



8th March 2024

Department of Health and Aged Care - New Aged Care Act Consultation
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Brisbane Residents United submission to the Aged Care Act 2024

Thank you for the opportunity to make a submission to the Aged Care Act 2024.

This submission is made on behalf of Brisbane Residents United (BRU), Brisbane's peak body for community resident actions groups. Whose purpose is to:

- Represent Brisbane and surrounding district residents and provide them with a united voice to Governments on matters pertaining to urban planning and development.
- Act as a resource centre, facilitating information sharing across established and start-up local resident associations.

BRU is a non-partisan and not-for-profit incorporated association that represent the interests of the broader community.

BRU has reviewed the draft Bill and the accompanying papers. We appreciate that there is much that is very good and worthwhile this bill.

In summary, our submissions are about areas we would like to see strengthened:

We see nothing that would indicate a minimum contract requirement for retirement or aged care facilities that would protect the elderly from the disgraceful practices of the past. Practices that included forcing them from their homes when retirement facilities wished to redevelop sites.

Whistleblower provisions would need to be much stronger than those currently available in Australia for the likes of David McBride and Richard Boyle from the ATO.

We would hope that there would be stronger oversight and supervision of legal guardianship arrangements to prevent the types of issues highlighted in the 4Corners Program Guardianship: Life under the hidden control of the Public Trustee system revealed | Four Corners <https://www.youtube.com/watch?v=eul2hAlZQtM>. Or those brought to light with the use of private operators as guardians in the United States <https://www.newyorker.com/magazine/2017/10/09/how-the-elderly-lose-their-rights>

We need to ensure that our elderly are in agreement about the person or organisation acting as their Legal Nominees or guardians and that they are guaranteed the right to access a lawyer should they request one. That there be no secret court hearings without their consent and no sudden and inappropriate assessment testing without them being fully informed as to its purpose and an assessment by an independent medical practitioner that they are not affected by excessive medication.

The Complaints Commissioner's office should be an entirely independent body. We have seen the outcome of a complaints organisation placed under the control of the managing organisation too many times with the same disgraceful results.

We agree with Stephen Duckett where in his article for Pearls and Irritations dated 12th January 2024, he states the following:

"Although some of the right words might now be there, the draft Act is still riddled with the old ideology – of a health department ('System Governor') which is all care but no responsibility, extensive reliance on markets to address consumer needs, albeit with some improvement in regulatory oversight."

"However, the Act appears to ignore the reality that an individual is not a completely free-standing entity, disconnected from their surrounding context. Pace Margaret Thatcher, there is such a thing as a community. The draft Act has a Thatcherian individualistic emphasis, founded on a naïve belief in markets which can fix everything, and that government's role is to sit back and weed out the occasional bad apple. This is not good enough.

These fundamental failures are most in evidence in the section on the right to 'equitable access' (section 20 (2)) which states:

An individual has a right to equitable access to:

- (a) have the individual's need for funded aged care services assessed, or reassessed, in a manner which is culturally safe, culturally appropriate, trauma-aware and healing-informed; and accessible and suitable for individuals living with dementia or other cognitive impairment; and*
- (b) palliative care and end-of-life care when required.*

So, an individual has a right to assessment, and a right to palliative care, but nothing in between. Section 45 provides that the assessment report must be provided to the Health Department 'as soon as practicable', but there is no parallel requirement to provide it to the individual assessed in the same time frame.

Most importantly, there is no right to services to respond to assessed need. There is a weak 'function' assigned to the Department of Health 'to facilitate equitable access to funded aged care services' (Section 132) but no parallel right that needed services exist. Government has effectively

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washed its hands of any obligation to ensure that people can get the services they need, presumably on the invalid assumption that services will just emerge to respond to demand expressed in a perfectly functioning market. Section 20 does not create a right to information about quality of care that a person might experience, thus vitiating a key assumption that market participants can make informed choices. The idea of a government role in service development is missing from the Act.

The Aged Care Quality and Safety Commission is given a number of functions (section 141), but publishing information about relative quality of care is not one of them. Worse, in a later section (section 322), disclosure of information which might impact on a provider's commercial interests is absolutely protected, with no offsetting consideration about how that protection might impact adversely on consumers' interests.

The draft Act recognises decisions might be automated (Part 7), but nothing seems to have been learned from the Robodebt tragedy, and there is no requirement that decision algorithms are consistent with the Act's right-based principles or any of the other provisions of the Act.

Finally, the new Act smacks of 'rights washing' – high sounding rhetoric is simply there to placate consumers and advocates, allowing providers to continue on their way unimpeded, and government to eschew any role in creating and steering a consumer-focused service system. And this 'rights washing' is up there for all to see. The draft Section 21 of the Act literally provides government and industry with a 'get out of jail free' card: 'Nothing in this (aged care rights division of the new Act) creates rights or duties that are enforceable by proceedings in a court or tribunal'.

Although the government's plan is for the new system to be in place from July 2024, there is still a lot of work to be done in making sure the new Act responds in a meaningful way to the issues raised in the Royal Commission on Aged Care Quality and Safety."

We would suggest that any measures to automate parts of the aged care system be very carefully considered. The users of the aged care system are a particularly vulnerable cohort and under no circumstances should they be subjected to a Robodebt type system.

BRU supports measures and actions that improve the effectiveness of the aged care system for both the public and its users. We consider that an effective process is an important component of various measures to ensure that aged care operators act in the public interest and those of its customers. The aged care system needs to be utilised in the most effective manner to bring maximum benefit to the community as a whole. We are happy for our submission to be made public. Should you require any further information I can be contacted on [REDACTED]

Yours sincerely
Elizabeth Handley
President.

The Brisbane Residents United Inc Steering Group