



Submission
Exposure Draft Aged Care Act 2023
OLDER WOMEN'S NETWORK NSW

March 2024

To:

Consultation on the New Aged Care Act
Department of Health and Aged Care - New Aged
Care Act Consultation
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Background

The Older Women's Network NSW (OWN) has been a vital, strong and consistent voice for older women in NSW for more than 37 years. We have been at the forefront of progressive change, activism and advocacy since 1987.

We have gone from strength to strength as a dynamic members-led organisation expanding throughout NSW with over 20 groups. Over the years, OWN has developed services and resources for older women and written and contributed to numerous influential reports on key issues for older women such as on income security, homelessness, ageism, wellbeing, and violence against older women. We have played a big part in putting these issues at the forefront of public policy debates.

In relation to aged care, own's interests and initiatives have focused on the safety of older people in care. While confirming our anecdotal evidence, it was with great distress that we learnt from the Royal Commission that a conservative estimate of 50 sexual assaults occur in aged care every week. And that 'rough handling', is seen as an acceptable excuse for injuries, whereas in any other setting, it would be viewed as assault.

We have worked with Celebrate Ageing and the Older Persons Advocacy Network (OPAN) to develop training resources for aged care providers on how to respond to sexual assaults in aged care.

We welcome ongoing involvement in the drafting of the Rules as part of the implementation of the new Aged Care Act. This is a once in a lifetime opportunity to deliver quality care and provide effective protections for those receiving aged care services. OWN NSW is eager to remain engaged in this process.

1. GENERAL RECOMMENDATIONS

1.1 OWN NSW has provided input into, and supports in principle the recommendations set out in the 'Aged Care Act Exposure Draft – Key Issues Paper' prepared by the national organisations working with older people and carers, published in January 2024, and hosted by COTA at: <https://cota.org.au/publication/aged-care-act-exposure-draft-key-issues-paper/>.

1.2 OWN NSW also provided input into and supports the submission made under the facilitation of Aged Care Justice.

1.3 OWN NSW fully supports the submission made by the National Older Women's Network.

1.4 OWN NSW therefore will not repeat the points made in the submissions mentioned above.

The Act makes reference to Rules that will provide details on how the Act will be interpreted and implemented, which at this stage, have not been made public. Detail is needed of many of the terms, the implementation process and conditions under which the industry can seek exemptions to the new requirements. The Rules should be made public as soon as possible, and open for comment as part of the Parliamentary Committee process.

2. PRIORITY RECOMMENDATIONS

In addition to the matters raised by the submissions noted above (1.1, 1.2, 1.3), OWN NSW wishes to emphasise the following matters that must be supported in the interests and wellbeing of older people receiving care at home or in residential settings.

The horrendous stories exposed during the Royal Commission must be at the forefront of our minds when we consider the impact of the new Act and forthcoming Rules.

Self-governing guidelines and reliance on existing legislative frameworks (the current Act and related laws in all jurisdictions) have failed the most vulnerable in our community. The new conditions and penalties placed on the industry by the new Act are warranted given this history. For many, the new laws do not go far enough.

2.1 Adoption of the Act by July 1st, 2024

OWN NSW acknowledges the consultation undertaken in developing the Draft Act to this point. **OWN strongly supports the commencement of the Act on 1 July 2024.** We understand that the implementation will be paced to allow industry to recruit, train staff and modify their systems to comply with the Act. We believe that professional and experienced Board members and management of aged care services have the expertise to implement the requirements of the new Act.

Representation of the aged care service users must be built into the implementation process. This is a necessary addition to improving the conditions for aged care service users and the new accountability measures.

2.2 Complaints Commissioner

The Act should be amended to ensure the Complaints Commissioner is independent and responsible directly to the Minister. Comments made by Department staff in recent consultation webinars referred to the history of placing the complaint function in various structural arrangements within and out of the Department. They raised the issue of information sharing as a reason for placing the responsibility under one Departmental Secretary. However, this risks creating a conflict of interest. The provisions of information between parties in the draft Act should go some way in alleviating the issue of information sharing.

The most important principle that has failed to be adhered to historically and continues in this draft Act is not where the Commissioner sits but the need to ensure the body is

- a) fully independent from industry and funders
- b) given full power to investigate complaints
- c) given full power to direct a Provider to suspend, change or deliver a service; and order restitution or compensation and
- d) given full power to refer to judicial bodies (federal court/professional tribunals etc).

The Commission must be responsible directly to the Minister. It must have its own budget that is quarantined and control over its own staffing so that it cannot be made ineffective by strategically placed staff and/or be subjected to threats of reduction of funds.

2.3 Commission Powers and Penalties

The draft Act increases the power of the Commissioner investigating complaints to enter a premises and access information from a provider. OWN NSW fully supports the new powers of the Commissioner, for example: to enter a residential care home for monitoring and investigation purposes and to issue directions to a provider and/or appoint an external manager to a registered provider.

Providers may argue that these powers are unprecedented for a specific industry group; by a Commonwealth authority. However, there is precedence for

establishing authorities with similar powers for a single industry. For example, the Australian Building and Construction Commission (*ABCC Building and Construction Industry (Improving Productivity) Act 2016* (Cth)) had extensive investigation and coercive powers. While this may have been heavy handed for the construction industry, similar powers are warranted in an industry where the risk of death, neglect and misery is the result of poorly run services.

Greater civil and criminal penalties for owners, directors and providers are highly commended. The penalties should be reviewed regularly to ensure they are proportionate to the offence and community standards. If directors and providers are undertaking their work effectively, they should have confidence in their abilities and not fear the new penalties. While some of the breaches may be covered by other jurisdictions' legislation, it is important to bring the conditions under one Act rather than rely on rules and regulations that differ in each jurisdiction. This should also reduce the compliance obligations on national providers.

It is commended that the focus of responsibilities and penalties on owners, directors and providers are to protect the wellbeing of the aged care service user. This must include Directors in the legislative framework as it ensures the aged care service user is the most important stakeholder; not one of many of equal or lesser value. This allows Directors to properly balance and execute their responsibilities to the company.

2.4 Protection for Aged Care Service Users

OWN NSW supports the greater protections for aged care service users in the new ACT; including whistleblower and victim protections; and the register for aged care workers.

2.5 Provider information and staff ratios

The public must know how their money is being spent. Providers should deliver reports on the expenditure of each income source; and what amount has been transferred out of direct service provision to other areas of their service, and to other businesses or entities. Currently the only improvement in staffing appears to be a 24/7 nurse. The Act needs to set out staff ratios for all categories of staff.

Summary Observation

Every individual deserves to live in dignity, especially in their later years. Reports of neglect, abuse, and substandard care in some aged care facilities have highlighted systemic failures to provide dignified care. The new Aged Care Act is a step in the right direction and despite all its flaws, should be adopted by July 1st, 2024.

The devolution of care to providers who are dictated by business models of care, as opposed to human rights-based models of care, is a key stumbling block to realising the type of care we wish for our older people.

The current system too often fails to meet the diverse needs of Australia's aging population, creating disparities in care. All seniors, irrespective of their socioeconomic status, geographic location, cultural background, or health needs, have a right to high quality aged care. This should be the guiding principle of our aged care system.