



Submission from Flexi Care Inc. about the Aged Care Act Exposure Draft

Flexi Care Inc. is a community owned, not-for-profit provider of home care services which has operated in the southern suburbs of Brisbane for more than thirty years. We assist about 2,500 people each year, primarily through the Home Care Package Program and the Commonwealth Home Support Program.

We recognise the wide scope of this proposed legislation, so will focus in our comments on the areas that are of most concern to us. These concerns relate to digital platforms, Representatives and Supporters, the penalty regime, and the unintended consequences of the exclusion of consumer obligations.

Digital platforms

Sub-sections 129 (1) and (2) indicate that unregistered entities or people can have their services promoted through the same platform as those services that are delivered by entities and people registered under the Act.

If these sub-sections are intended to enable unregistered providers which are *not* delivering Commonwealth subsidised services to promote themselves through the platforms, there is a high likelihood of confusion among consumers as to the true status of these unregistered providers. This is particularly the case as the platforms themselves will have a form of registration. It would be easy for a consumer to incorrectly assume that all the services *are* subsidised, and that the consumer will have all the related protections of the Aged Care Act.

Alternatively, if these sections are designed to enable unregistered providers to deliver *Commonwealth subsidised services*, we would strongly oppose this proposal. All older people receiving subsidised aged care services should be entitled to the comprehensive protections that come with having their services delivered by a fully registered provider. The protections available through the proposed digital platform registration are substantially weaker than those applying to other providers. In particular, the legal requirements on platforms to advise potential users whether an entity or person is registered, and to have SIRS and complaints systems, are no substitute for the much stronger protections that come with full provider registration.

We have noted that the recent review of the National Disability Insurance Scheme (NDIS) drew attention to the risks of having unregistered providers in the system (refer pages 207 of final report). Given this experience, surely it would be unwise to now introduce the dangers of unregistered providers into the aged care system.

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Representatives and Supporters

We welcome the move to establish clearer arrangements for representation and support of older people in the aged care environment. It is currently difficult to have clarity about who might be authorised to make decisions for an older person who has lost capacity, and a national arrangement is superior to multiple State/Territory schemes.

We agree that the proposed supported decision making model is preferable to an approach only requiring a substitute decision maker to represent their perception of the older person's best interests. Supported decision making reinforces the person's dignity and independence.

We recommend that an individual should be able to have both Supporters and Representatives. These functions are distinct and complementary, and we do not understand why one role should preclude the other.

It is clear that there will need to be transitional arrangements to operate from the legislation's commencement so current measures can continue until there has been an opportunity for the System Governor to make appointments of Representatives and Supporters.

There will also need to be time for the Department to establish a mechanism to allow older people to express their views about these appointments and for disagreements about the appropriateness of appointments to be resolved.

Further, it is crucial that the interface between the guardianship and related arrangements, which are the responsibility of the States and Territories, is sufficiently aligned with aged care measures. Providers should not be in a position where they are trying to sort through competing claims from people maintaining to have rights to represent the consumer under different regimes. It would also be very problematic if an older person was represented by one person in aged care and another individual when they are receiving primary care or are in a state health system.

Penalties that are not in alignment with other sections of the care industry

We note that there are both civil and criminal consequences for failures to meet various requirements in the Act.

We consider that the Act should not include any criminal offences and that behaviour that is criminal in nature should be prosecuted vigorously through the offences which comprise the general criminal law system. Further, the quantum of any civil penalties should be



commensurate with the seriousness of the act or omission. For example, we understand that an aged care worker would face a penalty of 250 penalty units (currently almost \$80,000) for failing to comply with the code of conduct. This appears to be an extraordinary penalty for someone who is most probably earning less than average weekly earnings.

Further, the inclusion of strict liability offences in this context appears to be a regulatory over-reach.

This proposed penalty regime will discourage some capable people from participating in the industry when they realise the personal risks to themselves are so much greater than in other sectors of the care industry (e.g. hospitals, the NDIS) and other industries. As an organisation that relies on volunteers for its governance body, we are particularly concerned that the criminal penalties will deter people from offering their services. The same applies to employees; why would someone choose an industry that exposes them to disproportionate fines and imprisonment when there are plenty of other safer employment options?

Unintended consequences of having enhanced rights but no responsibilities

We support a strong set of rights for users of aged care services. We note however that the most important potential right, the right to receive aged care services, is missing from the legislation. We note that rights only accrue once the person has services approved.

Leaving this issue aside, we suggest that it would be both reasonable and beneficial for individuals receiving services to have at least two obligations as well as the set of rights.

The *first* should be a responsibility (to the extent the person is able) to treat other people in the system with respect and to avoid doing them harm. This obligation should extend both to other older people receiving services as well as to employees providing their services.

Our organisation has had multiple experiences with consumers mistreating others because of their race, their religion, their skill colour, their accent and/or their sexual orientation. There have also been instances of repeated sexual harassment of employees. Further, we have had one example of a client who refused to restrain a dog that was biting employees during home services. These incidents all caused genuine harm to those affected. Under current arrangements, these types of situation can be carefully managed. Our concern is that, with the further strengthening of rights for consumers in the absence of any legislated responsibilities, providers' capacity to address these types of difficult and dangerous situations would be further undermined.



The *second responsibility* should be to meet financial obligations. We contend that it is not reasonable that consumers can ignore financial obligations and expect to remain supported by the aged care system that focuses solely on their rights.