



8 March 2024

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

Via email: AgedCareLegislativeReform@health.gov.au

To Whom it May Concern,

RE: Consultation on the New Aged Care Act Submission

I write to you on behalf of the National Aged & Community Care Roundtable for Forgotten Australians. This National Roundtable was formed in 2019 and has extensive membership of Forgotten Australians themselves, aged and community care service providers who want to make a difference in delivering more appropriate services, and researchers exploring the ageing of this cohort.

Forgotten Australians is a term used by the Senate in its 2004 inquiry into Children in Institutional 'Care'. There are estimated to be over 500,00 children who were placed in institutions and out-of-home 'care' around Australia between 1940 and 1989. This group is now ageing and ageing prematurely as a result of the neglect, abuse, and treatment they received as children in institutional or out-of-home care.

The National Aged and Community Care Roundtable for Forgotten Australians has a mission to improve the quality and models of care and support for Forgotten Australians, promote evidence-based approaches and leading-edge research, and ensure that there is an appropriately skilled and aware aged care sector to respond to the needs of this group. As a special needs group under the Aged Care Act, this group must be seen as the largest with the most pressing needs.

National Redress Scheme

The National Roundtable has been approached by many concerned Forgotten Australians, their specialist services, and key support personnel about the injustice that they are experiencing entering the aged and community care system if they have received a Redress Payment under the National Redress Scheme.

As you would be aware, Redress Payments are made to eligible applicants who have experienced childhood institutional sexual abuse. Redress Payments are not intended to be compensatory but are a recognition of the harm caused to those who experienced abuse. We are aware that Forgotten Australians make up a large proportion of those who seek Redress Payments.

Applying Redress Payments to the assets that are taken into account in the financial testing for access to aged care is unfair, unjust and is a further blow for already disadvantaged and traumatised individuals. For new people entering Home Care Packages similarly, these Redress Payments are being taken into account with higher fees being paid by the Redress Recipient. This is cause for major concern for Forgotten Australians, as majority of them are getting to the age where entering the aged care system is a necessity. There is precedent in this area as Veterans' one-off payments are not considered in aged care asset testing. We would recommend that the on-off Redress Payments are treated the same way to mitigate any further disadvantage thrown their way. This must be considered in the new Act drafting as a critical issue.

Contradiction with the Convention on the Rights of Persons with Disabilities (CRPD) which states that substitute decision-making should be abolished.

As Australia is a signatory to the CRPD, the Australian government is required to promote and protect older person's human rights. Substitute decision-making regimes in forms such as the proposed supporter and representative framework for the aged care sector, must not be established. This will ensure that full legal capacity is available to persons with disabilities on an equal basis with others. The CRPD's definition of legal capacity is two-pronged, defined as the capacity to be both: a holder of rights which entitles persons to full protection of their rights by the legal system; and recognition that a person is an agent with the power to engage in transactions and create, modify or end legal relationships. Substitute decision making is contrary to this important safeguard against abuse.

Choice

A point for consideration for Forgotten Australians and Care Leavers is the importance of choice. Choice of services, when, where and who can allow these special needs groups to feel empowered rather than as if they have no control. Having no say over who provides their services and when can lead to a feeling of powerlessness that was previously experienced in childhood. Enabling all older Australians, and specifically Forgotten Australians, with the ability to self-manage their care would be beneficial for all.

The proposed supporter and representative framework for aged care can impact an individual's choice by implementing substitute decision-making. Requiring an older person to have a Representative for accessing aged and community care is a threat to enabling individuals to make supported decisions regarding the services and care they receive.

Administrative considerations for substitute decision-making

Adding another form of substitute decision-making, along with the current existing regimes in place nationally and for each state and territory, could result in consumers being subjected to conflicting systems. As well providers will be required to know all the different systems of substitute decision-making for every type of decision needing to be made. This could lead to administrative errors and could cause more harm than good to older Australians requiring assistance for decision-making.

Safeguards in Supporter and Representative Framework

The proposed framework does not provide sufficient safeguards for older people. These are needed to ensure that there are no inappropriate assignments of supports and representatives, as well as minimising potential harm that could be caused. The Roundtable concerned that there is a lack of detail provided about safeguards for the process for appointment, for example details on whether the older person are given the reasons for the appointment, the process the government or service provider has undertaken to search for someone who could act as a supported decision maker for an older person, whether an older person has the right to an advocate and legal representation, the process for appeal, etc. A system for monitoring supporters and representatives is also not included in the current proposed framework and this must be addressed.

Proposed Solutions

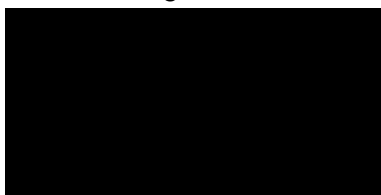
The National Roundtable supports a platform that would allow people to make their own decisions, as being able to choose what type of services they receive can hold value for Forgotten Australians/ Care Leavers. Innovation in this area would be highly recommended, not just for Forgotten Australians, but for all older people.

A solution to the issue presented regarding the inclusion of substitute decision making would be to only include the role of Supporters to enable supported decision-making. The inclusion of Representatives for allowing an individual to access aged care takes away from ensuring supported decision-making is implemented in the aged and community care sector. Eliminating the need for Representatives to be appointed under the Act, whilst introducing the role of Supporters would be a transformative method to ensuring the rights of older people in Australia. Supported decision-making needs clear promotion and awareness campaigns that are targeted for the aged care sector to allow for a reduced number of applications for supported decision-making.

The National Disability Insurance Scheme (NDIS) has suggested that independent decision-making supporters should be funded under the NDIS for individuals who may not have access to supported decision-making, avoiding the need for substitute decision-makers. This approach would be useful in the aged-care sector to allow for Supporters to not only empower older Australians but advocate for their needs as well.

We appreciate the opportunity to provide our views on topics for your consideration on behalf of this group.

Kind Regards,



Ms Anne Livingstone
Chair
National Aged and Community Care Roundtable for Forgotten Australians
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