time.

Recommendation:

The VHA recommends that the Commonwealth Government provide greater clarity about when critical gaps in the exposure draft will be addressed and when there will be future opportunities to consult the sector on these provisions of the new legislation.

The VHA recommends that while arrangements are under discussion with the Victorian State Government, that Commonwealth legislation must remain in place until alternative mechanisms are established.

Limited information about implementation is frustrating the change management process

The VHA and its members recognise the significant policy reforms represented in this exposure draft and commend the Commonwealth Government for its urgency in addressing the issues highlighted by the Royal Commission. Despite this, VHA members remain conscious that the reform milestone of 1 July 2024 is drawing closer and are concerned about the absence of a staged transition plan that articulates the care services will be expected to be delivered beyond this date.

Some VHA members have pointed to the long lead times required to train staff who care for older people, and to change the systems that underpin their care. Ineffective recognition of the time needed to implement system reform could further destabilise the sector's ability to respond to reform and thus further delay the intended positive impacts to consumers.

At this point in the reform process, some VHA members anticipate that transitional arrangements will need to apply but are unclear about the elements of the current system that will be retained and for what period. The VHA supports the Aged Care Quality and Safety Commission's work in undertaking the framework analysis and proposes that a similar activity could be undertaken to include all elements of the Aged Care Act. Smaller aged care services are more concerned about the transition lead in timeframes, particularly those that have recently completed their accreditation under the National Disability Insurance Scheme and responded to State-based reform. The VHA highlights the opportunity and importance in learning from these recent reform experiences.

Some VHA members who provide the CHSP have proposed that the Commonwealth Government should set out suggested timeframes rather than a series of aspirational milestones that must be reviewed and reset over time. They contend that questions around registration should be resolved as a priority, noting, however, that more information is required before the scope and scale of implementation can be understood.

Recommendation:

The VHA recommends that, as a matter of urgency, the Commonwealth Government establish and make publicly available a comprehensive staged transition plan that outlines the timelines for the implementation of the new aged care system infrastructure.

Conclusion

The foundational tenets of the proposed Act are sound; that is, as the Royal Commission's findings have shown, a high-quality aged care system is one that safeguards and respects the rights of older Australians, is innovative, efficient, and well governed. However, as is outlined in this submission, members of our organisation are concerned that the regulation of the proposed future system has not yet struck the right balance between incentivising good practice and punishing misconduct.

On behalf of its members, the VHA calls on the Commonwealth Government to consider the recommendations outlined in this submission.



For further information contact

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[Redacted contact information]

8 March 2024

Aged Care Act Consultation
Department of Health and Aged Care
GPO Box 9848
CANBERRA ACT 2601
Australia

Via email: AgedCareLegislativeReform@health.gov.au

To Whom It May Concern,

I am pleased to enclose our submission to the Aged Care Act exposure draft (the Act) released for consultation on 14 December 2023.

The Victorian Healthcare Association (VHA) is the peak body supporting Victoria's public health services to deliver high-quality care. Established in 1938, members of the VHA include public hospitals, rural and regional health services, community health services, aged care facilities and primary care organisations. With 113 member organisations, the VHA represents 95 per cent of the Victorian public healthcare system.

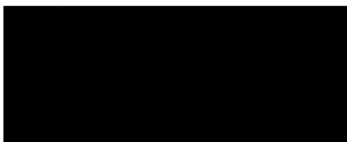
Within our membership, aged care services are delivered by public sector residential aged care services (PSRACS) that are linked to public hospitals or small rural health services, as well as stand-alone PSRACS (PSRACs not linked to a hospital) and Multipurpose Services (MPS), a system design unique to Victoria.

In addition to PSRACs, VHA also represents 79 community health services. Almost all community health services deliver community aged care services as part of the Commonwealth Home Support Program (CHSP) and Home Care Packages (HCP) program.

Responding to sector transformation as part of the Aged Care reforms is a high priority for VHA members. The VHA is keen to support services as they innovate, grow, and further embed practice improvements over time to deliver benefits to older people, their families, and carers.

We would be pleased to provide further detail on these recommendations or other issues, from the perspective of the Victorian public healthcare sector. To set up a meeting, please contact the VHA's Executive Assistant on [REDACTED] or [REDACTED]

Yours sincerely,



Leigh Clarke
Chief Executive Officer

Attachments: Aged Care Act exposure draft: Submission from the Victorian Healthcare Association