



**Brotherhood
of St Laurence**

Working for an Australia free of poverty

ABN: 24 603 467 024

Brotherhood of St Laurence
67 Brunswick Street
Fitzroy Victoria 3065
Telephone: 03 9483 1183
Facsimile: 03 9417 2691

CONSULTATION ON THE NEW AGED CARE ACT (Exposure Draft)

8 March 2024

Department of Health and Aged Care – New Aged Care Act Consultation
GPO Box 9848
Canberra ACT 2601
Australia

Dear Consultation Secretariat

The Brotherhood of St. Laurence (BSL) is pleased to submit the attached submission to the Australian Government consultation on the new Aged Care Act.

The submission has been developed by Anglicare Australia on behalf of network members and social welfare organisations. BSL has participated in the development of the submission and is pleased to endorse the submission and its recommendations.

If you require additional information or clarification, please feel free to contact Mr Ismo Rama, Principal Policy Advisor, BSL at ismo.rama@bsl.org.au.

Kind Regards,



Lisa Rollinson
Director – Aged Care Services
Brotherhood of St. Laurence



care DIGNITY
respect
change HOPE

**Submission to A new Aged
Care Act: Exposure Draft**

March 2024

www.anglicare.asn.au

About Anglicare Australia

Anglicare Australia is a network of independent local, state, national and international organisations that are linked to the Anglican Church and are joined by values of service, innovation, leadership and the Christian faith that every individual has intrinsic value. Our services are delivered in partnership with people, the communities in which they live, and other like-minded organisations in those areas. With a combined income of \$2.19 billion, a workforce of over 20,000 staff and 5,600 volunteers, the Network delivers more than 50 service areas in the Australian community. Our services are delivered to over 500,000 people and reach close to 1.17 million Australians in total. In all, Anglicare services reach almost one in every twenty Australians.

As part of its mission the Anglicare Australia Network partners with people, families and communities to provide services and advocacy and build resilience, inclusion and justice. Our first strategic goal charges us with reaching this by influencing social and economic policy across Australia with a strong prophetic voice; informed by research and the practical experience of the Network.

Contact

Kasy Chambers
Executive Director

Anglicare Australia
PO Box 4093
Ainslie ACT 2602
T: 02 6230 1775
anglicare@anglicare.asn.au

Contents

About Anglicare Australia	2
Contents	3
Introduction	4
An equitable aged care system	6
Equitable access to aged care services	6
An aged care system that embraces diversity	6
Choice in aged care	7
Commonwealth support for a sustainable system.....	9
A system that meets the needs of older Australians.....	9
An aged care system for the future	10
Supporting the aged care sector.....	11
Regulatory harmonisation.....	11
Improving quality compliance.....	12
Transitioning to a new system	13
Conclusion.....	14

Introduction

Anglicare Australia welcomes the opportunity to submit to the Australian Government Department of Health and Aged Care (the Department) consultation on the exposure draft of the new Aged Care Act (the Act).

Anglicare Australia is network of organisations linked to the Anglican Church of Australia. Our members include Anglicare agencies, standalone aged care providers such as Amana Living, Anglican Care, Benetas and St Barts, and social welfare organisations such as the Brotherhood of St Laurence. This submission is made on behalf of Anglicare Australia members and was developed with their input.

Anglicare Australia Network members supported over 68,700 Australians through aged care services across every state and territory in the 2022-23 financial year. With the support of more than 9,000 staff and over 1,000 volunteers, the Network provides support in a range of settings including residential care, community-based care services and Independent Living Units (ILUs) and retirement villages. In addition, Network members assist older people through financial counselling, emergency relief, housing and homelessness, and community-based mental health programs. This experience has given us unique insight into the work that needs to be done as a society to ensure our later years are valued.

Anglicare Australia believes that every person has the right to dignity and quality of life as they age. We have been strongly supportive of the development of a rights-based Act and understand the importance of building a system that places the older person, and their rights, as the foundation of aged care. The introduction of a new Act has provided us with an opportunity to transform Australia's current aged care system and ensure we are doing our best to ensure the system is sustainable, meets the needs of those within the system, and recognises the rights of older people.

The introduction of a new Aged Care Act will be vital in achieving the positive change needed in our journey to an improved aged care system. We are pleased that the draft Act makes some significant strides through its rights-based approach and simplified legislative framework for the regulation of aged care. The exposure draft is reflective of the government's commitment to building a system that ensures the safety and dignity of Australians as they age.

However, the significance and long-lasting impacts of a new Act cannot be understated and the exposure draft both contains and excludes several concerning features. The draft Act does little to support the development of a robust, sustainable and equitable legislative framework for all actors in the system.

Anglicare Australia's recommendations focus on four key matters:

- The Act should ensure equitable access to the aged care system;
- The Commonwealth Government must take greater responsibility in enabling an aged care system that meets the needs of those who access it.

- The Act should work in harmony with other legislative frameworks, supporting and resourcing aged care providers to sustain a diverse, trained workforce to deliver the outcomes of the Act.
- The success of the new system cannot be achieved without adequate implementation and transition arrangements for the sector.

We look forward to working in partnership with the Australian Government, the aged care sector, and the broader community to ensure that security, dignity, quality and humanity are at the centre of the system for those older Australians that use it.

An equitable aged care system

Equitable access to aged care services

Australia's future aged care system must be designed to meet the needs of those it is intended to serve. Anglicare Australia agrees with the foundation of safety, dignity and respect for older Australians, and notes that these principles should apply regardless of means and circumstance.

Object b(3) of the Act states a legislative intent to “ensure equitable access to, and flexible delivery of, funded aged care services that put older people first and take into account the needs of individuals, regardless of their location, background and life experience.” However, there are no provisions in the Act to enable the delivery of this. While the proposed Statement of Rights addresses the inclusive provision of aged care services to older people, mechanisms to enforce and support the proposed rights apply only once services are being provided.

The proposed rights fail to deliver equitable and timely access to both an aged care needs assessment and approved aged care services to older Australians. Although the framework includes a System Governor who is responsible for considering equitable access issues, there is no assurance that services will be accessible in different locations. This approach contradicts Object b(3).

Anglicare Australia has previously recommended the provision of timely access to services, given the long-standing challenges under the old rationed system, where many people waited years for the right level of care.¹ We again raise this recommendation noting that we continue to hear reports of aged care assessments or reassessment being delayed or cancelled. This issue has not been addressed within the draft Act, which does not include any timeframes for processes and activities where the government is responsible for decisions.

Anglicare Australia welcomes the addition of an emergency access provision, enabling access to supports without assessment in emergencies. However, people seeking access in non-emergency situations and providers of aged care services have no timeframe for government decision. We believe timely access should be embedded throughout the Act to ensure no one is left behind in the system that they have been approved to access.

Recommendation

Anglicare Australia recommends the Statement of Rights be expanded to include the following:

- A right to equitable and timely access to an aged care needs assessment.
- A right to timely access to services an individual has been approved access to.

An aged care system that embraces diversity

The introduction of a new Aged Care Act provides an opportunity to reflect the diverse and evolving nature of Australia's population. Anglicare Australia welcomes the right to have one's identity, culture, spirituality, and diversity valued and supported, and the right to care that meets their needs which have been provided in the draft Act.

However, we believe there is a greater opportunity to ensure the Act and the delivery of the aged care system is inclusive of those from diverse or disadvantaged cohorts. The proposed Act does little to guarantee diverse communities are afforded the same treatment and access as everyone else. This is an issue that is particularly relevant for those who face systemic disadvantages such as First Nations peoples, people living with disability, culturally and linguistically diverse communities, and people facing, or at risk of, homelessness.

To ensure the aged care system is equipped to deliver services to those it is intended for, Anglicare Australia recommends that the Act be amended to strengthen the overt recognition of and support for diverse population groups. This includes reviewing the provisions for early access to aged care services for First Nations peoples. Anglicare Australia supports the recommendations of other aged care advocacy organisations, such as the National Aboriginal and Torres Strait Islander Ageing and Aged Care Council (NATSIAACC), to provide First Nations individuals with flexible and early access to funded aged care services.ⁱⁱ

Recommendation

Anglicare Australia recommends:

- The eligibility for early access to aged care services be expanded to include First Nations peoples of a younger age, which should be determined in consultation with First Nations peoples and advocacy organisations.
- The eligibility for early access to aged care services be expanded to provide a pathway to access services in exceptional circumstances.
- Strengthening the overt recognition of diverse population groups throughout the legislation, including positive language on supporting the needs of people during assessment for funded aged care services.

Choice in aged care

The principles of choice and control are well acknowledged throughout the United Nations Convention on the Rights of Persons with Disability (UNCRPD),ⁱⁱⁱ which has provided the foundation for the introduction of a rights-based aged care Act within Australia. Despite being a new concept within aged care legislation, individual choice and control has been thoroughly discussed and successfully embedded into other Australian legislative and policy frameworks, most recently through the Disability Services and Inclusion Act 2023.^{iv} The methodology used to embed this principles should be better utilised within the proposed Act to ensure older people are afforded the same rights to choice and control as others.

The draft Act outlines the importance of choice and control within the Objects and Statement of Rights. However the operational framework for a funded aged care services assessment does not include a requirement to consider a person's self-identified needs. While some could argue that a conversation of this kind would be considered common practice by many, Anglicare Australia notes that the draft Act explicitly states that an individual's preferences need only be considered after access to specific services has already been determined.

To rectify this, Anglicare Australia recommends the assessment and reassessment process be amended to require a discussion with the individual as part of the service need assessment. Ensuring that the Act includes the fundamental safeguards necessary to enable people to be involved in the decision-making process for their care.

Recommendation

Anglicare Australia recommends that the requirements for aged care needs assessments and reassessments in Chapter 2 be amended to require a discussion with the individual about their needs and preferences for aged care services, before identifying assessed service needs.

Commonwealth support for a sustainable system

A system that meets the needs of older Australians

The Statement of Principles aims to underpin the operation of the Commonwealth aged care system by providing holistic principles to guide the Commonwealth's delivery, funding, management, and regulation of the system. Unfortunately, these principles fall short of ensuring the system meets the needs of those accessing it.

While Principle 4 addresses the need for the system to offer funded aged care services that meet the needs of an individual, there is no further recognition of individual needs in the management or governance of the system. It could be argued that offering funded aged care services that meet the needs of an individual will innately ensure adequate funding. However, this is not currently possible as the draft Act only requires Commonwealth funding to cover aged care services "for individuals who have been prioritised based on need and taking into account the availability of resources." This is extremely concerning as it sets a precedent for a system that is innately underfunded and could be prejudiced against people living in areas facing service shortages. Pursuing this funding approach would develop a system that contradicts the government's vision of accessing care when and where an individual needs it.

Anglicare Australia recognises that sustainability is fundamental to the longevity of the aged care system. However, unless the baseline for Commonwealth support accounts for the needs of those approved to access funded aged care services, the system is being set up to fail older people. We ask that the Statement of Principles be amended to ensure that Commonwealth support, management, and governance of the aged care system is based on meeting the care needs of individuals who have been approved access to funded aged care services.

Similarly, the principles governing Commonwealth support and funding fail to address the implications and responsibility for the delivery of the newly defined standard of 'high quality care.' While Anglicare Australia recognises and welcomes the rationale behind introducing the standard, further clarification is needed to reassure the sector that the standard is clearly and continuously differentiated from a legislated standard of safe and quality care. This should clarify how the standard aligns with funding reform, including that being undertaken by the Aged Care Taskforce and the Independent Health and Aged Care Pricing Authority. Not only does 'high quality care' need to be clearly defined, it must also be costed and funded if it is to be consistently delivered across the aged care system.

Anglicare Australia suggests changes be made to ensure the identified needs and concerns of older people are properly recognised by the Commonwealth. We recommend the Act include meaningful and ongoing consultation and co-design with older people and the aged care sector within the Act as a principle, in recognition that evidenced-based best practice cannot be determined without contributions from people with lived experience and sector advocates.

Another area of the Act where improvements are needed is the proposed complaints oversight and management framework. In its current form the Act allocates the function to a Complaints Commissioner, a public servant appointed by the Aged Care Quality and Safety Commissioner (ACQSC). The proposed form provides the role with extremely limited authority and resourcing to support its functions and introduces a conflict of interest. Not only would the effectiveness of the ACQS Commissioner be measured by the performance of providers in the sector, they would also be responsible for managing the overseeing management of the complaints system for the sector.

Recommendation

Anglicare Australia recommends that the Statement of Principles be amended to:

- Funding by the Commonwealth for funded aged care services supports the delivery and regulation of those services to individuals who have been approved access to funded aged care services.
- Ensure that the aged care system is managed, and governed in a manner that meets the needs of people who have been approved to access funded aged care services.
- Ensure regular, meaningful consultation and co-design of aged care services and policy with older people and the aged care sector.
- Require the Minister, System Governor, Commission, and any other person or body exercising powers under the Act to act in a manner that is compatible with the rights specified in section 20.
- Clarify how high quality care will be measured and funded by the Commonwealth.

Recommendation

Anglicare Australia recommends that the Complaints Commissioner should be independently appointed.

An aged care system for the future

The Australian Government has stated its intent to enable a forward-looking aged care system through the Act. However, Anglicare Australia does not believe the draft Act will enable the innovation and evolution needed to keep up with Australia's changing population.

The Aged Care Royal Commission recommended that a new Aged Care Act include a definition that recognises aged care as a holistic principle and not just clinical care. However, the current draft Act is explicitly limited to the provision of funded aged care services with access limited to those with eligible sickness or impairment. Noting that it may not be the intent to deny the importance of spiritual, social, communal, or other supports in aged care; we urge government to consider how else the holistic nature of aged care will be recognised within the Act.

Recommendation

Anglicare Australia recommends that the Act recognises aged care as a holistic principle, especially where it could promote integration with other Commonwealth-funded sectors.

Supporting the aged care sector

Regulatory harmonisation

The exposure draft recognises the need for a diverse, trained and appropriately skilled workforce. It also acknowledges the importance of integration with other government health and community service systems. However it introduces new and complex regulatory and compliance frameworks that raise concerns about the burden on the aged care workforce. Anglicare Australia fears the introduction of these requirements, which align with no other comparable legislative framework, will do little aside from placing additional pressure on a sector that is actively trying to limit complexity whilst recovering from continuous underfunding.

Anglicare Australia recommends the regulatory framework for the aged care system be revised to ensure harmonisation with the frameworks used for other human services and health care sectors. For example, the aged care system could work in partnership with the Australian Health Practitioner Regulation Authority (AHPRA), where qualified health practitioners that are accountable to AHPRA regulation are working in aged care. In doing this, the system would limit the duplication of registration requirements for these professionals.

Where regulatory and compliance frameworks already exist, employers are responsible for ensuring employee protections. The Act must recognise the existing obligations of employers and empower appropriate risk management for the safety and wellbeing of employees and consumers. This is vital in instances where risk has been identified and an employer is required to balance their duty of care responsibilities with the protections an older person is entitled to. A forward-looking aged care system cannot be achieved without a culture of collaboration and continuous improvement, as opposed to a system that fails to address competing rights and responsibilities.

The introduction of this legislation has already and will continue to completely reform the nature of how aged care services are provided. The significance of this change is already evident and is likely to become more complex once new legislation is introduced. To ensure the complexity of reform does not impede the system's improvement, Anglicare Australia asks that several functions of the Act, which have complex practical implications, be reviewed and greater clarity be provided on how they will operate.

The system should also provide support to the sector to navigate and implement changes and challenges associated with reform. This can be achieved by expanding the education and engagement functions of the Aged Care Quality and Safety Commissioner to include education support for providers and workers.

Recommendation

Anglicare Australia recommends:

- Amending regulatory and compliance frameworks to ensure national harmonisation with comparable sectors and employment law. This framework should take a risk-based approach to guide the balance of competing rights and responsibilities.
- Enabling providers to make reasonable adjustments to manage risks to both care recipients and aged care workers.
- Considering security of tenure provisions where there are behavioural, interpersonal, or other significant safety risks.
- Enshrining protections for providers in instances of significant financial risk due to fees not being paid.
- The functions of the Commissioner of the Aged Care Quality and Safety Commissioner be expanded to include education and engagement on aged care reform policy and process changes with registered providers and aged care workers.

Recommendation

Anglicare Australia recommends clarifying the following aspects of the Act:

- Supporters and representatives. The Act must address how the new system will interact with existing guardianship arrangements.
- Statutory duties. The Act should outline how these duties interact with existing workplace health and safety laws.
- Classification of funded aged care services. The Act should clarify changes to services classification in Retirement Living facilities.

Improving quality compliance

Anglicare Australia acknowledges the evidence provided to the Aged Care Royal Commission which detailed poor practice and care. We support measures to make those responsible for such practices liable for serious misconduct. However, the new compliance provisions introduce overly punitive criminal and civil penalties.

The expanded penalties apply to all “responsible persons” within aged care. In some instances, this includes frontline workers and other staff members who lack authority over organisational decisions. In other cases they will capture volunteer board members who do not have control over the actions of a single individual. A forward-looking aged care system is not possible without a culture of continuous improvement, and this cannot be achieved in a system where individuals face severe penalties for unintentional consequences.

The introduction of these penalties would result in detrimental unintended consequences. Examples include an increase in risk-averse practices that would hinder service innovation or the exacerbation of workforce shortages as senior staff and board directors are deterred from the sector. These consequences entirely contradict what the Act is trying to achieve.

Anglicare Australia recommends reconsidering the approach to safety and quality compliance to address concerns about the proposed penalty provisions and how they overlap with existing legal mechanisms. We note existing mechanisms such as work health and safety laws, state and territory privacy laws, criminal codes, and common law. These mechanisms apply across sectors to manage compliance and capture infringements in instances of negligence, fraud, abuse, or breaches of privacy.

Recommendation

Anglicare Australia recommends removing proposed criminal and civil penalties where an appropriate legal mechanism already exists to manage infringements of the same kind.

Transitioning to a new system

Anglicare Australia supports the government's ambition for timely reform and a transition into a new aged care system. We also recognise the need to ensure all older persons accessing aged care have rights and are supported to ensure the implementation of these rights. Nonetheless, the transition to a reformed system must not jeopardise its success by rushing providers, workers, and older people into a system that no one knows how to operate or navigate.

We note the absence of several key sections within the draft Act and the limited guidance on when this further information can be expected. There is also a lack of information on how the sector will be supported to transition to the new system. Anglicare Australia supports the commencement of a new Aged Care Act within the year, however the implementation of the reforms should be staggered to provide all actors within the system the best chance of operating successfully under the new Act. This transition should also include meaningful consultation, clearer timelines for the outstanding sections of the Act, subordinate legislation including the Rules, and areas identified as in need of further clarification.

Recommendation

Anglicare Australia recommends proceeding with a new Aged Care Act by the end of 2024. It should be enacted with a minimum twelve-month transition period for each section of the Act following the publication of all relevant information needed by the sector to complete the transition. This may include the provision of additional or flexible implementation timelines for system changes that require greater reform or revision.

Recommendation

Anglicare Australia recommends:

- Mandatory sector consultation inclusive of clear timelines for the outstanding sections of the Act and all subordinate legislation. These include sections on fees, payments, and subsidies; the Rules; and Support at Home amendments.
- Mandatory sector consultation on and provide adequate funding for transition and implementation.

Conclusion

It has now been three years since the Aged Care Royal Commission Final Report was handed down. While significant and necessary changes have already been made, a new Aged Care Act is fundamental to securing the safety and dignity of older Australian's presently and into the future. The Aged Care Royal Commission made it obvious that the opportunity afforded to older people and the aged care sector through the introduction a new Aged Care Act is something that cannot be overlooked.

Older people throughout Australia should have a right to access high quality and safe care, where and when they need it. Our submission highlights the fact that this right can only be upheld by a workforce that is supported to do their absolute best and is valued for the work they do. Anglicare Australia believes that this can only be achieved through a legislative framework that is well-considered through meaningful consultation and co-design with older people and representatives from across the aged care sector.

Anglicare Australia has experienced firsthand the time, effort and passion that aged care consumer, provider, and professional representatives have dedicated to engaging in the Australian Government's consultation on aged care reform. The feedback and insight gained from these contributions must be used to inform the future activities and decisions in this reform journey.

ⁱ Anglicare Australia (2023) *Letter to Commonwealth Department of Health and Aged Care Aged Care Legislative Reform Team*. 8 September 2023.

ⁱⁱ National Aboriginal and Torres Strait Islander Ageing and Aged Care Council (2023) [NATSIACC Submission- New Aged Care Act – Foundations](#).

ⁱⁱⁱ United Nations (2006) [Convention on the Rights of Persons with Disability](#).

^{iv} [Commonwealth Disability Services and Inclusion Act 2023](#).