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Federal Department of Health and Aged Care
GPO Box 9848
Canberra ACT 2601
Australia

By email: AgedCareLegislativeReform@health.gov.au

ANZSGM submission to the Australian Government Department of Health and Aged Care on the exposure draft of the new Aged Care Act

Dear Colleagues,

Thank you for the opportunity to provide feedback to the Department of Health and Aged Care on the exposure draft of the forthcoming new Aged Care Act.

First and foremost, ANZSGM acknowledges that the medical needs of older people must be paramount in any new aged care model and must underpin the principles of the new Aged Care Act. As geriatricians we recognise that older people access aged care services at home or move to residential aged care because they have serious, often multiple, medical conditions, with consequent physical, functional, cognitive and psychological/psychiatric impacts, often in the setting of frailty and social and familial stressors. All Australians, including people living in residential aged care services, should have the right to access a full range of healthcare services appropriate to their needs.

ANZSGM supports a new Aged Care Act that highlights equity of access to healthcare, including:

- Access to both primary and specialist medical care, including expert medical, allied health and nursing support, which is evidence-based, multidisciplinary, timely, and delivered (where possible) in the setting preferred by the older person.

- Access to models of restorative care (including rehabilitation), with a focus on reablement and improving function when able, or maintenance of function where improvement is not possible; such models must include adequate provision of allied health services.

- Access to specialist palliative care and end of life care in the person's place of residence, that provides dignity, comfort and relief of symptoms for those in the last stage of their life.

- Practical issues including adequately equipped consultation spaces that provide privacy and confidentiality; access to RACF medical records, whether paper-based or electronic, and GPs and other providers accessing their own electronic records remotely.

The following further comments were collected in reference to specific chapters. Most of our feedback is in relation to the Introduction (Chapter 1), as it applies particularly to the role of geriatricians.

Chapter 1 – Introduction

- Colleagues are satisfied with the Objects of the new Act and agree that they place the needs of older people at the centre of the new aged care system.

- We agree with the definition of high-quality care (Section 19 of the Act) and support the Royal Commission's recommendation that a shared understanding of this concept is required to achieve much needed cultural change in the aged care sector.

- The provisions for supported decision-making are reasonable, apart from the Act prohibiting the simultaneous appointment of both supporter(s) and representative(s). It seems unnecessarily restrictive to permit a person to appoint representatives OR supporters, but not both. The decision to access aged care services can be enormously consequential for the older person, who must have access to multiple sources of support if desired. Allowing supporters and representatives is one way of maximising the older person's self-determination. In some instances, the older person may regard supporters as performing an important oversight function when appointed in conjunction with representatives (i.e., that supporters may help to safeguard the interests of the person in circumstances where a representative or representatives are making decisions on the person's behalf).

  The Act should address the means by which multiple representatives can make decisions (e.g. the extent to which there must be agreement between a number of representatives), as well as the mechanisms through which disagreement between representatives, or between representatives and the person, are to be resolved.

  The Act should explicitly support the right to self-determination through the execution of Advanced Care Directives (and equivalent instruments) and should require representatives (and supporters) to make decisions that are, as far as practicable, consistent with existing Advanced Care Directives.

  Older people should be able to appoint a representative at a time when they can still make their own decisions about their aged care, but they prefer someone else to make decisions for them. This is reasonable and consistent with prevailing attitudes in some cultures that one or more family members will make decisions in relation to an older

person, even when the older person legally has capacity to make their own decision about a matter. It is worth adding the proviso that in this circumstance the older person retains the ability to object to and override any decision made by the representative should they wish to do so.

- The need for timely access to appropriate health care does not appear to be covered in the draft exposure bill. Whilst the safety, health, wellbeing and quality of life of older people is acknowledged as the primary concern of the aged care system, we assert that the bill must affirm the obligation on aged care providers to facilitate timely access to appropriate healthcare, including primary and specialist healthcare services, mental health and allied health services.

  As highlighted in ANZSGM's previous Aged Care Act consultation, a major part of the reason that older people access aged care services is to address functional and cognitive limitations. These are brought about by medical conditions, and healthcare needs in the older population that are not adequately addressed and will inevitably lead to further functional decline, loss of independence and increased care needs. It is therefore critical for the sustainability of the aged care system (quite apart from the human rights imperative) that aged care services facilitate the provision of healthcare.

- In response to the question of whether a single service list will increase clarity of the services that the Commonwealth aged care system provides to older people, we believe that a list of services runs the risk of working against the purported principles of flexibility, being consumer-driven, person-centred, and may limit the ability to introduce new, innovative interventions and models of care.

<u>Chapter 2 – Entry to the Commonwealth aged care system.</u>
We strongly support streamlining and simplifying the process of making a single, simple application for funded aged care services.

Question 13
Is there anything else you would like to see specified in the legislation regarding the needs assessment process?

There is no real information about who can be an assessor and whether they need a tertiary qualification in a profession with clinical expertise in the area? We strongly support a requirement for assessors to possess a relevant tertiary healthcare qualification (including in the discipline of Social Work) in addition to appropriate clinical experience in a healthcare or aged care setting.

Chapter 3 - Registered providers, aged care workers and digital platform operators
It is worth considering whether a move to an IT platform-based approach risks excluding older Australians without the necessary IT literacy and how this will this be mitigated.

Chapter 7 – Information Management
Do these obligations apply to visiting geriatricians or other health professionals? Are they considered "contractors" for the purposes of the Act, even if working in their capacity as a state health service employee?

Other general comments

- A rights-based approach seems reasonable and fits within the UN/WHO declaration and convention frameworks.
- An on-going focus on needs is appropriate, as opposed to universal access.
- Whistleblower protections seem appropriate given the Royal Commission findings.

Please contact our CEO Alison King on 02 9241 2412 or [redacted] if you require any further information.

Yours sincerely,

[redacted]

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