

# Aged Care Worker Regulation Scheme

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mpconsulting ™

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## Executive Summary

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The quality of care delivered to consumers within aged care services is under scrutiny. With an aged care workforce that is characterised as “under pressure, under-appreciated and that lacks key skills”<sup>1</sup>, opportunities to ‘raise the bar’ are being explored including to strengthen protections for consumers.

Numerous inquiries and reports over the past five years have made recommendations for an aged care worker regulation scheme to combat concerns about the quality of aged care and the safety of consumers. This year, the Royal Commission into Aged Care Quality and Safety (the Royal Commission) has been exploring the issue of protections for consumers more broadly and, to date, has canvassed a registration scheme for personal care workers (PCWs).

Against this backdrop, mpconsulting was engaged by the Department of Health (the department) to consult with stakeholders on the features of a future scheme to reflect community expectations and also in light of the Royal Commission, and a number of recent reviews and taskforces.

Since the commencement of the consultation, the aged care environment has been fundamentally impacted by the COVID-19 pandemic. While a skilled and competent workforce is more important than ever, the sector is grappling with a substantial loss of workforce and an influx of new staff, some of whom do not have extensive experience providing care to older Australians. While the safety of consumers must always be at the forefront, it is important that any changes to workforce requirements do not impose unnecessary barriers to the recruitment and retention of the right people for the diverse range of aged care roles.

This report outlines the overall themes of consultation and details stakeholder responses to the options described in the [Aged Care Worker Regulation Scheme Consultation Paper](#) (Consultation Paper). It notes the areas in which there was a high degree of consensus and also where stakeholders presented polarised views or felt that further exploration of the issues was needed.

Stakeholders felt strongly that the issues to be resolved and the objectives of any new regulation need to be well understood to ensure that the right model is achieved. The concept of ‘walking before running’ was a prominent theme, with stakeholders keen to ensure implementation of any new scheme is carefully staged to gain the outcomes intended without unnecessarily disrupting a much-needed workforce.

Stakeholders overwhelmingly noted that a key objective of a worker regulation scheme is to improve consumer protections against abuse and neglect in aged care, and that strengthened worker screening aimed at preventing unsuitable workers entering or remaining in the aged care sector should be prioritised. Many stakeholders urged implementing different features of the scheme over two to six years, such that public confidence could be built through the staged roll out of features addressing the objectives of the scheme in order of priority, starting with worker

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<sup>1</sup> Royal Commission into Aged Care Quality and Safety, Interim Report – Neglect (31 October 2019), Volume 1, p. 255.

screening before moving to broader registration requirements (such as mandated national minimum qualifications).

Another area of broad stakeholder agreement was that aged care workers (as described in Chapter 4) should be subject to an aged care specific code of conduct, that could draw on the NDIS Code of Conduct (NDIS Code) in terms of themes and simplicity but could otherwise complement the Aged Care Quality Standards and Charter of Aged Care Rights. This view also reflected the strong desire to avoid duplication of existing regulation and, where possible, to enable mutual recognition and alignment with like schemes.

Stakeholder views were most disparate in relation to the potential features of a worker registration scheme (as distinct from worker screening as described above). While most felt that any registration standards should apply to PCWs specifically, varying feedback was provided on how registration should be incorporated into the workforce environment and the value of adopting government regulated requirements for minimum qualifications, continuing professional development (CPD) and English proficiency (with stakeholders noting that the development of any such standards should await the outcomes of the work being conducted in the sector to review qualifications and any recommendations of the Royal Commission).

A range of views were also offered in relation to who should have responsibility for the regulation of the workforce, with some question over whether an existing national body should undertake and manage worker screening (and any registration features) or whether a new national body that works alongside the Aged Care Quality and Safety Commission (ACQS Commission) should be established. Feedback on these issues is explored in Chapters 4 and 5, with a summary of the preferred model reflecting the outcomes of consultation set out in Chapter 6.

In relation to the implementation of any worker regulation scheme, stakeholders highlighted the need for further consideration of:

- the legislative basis for any such scheme and mechanisms for requiring compliance (noting the Constitutional considerations of extending aged care regulation from providers to also include individual workers)
- the supporting infrastructure needed to establish and sustain a national scheme across a sizable workforce
- operational considerations, including how worker screening would be undertaken and the practicalities of drawing on existing infrastructure
- the costs associated with establishing any new regulatory body or expanding the capacity of a current regulator to accommodate the worker regulation scheme
- the role of government compared to that of industry, and
- the arrangements for engaging with existing schemes and bodies (e.g. the NDIS Quality and Safeguards Commission, the national boards under the National Registration and Accreditation Scheme, health complaints entities).

We sincerely thank stakeholders who have provided feedback and shared their expertise to inform and support the further development of an aged care worker regulation scheme.

## Chapter 1 – Context

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### Background

Over the last five years, various inquiries and reports have recommended implementation of a worker screening or registration scheme in aged care:

- In 2016, a Senate Committee recommended that the government examine workforce regulation across all carer service sectors, and that it include: a national employment screening or worker registration scheme; the full implementation of the National Code of Conduct for Health Care Workers; nationally consistent accreditation standards; CPD requirements; an excluded worker scheme, and workplace regulation of minimum duration for new worker training.<sup>2</sup>
- In the 2017 report, *Elder Abuse – A National Response*, the Australian Law Reform Commission recommended the implementation of a national employment screening process for potential workers and volunteers in Commonwealth-regulated aged care.<sup>3</sup>
- Numerous stakeholders have commented on the desirability of national regulation for aged care workers (particularly PCWs) before the Royal Commission and past Senate Committees.<sup>4</sup>
- The Aged Care Workforce Taskforce proposed in the report *A Matter of Care* that the Aged Services Industry Council consider existing accreditation frameworks and codes of conduct and consider “centralising registration for all care staff and volunteers to ensure that all workers have completed mandatory police checks (as already required) and are trained and accredited to work with aged care consumers”.<sup>5</sup>
- Counsel Assisting the Royal Commission has suggested that the Commissioners make final recommendations regarding unregulated care workers (specifically PCWs) being subject to a registration process with a minimum mandatory qualification as an entry requirement.<sup>6</sup>

### Conduct and scope of project

Against this background, in February 2020, the department engaged mpconsulting to:

- explore the gaps within the current regulatory environment
- define the objectives of any worker regulation scheme
- develop possible options for an aged care worker regulation scheme

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<sup>2</sup> Senate Committee, Community Affairs Reference Committee, *Future of Australia’s aged care sector workforce* (2016), p. xv.

<sup>3</sup> Australian Law Reform Commission, *Elder Abuse – A National Legal Response: Final Report* (ALRC Report 131), 2017, recommendation 4-9.

<sup>4</sup> Response from ACSA, see Transcript from Royal Commission into Aged Care Quality and Safety, Melbourne Hearing 3, 16 October 2019, P-6010; Response from United Voice, see transcript 14 October 2019, P-5758; Response from the Aged Care Guild, see Committee Hansard, 3 November 2016, p. 5 cited in the Senate Committee, Community Affairs Reference Committee, *Future of Australia’s aged care sector workforce* (2016), p. 67.

<sup>5</sup> Aged Care Workforce Strategy Taskforce, *A matter of care: Australia’s aged care workforce strategy*, 2018, p. 42.

<sup>6</sup> Royal Commission into Aged Care Quality and Safety, 21 February 2020, Transcript, P-7859.

- consult on possible options, and
- provide further advice informed by the outcomes of consultation.

This involved examining the findings and recommendations of recent inquiries into abuse, mistreatment and consumer safety issues related to workforce, considering existing and proposed aged care measures to safeguard consumers (e.g. the Aged Care Quality Standards and the proposed Serious Incident Response Scheme (SIRS) for residential care, etc.) and analysing worker regulation in other care sectors (e.g. health, disability and childcare).

Initial discussions were also had with key stakeholders including relevant statutory bodies, professional bodies and sector committees, to develop proposed objectives for any worker regulation scheme.

A Consultation Paper was drafted to summarise the context of the reform including the key issues and objectives, the existing models that could be drawn on (and how they could potentially be applied in aged care), and the options in relation to specific features of a worker screening and/or registration scheme.

On 18 May 2020, the department released an online consultation survey seeking public comment on the Consultation Paper. The online consultation comprised 17 questions about the possible features of any new scheme and sought stakeholder input into the advantages and disadvantages of incorporating each feature. It focused on high level conceptual regulatory approaches to gain stakeholder views as to the objectives of any new worker screening or registration scheme, and to understand stakeholder preferences and concerns with any features of a potential model.

The online consultation was open from 18 May 2020 to 29 June 2020, and 276 responses were received.

In parallel to the online consultation, targeted stakeholder forums were held to provide further opportunity to discuss the various objectives, options and key features of any scheme.

The outcomes of this consultation are detailed in Chapters 4, 5 and 6 of this report.

## Chapter 2 – Key issues and objectives

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### Key issues a worker regulation scheme seeks to address

As set out in the Consultation Paper, the aged care legislation does not place any direct requirements on aged care workers. However, the aged care legislation does place certain responsibilities *on providers* in respect of aged care workers (discussed in more detail in the following Chapter). These responsibilities relate to requirements for police certificates, compulsory reporting of allegations or suspicions of abuse and requirements relating to the competency of the workforce (including their skills, qualifications and conduct) as set out in the Aged Care Quality Standards and the Charter of Aged Care Rights.

Despite these regulatory controls, stakeholders have expressed concern regarding the ongoing occurrence of abuse and neglect. There is a particular concern that the current arrangements do not adequately identify unsuitable workers who may pose a risk to aged care consumers including where they are able to move across care settings, providers and jurisdictions.

Key issues for stakeholders are that workers are either permitted to enter the aged care workforce despite a history of unsuitable conduct that is not identified or consistently assessed under the current arrangements, and that workers who avoid employment termination for poor conduct are able to transition into like employment because behaviours of concern are not reported and consolidated for consideration by future employers (in either the aged care sector or similar sectors, including disability).

An additional concern is that some critical workers (such as PCWs) may not have adequate qualifications or skills, English proficiency and/or access to CPD to support the delivery of safe and high-quality consumer-centred care.

### Objectives of a worker regulation scheme

The primary objective of any new worker regulation scheme is to improve quality and safety within aged care and to enhance protections for consumers. This objective was affirmed by stakeholders.

Stakeholders also generally supported a number of the secondary objectives identified in the Consultation Paper, highlighting the value of improving the community standing of aged care workers and elevating or professionalising the workforce.

In terms of implementation objectives, stakeholders also agreed the importance of:

- avoiding unnecessary barriers to workforce entry
- facilitating the attraction and retention of suitable aged care workers
- avoiding duplicative regulatory requirements for providers and workers operating across sectors
- minimising the cost to workers, providers, consumers and governments of any new scheme.

## Chapter 3 – Existing regulatory environment relevant to consideration of reform

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Throughout the consultation, stakeholders highlighted the importance of any new regulation:

- seamlessly intersecting with existing regulation and not creating duplicative requirements for workers covered by more than one regulatory scheme
- aligning, as far as possible, with existing regulatory schemes, noting that each of the existing regulatory schemes (particularly in relation to regulated health workers and disability workers) are very different in their intent, scope and operation.

This Chapter describes key elements of existing regulation relating to criminal history screening and competency requirements for aged care workers, along with requirements for screening and/or registration relevant to workers in the disability services sector and health.

### Police check requirements in aged care

As detailed in the Consultation Paper, criminal history checks for staff members and volunteers are currently required by the aged care legislation, for assessment and review by providers in determining employment of its aged care workforce. This approach is consistent with the system of Commonwealth regulation of aged care, whereby providers, as the recipients of Commonwealth subsidy, have responsibilities for the quality of care and services provided.

Providers are responsible for ensuring that people with certain criminal convictions (such as murder, sexual assault or assault for which the person was imprisoned) do not become or do not continue to be staff members or volunteers, and that staff members and volunteers have a police certificate (and/or have made a statutory declaration) which is current within the last three years, stating that the person has not been convicted of these offences.<sup>7</sup>

Where the police certificate records an offence that is not a precluding offence, providers are expected to assess the suitability of the person to work with consumers. The department publishes guidance for providers (the *Police Certificate Guidelines, July 2019*) about how to apply the requirements and assess worker suitability. These guidelines suggest that:

- a provider's decision regarding the employment of a person with any recorded convictions must be rigorous, defensible and transparent
- the provider should consider matters such as the degree of access the worker will have to consumers, the relevance of their convictions, when the conviction occurred, their employment history since the conviction and the probability of an incident occurring should the person be employed (or continue to be employed).

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<sup>7</sup> Sections 48 and 49 of the *Accountability Principles 2014*.



In addition, the aged care legislation places specific requirements on providers in relation to the suitability of key personnel (essentially someone who is a director or member of the service's governing body or otherwise has authority or significant influence over the activities of the service):

- all key personnel must undergo police certificate checks, a bankruptcy search and previous employment and referee checks<sup>8</sup>
- there are certain circumstances in which key personnel are not permitted to be employed or continue to be retained in that role (i.e. convicted of indictable offences, insolvent, mental incapacity).<sup>9</sup>

Similar requirements exist in relation to care delivered under the Commonwealth Home Support Programme (CHSP) and National Aboriginal and Torres Strait Islander Flexible Aged Care Program (NATSIFACP) where providers are also required to comply with the Aged Care Quality Standards.

The relevant program manuals also require that all new staff members and executive decision makers have obtained a police certificate before they start work.<sup>10</sup> Due to the nature of these programs, there are exceptional circumstances where new staff members and executive decision makers can commence work prior to receipt of a police certificate.

Stakeholders were concerned that the existing police check requirements:

- set too high a threshold for excluding a worker, noting that matters such as murder, sexual assault or assault resulting in imprisonment are extreme cases
- fail to risk assess workers based on more common offences or patterns of lower level offences that may indicate a worker is not suitable for working with vulnerable cohorts, including offences such as theft, neglect, fraud and deception
- do not extend to conduct or suitability more broadly
- rely too heavily on the assessment of individual providers, rather than on a national approach
- are administratively burdensome for providers and workers
- are not conducted often enough to capture offences that occur between certificates and are otherwise not subject to real time updates.

Stakeholders did however note that the current approach meant that workers were able to be engaged without much delay, which may be a challenge should workers need to apply for national risk assessments for broader categories of offences and conduct.

## Competency requirements in aged care

While there are no specific requirements in relation to competencies and the ongoing training of workers in the *Aged Care Act 1997* (the Act), the Aged Care Quality Standards require that:

- an organisation has a workforce that is sufficient, and is skilled and qualified to provide safe, respectful and quality care and services

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<sup>8</sup> Section 53B of the *Accountability Principles 2014*.

<sup>9</sup> Section 8A of the *Aged Care Quality and Safety Commission Act 2018*.

<sup>10</sup> Commonwealth Home Support Programme Manual (2018-2020); National Aboriginal and Torres Strait Islander Flexible Aged Care Program Manual (2019).

- members of the workforce are competent and have the qualifications and knowledge to effectively perform their role
- workers are recruited, trained, equipped and supported to deliver the outcomes required by the standards
- regular assessment, monitoring and review of the performance of each member of the workforce occurs.<sup>11</sup>

The ACQS Commission assesses provider performance against these requirements, taking into account:

- consumer feedback about whether they consider that staff are sufficiently skilled and capable to meet their care needs
- the documented competencies and capabilities for different roles
- the organisation's staff performance framework
- feedback from managers and staff about their performance appraisals and the changes made following performance appraisals.

Despite the above, some stakeholders expressed concern that the assessment of competency varied from service to service and that without a nationally consistent baseline for competencies and training, there is no clear expectation on providers for what 'skilled and qualified' looks like.

Some stakeholders highlighted that consumers should have a right to the same quality of care no matter which service they used and that the assessment of competencies should be measured at an earlier stage than during performance assessments by the ACQS Commission.

Other stakeholders described the challenges designing competencies to accommodate all service settings and environment, and noted that the current requirements are flexible for providers to adapt to the unique features of their service and consumers, e.g. regional and remote or specialist services.

## Worker regulation in other schemes

Two existing Australian schemes that the Consultation Paper highlighted, and which stakeholders referred to throughout submissions, are the NDIS Worker Screening Check (the NDIS model) and the National Registration and Accreditation Scheme for health practitioners (the National Scheme).

For the purposes of understanding the features of complementary schemes and the regulation that sits alongside aged care, the key elements of these two schemes are repeated below. These schemes are instructive in the context of understanding how the features considered by stakeholders' work in practice in other sectors.

The NDIS case study provides an illustration of a worker screening scheme and the National Scheme is an example of a registration scheme (which includes registration standards in relation to criminal history, English proficiency, minimum qualifications, CPD etc.).

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<sup>11</sup> Standard 7, Aged Care Quality Standards.

Stakeholders variously referred to these schemes in providing their feedback to the consultation, including the particular features that they consider should be drawn into an aged care worker regulation scheme.

### **Case Study 1 – NDIS Worker Screening Check and Database**

Key features of this scheme:

- Applies to workers in risk-assessed roles (i.e. key personnel, those workers whose normal duties include either direct delivery of specified supports and services or are likely to require more than incidental contact with people with disability).
- It is a condition of registration that registered NDIS providers ensure workers in risk-assessed roles have a NDIS Worker Screening Check.
- Screening is undertaken across three tiers: convictions that result in automatic exclusion (Tier 1); convictions and circumstances presumed to disqualify a person (Tier 2); and convictions and conduct that require a risk assessment (Tier 3).
- Worker screening is undertaken by State/Territory worker screening units (WSUs), which consider a person's circumstances and any risk to determine whether convictions and/or circumstances warrant an exclusion decision.
- Clearances remain current (and are valid nationally) for five years.
- Workers can seek internal review by the WSU for certain decisions including decisions to issue an exclusion and revocations or suspensions of an NDIS Worker Screening Check (except exclusion decisions from Tier 1 offences). If the individual is not satisfied after the internal review, they may seek an external review by a tribunal or authority within that jurisdiction.
- The NDIS Quality and Safeguards Commission (NDIS Commission) will maintain a national database known as the NDIS Worker Screening Database (NDIS Database) which will contain details about a worker's clearance including whether there is an exclusion decision or clearance decision and the status of the clearance. The NDIS Database is currently due to roll out in February 2021.
- Certain persons and bodies, including the WSUs, will have access to the database and the NDIS Commission will monitor access on the basis that information provided is only done so to the extent that is proportionate and necessary.
- Employers will be able to enter a potential or existing employee's name and application number (held by the worker) for confirmation of whether the person is cleared, or if the person is excluded.
- The NDIS Code applies to all workers (including registered health professionals). Complaints regarding the NDIS Code are managed by the NDIS Commission, and findings may be referred to the WSUs for consideration in the context of a worker's ongoing clearance.
- The NDIS model does not address minimum qualifications or CPD. This is a policy decision based on a focus on participant choice and control and a desire to see workers with the right capabilities and experience (matched to the participant's need and preferences) rather than only formal qualifications. The intent is to build a workforce that represents the different needs and interests of participants including age, gender, language and culture.

### **Case Study 2 – National Registration and Accreditation Scheme for health practitioners**

Key features of this scheme:

- The National Scheme regulates 16 health professions.
- Registration standards are set by each of the 15 National Boards that collectively regulate 16 health professions. Registration standards cover matters such as a person's criminal history (with relevant offences varying between jurisdictions), English language skills, CPD requirements for ongoing education, professional indemnity insurance arrangements and requirements for recency of practice.
- The Health Practitioner Regulation National Law (National Law) is the legislative foundation of the National Scheme. Under the National Law, there is a set of protected titles that apply to registered practitioners. Penalties apply to people who use these protected titles when they are not entitled to.
- Under the National Law, registration must be renewed annually.
- Ahpra maintains a public register of health practitioners, which can be searched by family name or registration number. Information on the register includes the information about a practitioner's registration and registration expiry date, endorsements, conditions on registration, disciplinary matters, etc. There is also a register for cancelled and/or prohibited health practitioners.
- Ahpra and the National Boards can be notified of certain conduct through a notifications process, which may be investigated by a National Board in most States and Territories (alternative processes exist in Queensland and New South Wales).
- In response to a notification about a registered practitioner, a National Board can take a range of actions including cautioning the practitioner, imposing conditions on registration or referring the practitioner to a professional standards panel.
- A health practitioner can appeal certain regulatory decisions (e.g. to suspend or impose a condition on registration) and decisions made as a result of the notifications process.
- There are Codes of Conduct and Codes of Ethics relevant to the various registered professions, which go to professional conduct of the practitioner. Alleged breaches are reviewed by the relevant National Board.

When discussing codes of conduct as part of the consultation, stakeholders also referred to the National Code of Conduct for Health Care Workers (the National Code). The National Code is an example of a code of conduct that operates in some State and Territories, and which can apply to some aged care workers depending on the jurisdiction.

### **Case Study 3 – National Code of Conduct for Health Care Workers**

- The National Code applies to the provision of health services by health care workers who are not required to be registered under the National Scheme (unregistered health workers) and those who are registered under the National Scheme but are providing health services unrelated to their profession.
- The National Code addresses over 40 matters across 17 topics including requirements in relation to:
  - safe and ethical service provision

- record keeping and indemnity insurance
- making claims to cure illnesses
- action to be taken in relation to adverse events.
- Laws in individual States and Territories enable enforcement of the National Code through investigation of breaches and the issuing of prohibition orders (prohibition orders are designed to be mutually recognised across States and Territories). Each State and Territory determines the body responsible for applying the National Code within that jurisdiction.
- Code-based regulation occurs in New South Wales, South Australia, Victoria and Queensland, but has not yet been adopted in all State and Territories. There is no national consistency in relation to which aged care workers are captured as ‘health care workers’.

## Chapter 4 – Worker screening scheme

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Feedback from stakeholders reflected a strong desire to expand worker screening in relation to:

- the types of matters (criminal offences) that may exclude a worker from the aged care sector
- the scope of information relevant to the assessment (beyond a person's criminal history)
- the manner in which assessment occurs (i.e. who undertakes the assessment and whether it is centralised).

Stakeholders favoured an approach to worker screening whereby aged care workers (as described below) would be expected to submit to a screening process and be ineligible to work in the sector unless cleared (noting that if a worker has been screened or excluded as part of another regulatory scheme (such as the NDIS) this should be recognised).

The majority of stakeholders supported:

- screening to include a wider range of criminal matters in assessing suitability to work in the sector
- a similar (if not identical) tiered system of assessment to that in the NDIS model. On the whole, stakeholders favoured the inclusion of a broad range of information in the risk and suitability assessment, noting that in order to improve consumer protection, it was necessary for worker screening to consider several sources of information
- the implementation of a code of conduct (where breaches of the code could be taken into account in the worker risk assessment). Most stakeholders felt that while an aged care specific code of conduct was desirable, it should align (in scope, style and substance) with the NDIS Code
- consolidating the outcomes of the screening assessment through a national oversight body
  - While stakeholders had differing views about who should conduct the screening and be the responsible oversight body, there was consensus that only one body (rather than multiple bodies) should be tasked with managing worker regulation (i.e. which could include both screening as discussed in this chapter and registration as discussed in Chapter 5).
- a positive and negative register, to not only collate cleared workers but also identify workers that had either been excluded through initial screening or as a consequence of re-assessment for their conduct during employment in the sector.

The above features were generally seen as a key mechanism for meeting the objectives in relation to protecting against unsuitable workers entering or remaining in the sector.

Stakeholders were keen to draw on existing infrastructure and models to implement the strengthened worker screening process for aged care but understood there are a range of implementation questions to be explored in the next stage of this project.

## Who should be assessed?

Stakeholders expressed a strong preference for a model in which aged care workers (by reference to the definition of ‘staff member’ below) would be subject to strengthened worker screening requirements. Some also sought to have volunteers subject to the same screening, noting that under the current arrangements, volunteers are required to have the same level of criminal history check as staff members.

The aged care legislation currently defines ‘staff member’ for the purposes of police certificate requirements as someone who:

- is at least 16 years old
- is employed, hired, retained or contracted by the approved provider (whether directly or through an employment or recruiting agency) to provide care or other services
- has, or is reasonably likely to have, access to consumers.<sup>12</sup>

The definition is supported with examples of staff members who may have access to consumers or who provide care or other services, including key personnel, office personnel, kitchen and laundry staff, and other employees and contractors who provide care and services.

Consistent with the concept of a ‘risk-assessed role’ used to describe workers in the NDIS model, where duties may include direct delivery to, or more than incidental contact with, a person with disability, the definition of a ‘staff member’ in aged care relies on the concept of a person who has access to, or is reasonably likely to have access to, consumers.

As noted in the Consultation Paper, a person will be characterised as holding a ‘risk-assessed role’ under the NDIS model if:

- they are key personnel as defined under the *NDIS Act 2013*
- their normal duties include the direct delivery of specified supports or specified services to a person with disability, or
- their normal duties require more than incidental contact with a person with disability.<sup>13</sup>

The advantages of applying screening requirements to the above group of aged care workers (i.e. ‘staff members’ as currently defined in the legislation) is that:

- it would rely on a widely understood and existing definition within the sector such that providers would not be in doubt as to who was subject to screening
- it broadly aligns with the NDIS definition of workers covered by the NDIS Worker Screening Check which focuses on key personnel and people performing a role for which the normal duties are likely to require more than incidental contact with a person with a disability.

While the Consultation Paper tested the idea of exempting volunteers and students from the worker regulation scheme, many stakeholders flagged that screening should also include

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<sup>12</sup> Section 63-1AA of the *Aged Care Act 1997*; section 4 of the *Accountability Principles 2014*.

<sup>13</sup> Section 5, *National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules 2018*.

volunteers, with some noting that students and others with regular contact with consumers should also be included. In addition, some stakeholders suggested that for consistency, any changes to screening should also be reflected in the requirements for key personnel screening.<sup>14</sup>

Noting the time this could take to implement, some stakeholders also suggested that a staged approach could be adopted for the introduction of strengthened screening. A staged approach would prioritise direct care workers (such as PCWs) and could then be extended in future to also include non-direct care staff (like office personnel, key personnel and, potentially, volunteers) who have more than incidental contact with consumers.

Stakeholders were also generally supportive of the aged care scheme recognising worker clearances (or exclusions) through other processes such as the National Scheme and NDIS, to reduce duplication of regulatory requirements for workers working across health, disability and aged care. Stakeholders were specifically asked about mutual recognition as part of the consultation; this is detailed further below.

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<sup>14</sup> Section 53B, *Accountability Principles 2014*.



## What should be assessed?

### Criminal history and risk assessment

Of the stakeholders responding to online consultation:

- 29% selected Option 1, 'Providers continue to assess criminal history for workers in line with aged care legislation, funding agreements and guidance (status quo)'
- 55% selected Option 2, 'Establish a centralised assessment of criminal history for workers (based on the NDIS model)' as their preferred approach to worker screening
- 16% did not answer.

A minority of stakeholders preferred Option 1 (status quo), with some describing additional protections and responsibilities that could complement existing arrangements such as:

- workers be required to declare notifiable criminal conduct beyond the precluding offences throughout their employment to their employers and/or that providers be responsible for reporting certain conduct to the ACQS Commission or the department
- police checks be conducted more regularly than every 3 years (with some suggesting annually) and employers should not accept police certificates older than 6 months at the time of recruitment
- a new offence be introduced into the Act for giving an employment reference (whether by a provider or another worker) that is materially misleading.

A majority of respondents preferred the establishment of a centralised assessment of workers as per Option 2. Stakeholders variously described the benefits of Option 2 as being:

- reduced administrative burden and cost for both workers and employers, particularly where workers are employed across many employers and aged care settings, and where submission of multiple police checks would otherwise be required
- the potential for real time updates regarding matters relevant to workers' criminal history and suitability
- consistent consideration of workers' criminal histories and outcomes of risk assessments, which would improve worker protection in relation to decisions about suitability to work in the industry and would reduce the burden on providers to make such assessments
- that centralisation would facilitate mutual recognition or cross-sector work if other industries were able to access the assessment for their own purposes (e.g. where an aged care worker was applying to work in disability services).

While stakeholders were not explicitly asked to provide comments about the types of criminal offences that should exclude aged care workers beyond the current offences set out in the Act (i.e. murder, sexual assault or assault for which the person was imprisoned), many identified broader offences that should be considered as part of a risk assessment such as:

- fraud charges
- elder abuse and matters relevant to the safety, welfare and wellbeing of the elderly

- violence related offences
- property and tax related offences
- neglect related offences and matters against vulnerable people
- drug and alcohol related offences
- listing on sexual offenders and child protection registers
- family law matters, family violence orders and child protection matters.

Stakeholders also queried whether spent convictions, pending charges, historical charges (e.g. convictions 5-10 years ago) or international convictions should be included.

In addition, some stakeholders suggested that the following matters be captured, and risk assessed:

- prohibitions from other industries (e.g. NDIS banning orders)
- information sourced from the compulsory reporting/upcoming SIRS about the conduct of aged care workers in relation to reportable conduct
- history of worker's compensation claims or Fair Work matters
- mental health concerns including Community Treatment Orders
- de-registration from other professions or registration schemes including the National Scheme
- any denied Working with Children or Vulnerable People Check applications.

Despite the wide range of offences and matters for assessment noted in submissions, most stakeholders felt strongly about building on existing worker screening infrastructure through the NDIS model, which would mean adopting the tiered approach to screening detailed below.

### Information sources

When asked to identify what additional information should be assessed, of the stakeholders responding to online consultation:

- 75% selected Option 1, 'Information from disciplinary bodies such as health complaints bodies, the NDIS Commission and National Boards' including any adverse findings made in relation to an individual, where the finding is relevant to their suitability to provide aged care
- 55% selected Option 2, 'Information from relevant government agencies', for example, child protection information and information about suspicions or allegations of reportable assaults
- 56% selected Option 3, 'Information from courts and tribunals'
- 58% selected Option 4, 'Information from employers'
- 16% did not answer.

For this question, stakeholders were able to select one or more of the options. The percentages above (in combination with written comments) reflected a strong desire by stakeholders for a range of information to be included in the assessment of workers to support a comprehensive risk assessment and ensure key information about a worker's suitability is not missed. In the interests of ensuring timely assessments, stakeholders felt that information sourced through Options 1 and 4 should be prioritised, noting that information from the other sources would take longer to process and access, thereby potentially delaying screening outcomes.

Responses indicated that stakeholders were inclined to include employer decisions or disciplinary matters in the assessment criteria (Option 4). However, stakeholders acknowledged that there may

be fewer consistent procedural fairness avenues for workers at the employer-level and that if this information were to be included, fairness measures would be needed prior to factoring any adverse decisions in to an assessment.

A number of stakeholders recommended a new provider responsibility that required employers to disclose certain matters to the relevant oversight body to ensure misconduct or concerns about competency were reported and fed into the centralised assessment. Stakeholders identified that this would address a current gap where workers who either resigned or were terminated as a consequence of misconduct could find employment with another provider despite their potential unsuitability.

### **Drawing on existing screening models**

A majority of stakeholders supported drawing on an existing centralised screening model, with most preferring the NDIS model, but others also suggesting that the National Scheme model be adopted and that a similar criminal screening standard should apply.

As set out in the Consultation Paper, the NDIS model relies on different tiers of offences, with some automatically precluding employment (similar to aged care), and others triggering a risk assessment by the State/Territory WSUs<sup>15</sup>.

The risk assessments are designed to identify whether there is ‘an unacceptable future risk’ to NDIS participants in light of the worker’s criminal history and/or other relevant information. The risk assessment takes into account matters such as:

- the nature, gravity and circumstances of the criminal history and/or other relevant information
- how relevant the criminal history or relevant information is to the work they will undertake
- the length of time that has passed since the event occurred
- the vulnerability of the victim at the time of the event
- the worker’s relationship to the victim or position of authority over the victim at the time of the event
- whether the information establishes a pattern of concerning behaviour
- the worker’s conduct since the event.

At a high level, WSUs are making assessments beyond criminal history (in accordance with the principles and terms set out in the Intergovernmental Agreement for Nationally Consistent Worker Screening for the NDIS) to take into account:

- civil penalties
- child protection orders
- information from State-based reportable or notifiable conduct schemes such as State Ombudsman and Complaints Commissions and professional associations
- employer or other professional records/information including professional references
- court and tribunal records.

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<sup>15</sup> *Intergovernmental Agreement on Nationally Consistent Worker Screening for the National Disability Insurance Scheme*, p. 16.

A similar assessment framework could be adopted for aged care, or aged care worker screening could be integrated with the operations of the WSUs for the purposes of the NDIS model, noting a clear similarity between the intent of the schemes and the kinds of matters stakeholders suggested should be risk assessed.

While stakeholders felt strongly about building on existing screening infrastructure through the NDIS model, particularly in light of the similar work undertaken between aged care and disability services, concerns noted included:

- the aged care workforce is larger than the disability workforce, such that there are questions about the capacity of the WSUs to screen aged care workers without either a significant increase in resourcing or the establishment of a national screening body specifically for aged care
- the NDIS model is still in its early stages and has yet to be tested as the best model for national worker screening.

Other stakeholders suggested that a centralised assessment should have similar principles-based considerations as the National Scheme's criminal registration standard and include the same inputs into the criminal history standard (for example, international convictions and spent convictions).

In the National Scheme context, the national boards undertake an initial police check for registration applicants and examine the results of the police checks, taking into account factors similar to the NDIS risk assessment (e.g. nature and gravity of the offence, time since the offence etc.). However, the national boards rely on worker declarations at the time of registration renewals and any police checks submitted to the national board following the initial application.

By contrast, the NDIS model conducts an initial risk assessment but receives real time data that informs ongoing monitoring of a worker's risk assessment. In light of strong stakeholder feedback that worker screening should be conducted more regularly and thoroughly, adopting the same process as the National Scheme is less aligned with the expectations of stakeholders.

Stakeholders also noted that if another model were to be adopted, as a matter of principle, aged care workers should not be subject to stricter criminal/risk assessments than those used for registered health practitioners, and that clearance decisions should set an appropriate bar such that employers need not have to conduct their own assessments in addition to the clearances.

### **Design and implementation considerations**

As part of the implementation of centralised screening, stakeholders noted that the following matters would need to be determined:

- who will undertake the criminal history check and risk assessments (i.e. the features of worker screening)
- how screening information will be gathered (e.g. through legislative responsibilities, changes to information sharing frameworks, integration of data) and the privacy and confidentiality implications
- how worker screening obligations could be achieved in legislation (and if this obligation would be an extension of the provider responsibilities or if it could be imposed on individual workers)

- the considerations or principles used to assess the circumstances of a worker and how the assessment should impact a worker's suitability to enter and remain in the aged care sector (i.e. the relative consequences of an assessment)
- the weight to be given to a particular matter and whether matters will be given more weight depending on the type of the worker (e.g. if the assessment is of a PCW as opposed to auxiliary staff)
- what appeal rights and procedural fairness mechanisms will be available
- whether to draw on existing screening models and the operational implications of doing so.

Each of these issues would require further consideration as any model is developed.

## Code of conduct

Most stakeholders noted the need for a code of conduct as a means of measuring expected behaviours, in addition to the existing expectations set by the Aged Care Quality Standards and the Charter of Aged Care Rights.

Noting the various existing codes of conduct used in like sectors, stakeholders were asked which code of conduct they would prefer in the aged care context.

Of the stakeholders responding to online consultation:

- 27% selected Option 1, 'Retain existing arrangements requiring providers to ensure the conduct of aged care workers is in line with the Aged Care Quality Standards and Charter of Aged Care Rights (status quo)'
- 16% selected Option 2, 'Adopt the NDIS Code of Conduct for aged care workers'
- 43% selected Option 3, 'Develop a new code of conduct specific to aged care workers' as their preferred approach
- 14% did not answer.

Of those stakeholders who selected Option 1, a number noted that the Aged Care Quality Standards and Charter of Aged Care Rights have only been in effect since 1 July 2019, and that there had not yet been sufficient assessment of the positive impacts and/or opportunities relating to regulatory oversight and the correlation between workforce behaviour and consumer outcomes.

Some stakeholders suggested developing companion pieces to these already existing requirements to address worker conduct directly. However, a majority of stakeholders favoured the development of an aged care specific code to be applied to individual workers, also noting that the code should closely align with the NDIS Code.

### Aged care code of conduct

In determining the key features of an aged care code of conduct, stakeholder feedback indicated that, as a minimum, a code of conduct should:

- cover all aged care workers (not just a subset, such as PCWs)
- be nationally applicable and consistent

- be underpinned by the power for enforceable action to be taken where a person's conduct is not consistent with the Code and for that action to be nationally recognised.

It was also suggested that:

- consideration of complaints against a worker (for non-compliance with the code) should be considered in tandem with any complaints against the aged care service
- the outcome of any findings of non-compliance (e.g. by a national body) should be centrally held and form part of worker screening assessments.

Stakeholders identified a number of advantages to an aged care specific code, including:

- having a consistent code that can be designed to complement and strengthen existing standards in aged care
- the ability to include aged care specific issues like restrictive practices, chemical restraint, culturally safe and inclusive care, and dignity of risk into the expected behaviours
- that it would be easily identifiable by consumers as applicable to them (noting that some consumers do not appreciate that they have rights under the National Code in some jurisdictions)
- it could support the introduction of an aged care specific registration scheme
- it could support the notion that all parties within the aged care setting have responsibilities – consumers have contractual responsibilities, providers have legislative responsibilities, nursing and registered staff have professional responsibilities, and all workers have a responsibility to act in accordance with the code etc.
- it would identify clear expectations of aged care workers such that poor conduct could be measured and identified (including by colleagues)
- it would provide those organisations that don't use an organisation-specific code of conduct with a baseline code that addresses the specific concerns in aged care
- it could be developed in a manner that is broadly consistent with the codes of conduct and ethics specific to the different professions within the National Scheme and in the disability sector.

Stakeholders did however acknowledge some disadvantages of an aged care specific code, noting that:

- the introduction of an additional code may increase confusion where codes overlap. For example, workers who work across both disability and aged care, and registered professionals who have their own professional codes of conduct
- it could displace any existing codes of conduct that providers have in place for their employees (which are usually aligned with organisational culture)
- it would increase training and education for workers and providers where multiple codes apply
- legislative change might be needed to support its introduction, and it would require consultation, transition and education to help workers, employers and consumers understand the stated behaviours in practice and the consequences of breaches of the code (such that it may take some time to implement and see improvements, as compared to adopting an existing code).

## NDIS Code

While building on existing regulatory schemes (including to reduce duplication) was important to many stakeholders (and this objective was noted in response to many questions), only 16% of stakeholders favoured the adoption of the NDIS Code. For those stakeholders who were supportive of adopting the NDIS Code, the importance of avoiding duplication, not ‘recreating the wheel’, ensuring consistency with the disability sector and the high-level (and therefore applicable) content of the NDIS Code, meant the adoption of the NDIS Code made more sense.

Many of the stakeholders who preferred the implementation of an aged care specific code, still noted that:

- reference to the NDIS Code and its principles is relevant given the shared workforce and consumers
  - For example, aged care providers who deliver behaviour supports or restrictive practices for NDIS participants are already subject to the NDIS Code.
- an aged care specific code of conduct that mirrors or complements the NDIS Code would reduce overlapping codes even within aged care
- the NDIS Code applies to all workers delivering services or supports<sup>16</sup> (and is not dependent on the concept of a ‘risk-assessed role’ for the purposes of determining who must undergo worker screening).
  - Consistent with this approach, an aged care code of conduct could apply to all aged care workers, and not just those who come within the definition of ‘staff member’ (i.e. where the person has, or is reasonably likely to have, access to consumers).

## National Code

Despite not being an explicit option identified in the online consultation, a number of submissions highlighted the possible application of the National Code noting that the Australian Law Reform Commission recommended the adoption of the National Code in its 2017 ‘*Elder Abuse – A National Legal Response*’ report.

While some stakeholders noted that the National Code was intended to apply to the aged care sector and that in some jurisdictions changes are underway to make the application of the National Code to aged care workers more explicit, stakeholders identified several limitations to adopting the National Code for aged care workers, including:

- If the National Code was given national application to aged care workers, health complaints entities within each of the States and Territories would be responsible for considering complaints and taking action under their respective authorising legislation, which would limit consolidation of complaints investigation outcomes at the national level.
- The National Code is not yet applicable in Western Australia, Northern Territory, the Australian Capital Territory or Tasmania, such that the Code would not be enforceable for workers in these jurisdictions.

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<sup>16</sup> Section 5, *National Disability Insurance Scheme (Code of Conduct) Rules 2018* defines ‘Code-covered people’ to mean NDIS providers and all persons employed or otherwise engaged by an NDIS provider.

- The application of the National Code to aged care workers is not consistent across the jurisdictions (despite the intention that the National Code would apply to aged care workers who provided a ‘health service’ however defined within each of the jurisdictions).
  - In some State/Territories, ‘health service’ is not defined broadly to include all aged care workers within all service environments. This means that staff in non-residential care environments or auxiliary staff such as lifestyle managers, cleaners, kitchen staff, CEOs and managers would not be subject to a code in some cases.
- Some jurisdictions are not currently empowered to share information with other regulatory bodies or States/Territory health complaints entities for the purposes of having a national consolidation of complaint investigation outcomes. For example, due to confidentiality provisions in the Western Australian legislation, information about complaints is only permitted to be shared in limited circumstances.<sup>17</sup>
- The threshold for investigation of complaints and enforcement action differs across jurisdictions.
  - For example, in Queensland, while complaints can be managed and steps taken to resolve issues, the health ombudsman can only take enforceable action if it is satisfied that the complaint presents a ‘serious risk to persons and it is necessary to protect public health or safety’.<sup>18</sup>
  - In South Australia, there must be an ‘unacceptable risk to person’ before enforceable action can be taken as a consequence of a breach of the National Code.<sup>19</sup>

In addition, stakeholders were mindful that the different features of aged care service delivery mean different behaviours are expected, and that the National Code has clinical references that do not neatly apply to the aged care sector.

### **Design and implementation considerations**

In designing a code of conduct, stakeholders highlighted that it should:

- be developed with industry, workers and consumers
- complement the existing Aged Care Quality Standards, Charter of Aged Care Rights and applicable human rights
- be concise and simple (including so people with English as a second language can readily understand it) and be more than a high-level statement of expectation.

In terms of implementing a code of conduct, stakeholders noted that further work would be required to determine:

- whether the code would be voluntary at introduction and only become mandatory (and enforceable) after a period of transition

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<sup>17</sup> Sections 17, 32 and 71, *Health and Disability Services (Complaints) Act 1995*.

<sup>18</sup> Section 14, *Health Ombudsman Act 2013*.

<sup>19</sup> Section 56C, *Health and Community Services Act 2004*.



- whether the code would not only set expectations for engagement with consumers, but also more broadly in relation to family members and carers
- how the code (and complaints about workers) would sit alongside complaints about providers (investigated and managed by the ACQS Commission)
- how to triage complaints about aged care workers that may come under an aged care code of conduct and the National Code (to ensure workers are not subject to action under two codes with different outcomes in respect of the same conduct)
- what basis the code would have in legislation and how the aged care legislation could be changed to regulate individual workers in relation to the code
- how the code would sit alongside provider established organisational codes of conduct, and whether there would be flexibility for providers to enhance and shape the code to reflect the culture and mission of their organisation
- whether employers would be required to investigate breaches of the code in the first instance and report back to a national body, or whether the matter is taken up directly by the national body to investigate with the worker
- what avenues of appeal and procedural fairness would be afforded to workers.

Stakeholders also raised questions about the enforcement of such a code and consequences of breaching the code and flagged a number of questions to be resolved as part of the design and implementation of the preferred approach to worker regulation more generally. For example:

- What would be the threshold for investigation of possible breaches of the code and for enforcement of an identified breach? For example, where there is 'serious risk' or 'potential harm' to consumers.
- What would be the outcome following a breach of the code? For example, notice to the employer, requirements for further training, conditions on work, or removal from the industry (on a short term or permanent basis)?
- Could employers use the code as a basis for disciplinary conduct and termination?
- Would employers be required to enquire about the history of any code breaches with a consolidated national body prior to offering employment?

## Mutual recognition

Opportunities for mutual recognition were strongly supported by many stakeholders as presenting efficiencies and reducing barriers for workers to work across similar sectors.

Mutual recognition with the NDIS was supported by nearly half of the respondents, who noted the increasing demand for disability support workers and aged care workers, in particular in the home care environment where service providers will often employ support workers to attend to both older clients and those with disabilities.

### Disability sector

Of the stakeholders responding to online consultation:

- 46% selected 'Yes' when asked whether they supported a person cleared to work in disability, to be automatically cleared to work in aged care
- 40% selected 'No'
- 14% did not answer.

As described above, the NDIS has a comprehensive criminal and risk assessment model (consistent with the matters stakeholders would like to see considered in aged care), with a complementary NDIS Code that informs worker risk assessments. It also has a positive register, that reflects the clearance outcomes it consolidates from WSUs, for employers to access and confirm worker clearance, and a negative list for those NDIS providers and workers who are subject to a banning order.

The NDIS is similarly looking to incorporate consideration of information about a person's work in aged care into its assessments of the suitability of a person to work in the disability sector. Legislation is currently before Federal Parliament to allow banning orders to be pre-emptively made against a person on the basis of information about their suitability and conduct in other sectors, and to ban them from working in disability.<sup>20</sup>

Many stakeholders noted that ideally, the two sectors would become harmonised and achieve a single worker regulation scheme that could potentially include health in the future. However, stakeholders did flag that even within disability, there was still some fragmentation between the jurisdictions as the NDIS continues to roll out and taking into account the separate Victorian regulation of disability providers including the Disability Worker Exclusion Scheme and upcoming Registration Scheme currently being consulted on.

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<sup>20</sup> *National Disability Insurance Scheme Amendment (Strengthening Banning Orders) Bill 2020*, introduced to Federal Parliament on 12 June 2020. The Bill seeks to enable a banning order where there is a reasonable belief the person is 'not suitable' to 'be involved in the provision of specified supports or services' and the person has not previously worked in the NDIS. The Explanatory Memorandum for the Bill refers to information about an aged care worker being considered and that information being relevant to a determination on whether to ban a person from working with people with disability in the NDIS before they commence in the NDIS.

Of those who did not support automatic recognition of clearances/exclusions across sectors, some suggested that either aged care was very distinct from disability and that the two schemes should not intersect, or that otherwise, to ensure the highest safeguards for aged care consumers, aged care workers should submit to the same screening process to avoid the risk of something not being taken into account under the NDIS model that could have been captured by the aged care process.

It appears that in responding to this question, some stakeholders may have assumed that the question of mutual recognition with the NDIS also related to registration standards that may be required in aged care (discussed below), rather than mutual recognition of screening outcomes specifically. For example, responses to this consultation question reiterated that the aged care sector requires different workforce skills and competencies to that of disability, and therefore having worked in the disability sector should not permit automatic entry into the aged care sector. For clarity, the question was specific to whether a worker who had been cleared through the NDIS Worker Screening Check should be exempt from submitting to aged care screening.

### **Other sectors and checks**

In relation to mutual recognition with the health sector, stakeholders flagged that registered health practitioners under the National Scheme should either be exempt from the regulation scheme altogether or otherwise considered cleared for the purposes of aged care screening such that compliance against the aged care scheme was not necessary to evidence.

Some stakeholders also considered that Working with Children and Working with Vulnerable People Checks should be eligible for clearances but this is dependent on how aligned the screening assessment in the aged care space will be to these State/Territory-based assessments (for example, if the aged care regulation scheme ultimately undertakes a risk assessment similar to the NDIS model in which matters beyond criminal offences are considered).

### **Who should assess suitability?**

Given the strong stakeholder support for several sources of information to be considered as part of the assessment and for centralised assessment to occur, suggestions for who should make the assessment generally involved:

- an existing national body (NDIS Commission, a national board under Ahpra or the ACQS Commission)
- a new national body
- State/Territory WSUs (to feed information up to a database managed by either the government or a new national body).

Stakeholders raised industry involvement in the development of the criteria for assessment, however, there was not consistent support for an industry-based assessment of worker suitability.

As part of the consultation process, stakeholders were not asked to select a preferred body, but rather whether one body should be solely responsible for worker screening and/or registration, or if the responsibility should be shared across many bodies.

Stakeholders consistently acknowledged their preference for a single national body to oversee screening and/or a registration scheme. There was broad consensus that information should be consolidated and fed into one body to make a determination about clearance and registration, and for this body to be the body that employers and workers engage with.

Stakeholders commonly mentioned the ACQS Commission, a new aged care specific national body or a new board under the National Scheme.

Stakeholders expressed a strong concern about the capacity of multiple bodies to efficiently share information in a timely way to safeguard against unsuitable workers not being detected and the heightened risk of inconsistent outcomes for workers.

While stakeholders noted that having multiple bodies may have advantages in relation to the spreading of the volume of work and costs, and the additional protections more scrutiny from other bodies could provide, there were several disadvantages<sup>21</sup>. Stakeholders were particularly concerned that not having one national body or a consolidated database would increase the risk of:

- providers and consumers needing to search multiple sources and inadvertently missing key information about a worker's suitability
- information not being shared appropriately between the multiple bodies as a result of concerns about limited information sharing powers
- unsuitable workers falling through the gaps created by multiple bodies providing oversight
- errors and delays resulting from having multiple bodies manage screening and/or registration where stakeholders valued screening decisions being in real time
- governance concerns about which body should respond or manage the matter
- potential duplication of work, business rules and policies.

### **Expanding the role of the ACQS Commission**

A number of stakeholders favoured the expansion of existing bodies, and in particular the ACQS Commission. Stakeholders recognised the benefits of expanding the ACQS Commission's role to perform this function, noting:

- the ACQS Commission is already responsible for:
  - regulating providers under the aged care legislation
  - enforcing complementary requirements including the Aged Care Quality Standards and Charter of Aged Care Rights
  - receiving and monitoring alleged and suspected reportable assault matters through its function in relation to compulsory reporting/SIRS noting that this information could be drawn upon to identify unsuitable workers for own motion investigations into conduct against the code
- it already has mechanisms for managing complaints about aged care providers that could be expanded to accommodate complaints about workers

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<sup>21</sup> Note that stakeholder concerns regarding multiple bodies in this context did not include reference to circumstances where, for example, multiple WSUs would feed information to a national body, as occurs in the NDIS model.

- it currently conducts an educative role through newsletters, bulletins, webinars and training that could be expanded for the purposes of educating workers as well as providers about responsibilities
- it would be consistent with the NDIS approach, where the NDIS Commission regulates both providers and workers, such that it would be consistent for aged care to have a single body to cover the regulation of both providers and workers
- increasing worker regulation is one means for addressing neglect and abuse within aged care and having a body with powers to investigate both provider and worker conduct is of value.

### **New national body**

Some stakeholders suggested that an independent authority could otherwise be created to oversee worker regulation (for the purposes of clearances and/or registration) but that it should share information with the ACQS Commission to complement the regulation of providers. It was noted that this would however entail significant investment and timeframes to establish a new body and its operations.

### **National board under the National Scheme**

Several stakeholders considered that the National Scheme should be expanded to include PCWs, with a board established for PCWs. The disadvantage of this approach is that it would deal with PCWs only and not the wider aged care workforce (noting that most stakeholders support worker clearances/risk assessment for aged care workers and not just PCWs). Nonetheless, some stakeholders were interested in seeing a national board specific to PCWs, which would support any future implementation of a broader registration scheme despite the limitations highlighted.

### **Combining aged care and disability regulation into one body**

Stakeholders also suggested that if mutual recognition was a key feature of any scheme, consolidating the screening and complaint management of aged care workers with the NDIS Commission would be ideal. This would mean that the same WSU arrangements would feed into a similar register to further align two similar sectors. This could also be achieved if screening considerations and a code of conduct were similar to the NDIS model. There was however concern about the capacity of the NDIS Commission to do this given the significant number of aged care workers (compared to disability workers) and the infancy of the NDIS Commission.

A number of stakeholders did however surmise that the most appropriate body would be determined once the full scope and features of the aged care worker regulation scheme were determined.

## What should be included in a register?

Stakeholders overwhelmingly supported a joint register with both a positive and negative list of workers.

Of the stakeholders responding to online consultation:

- 17% selected Option 1, 'A list of workers who have been cleared to work in aged care (positive list)'
- 4% selected Option 2, 'A list of workers who have been excluded from working in aged care (negative list)'
- 63% selected Option 3, 'A list of workers who have been cleared to work in aged care and a list of workers who are excluded from working in aged care' as their preferred approach to a register
- 16% did not answer.

Stakeholders were generally keen for a register to be publicly searchable (either noting those who are cleared or registered (i.e. complying with any registration standards)). A small number of stakeholders suggested that the register should also hold a history of investigated and finalised complaints about a worker so that consumers and employers could be informed about matters that may not have necessarily impacted clearance decisions.

For those stakeholders who advocated for a new national board for PCWs, the National Scheme's [Register of Practitioners](#) was highlighted as an example of a positive and negative list which showed compliance with registration standards, any notations about complaints/adverse findings and where there were conditions on a worker's practice.

Many stakeholders also mentioned the NDIS Database where clearance outcomes will be available on a database which is accessible to employers through a login. Employers will be able to use the application number to confirm the clearance status given to them by the worker is valid. The NDIS Commission will manage the database which essentially consolidates the outcomes of the WSUs' decisions (not the information that sits behind the assessment).

Other stakeholders suggested an arrangement where the department is responsible for maintaining a basic register of cleared and excluded workers, and that this register be complemented by a public and/or industry-led register or registration scheme that acts like a passport for employment.

Stakeholders noted the benefits that can be gained through the sharing of platforms not only within aged care but also across sectors, noting that information sharing is critical to achieve the objectives of the reform. The opportunity for an aged care register to integrate with the NDIS Database to ensure the sharing and tracking of mutually relevant information was particularly noted.

Stakeholders referred to current projects such as those undertaken by the Foundation for Workforce Innovation and the Community Services Industry Alliance. Such projects incorporated the use of apps and online platforms that complement existing registers and databases held by

government bodies, permitting workers to upload and store employment information including work history, acquired skills and, where applicable, evidence of meeting registration standards and legislative requirements (e.g. CPD hours and police check/clearance certificates).

Such platforms permit workers to easily share their currency to work in sectors with employers, and to maintain records relevant to their experience where they are engaged by multiple employers or where they move interstate. Given the flexibility and broad application across different sectors, such projects are examples of technologies that could be expanded on for future use if workers were required to record evidence of their experience and suitability to work in aged care.

Stakeholders identified that the operation and content of any register would depend on the features of the worker regulation scheme and whether it extended to registration, and regardless of format, should be supported by legislated privacy protections.

## Next steps/implementation

Key implementation issues for further consideration and consultation include:

- how clearances could be undertaken and whether this could be done by WSUs (as it is under the NDIS) (noting that this would require detailed discussions between the Commonwealth and States and Territories)
- how ongoing monitoring of the clearance would be managed (e.g. once a worker has been cleared, whether the responsible body would be updated with real time information and conduct re-assessments based on that information, or if annual assessments would be undertaken to identify any risks that trigger a need for a further assessment)
- the incorporation of procedural fairness mechanisms relevant to the decisions around clearance (e.g. notice of new information, opportunities to be heard prior to adverse decisions etc.)
- the expiry of any worker screening clearance (for example, whether 3 years would remain sufficient or if it could be extended to 5 years given real-time monitoring)
- the consequences that would stem from failing to be cleared (e.g. whether the worker is listed on a negative register for having failed clearance at the first attempt, or whether they are barred from reapplying for a certain period)
- what information an employer would be able to see or request regarding what informed a screening decision (e.g. should the list of offences be provided to the employer?)
- any requirements for worker declarations that would trigger re-assessment of a worker's clearance
- the alignment with the upcoming SIRS and how data analysis and information sharing could be expanded under SIRS and between other bodies to capture information specific to individual workers to feed into any assessments
- transitional arrangements for provider-based police check reviews for existing workers.

Finally, if registration were to be a feature of the broader worker regulation scheme, how the screening function would sit alongside registration standards and how such information would be stored as part of a register.

## Chapter 5 – Registration scheme for PCWs

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Stakeholders generally agreed that there was value in building the skills of the aged care workforce and that there were many ways that this could be done. One of the ways described in the Consultation Paper was through the setting of minimum qualifications, English proficiency and/or CPD. While most stakeholders favoured a worker screening scheme (and code of conduct) that applied to aged care workers, it was generally agreed that minimum qualifications and CPD requirements more relevantly related to the role of PCWs.

Having nationally applicable registration standards and a process for monitoring compliance with such standards was variously described as one way to ‘raise the bar’ and improve the quality of aged care.

Although some stakeholders noted the direction of the NDIS, which did not introduce a registration scheme as part of its worker regulation on the basis that it wanted to emphasise choice and control for NDIS participants about who they engaged, others expressed an expectation that registration of some form should be introduced to monitor the skills and competencies of PCWs.

Stakeholders gave varying feedback as to how a registration scheme could be introduced in the current workforce environment noting the challenges of:

- a large, low paid workforce
- an increasing demand for aged care workers<sup>22</sup> and the substantial proportion of PCWs in services<sup>23</sup>
- the inherent limitations on regional and remote services to attract and retain staff (and the relative impact any registration scheme may have on the supply of workers in these communities).

There was also no consensus as to who would be responsible for overseeing compliance with any registration standards. Various options were offered by stakeholders and are detailed below.

Regardless of the registration model adopted, the significant issues associated with transitioning the workforce to a registration scheme were noted. Stakeholders reiterated that arrangements such as recognition of prior learning and grandfathering arrangements were key to assisting the existing workforce to remain in the sector.

Consistent with a key theme of the consultation, stakeholders felt strongly that the staged implementation of any new scheme was critical. Particularly the potential to implement a worker screening component, while time was taken to effectively develop a registration scheme for a smaller subset of workers (i.e. PCWs).

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<sup>22</sup> In its report, *Caring for older Australians, op. cit.*, the Productivity Commission predicted that the aged care workforce will need to have at least doubled by 2050 in order to meet the projected target of 980,000 workers needed to support the 3.5 million Australians who will be accessing aged care services every year.

<sup>23</sup> According to the National Institute of Labour Studies, *2016 National aged care workforce census and survey—the aged care workforce (2017)*, PCWs make up 70 per cent of the direct care workforce in residential care settings and 84 per cent in-home care and home support.



Given the varying stakeholder feedback regarding the possible features of a registration scheme for PCWs, this chapter discusses the following six key issues in greater detail:

- Who should a registration scheme apply to?
- English proficiency
- Minimum qualifications and competencies
- Continuing professional development
- Who should manage a registration scheme?
- Development and implementation considerations

### Who should a registration scheme apply to?

Stakeholders consistently stated that registration standards need not apply to all types of aged care workers and that the focus should be on those workers in direct contact with consumers who provide personal assistance (i.e. PCWs).

PCWs operate across all aged care service settings and provide personal care to consumers as a core part of their job<sup>24</sup>. PCWs are variously named and include, for example, Assistants in Nursing (AINs), care support workers, health care assistants, personal care assistants (PCAs), community support workers and community care workers. Noting that there is no single, widely accepted definition of a PCW, their role is underpinned by providing direct personal care to consumers.

In residential care, PCWs comprise 70 per cent of the direct care workforce, and in home care and home support, they comprise 84 per cent<sup>25</sup> (which equates to 108,126<sup>26</sup> PCWs). Consistent with these numbers, stakeholders recognised that PCWs make up the largest cohort of aged care workers and identified the real potential for regulation of PCWs, including through mandatory qualifications and CPD, to have the greatest impact in regard to improving quality of care in the aged care space.

With the exception of English proficiency standards, where the importance of all workers having proficiency in English was noted, stakeholders felt that a registration scheme was most relevant to PCWs.

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<sup>24</sup> Department of Health, March 2017, [Additional information about the 2016 National Aged Care Workforce Census](#), annexed in National Institute of Labour Studies, *op. cit.*, p. 195.

<sup>25</sup> National Institute of Labour Studies, *op. cit.*, p. xvi.

<sup>26</sup> *Ibid.*, p. 18.

## English proficiency

Of the stakeholders responding to online consultation:

- 20% selected Option 1, 'Require providers to be satisfied that PCWs have the necessary English proficiency to effectively perform their role (extension of the status quo with improved guidance as to the expected thresholds for proficiency)'
- 66% selected Option 2, 'Establish a requirement for PCWs to demonstrate their proficiency in English as part of a registration process (consistent with the National Scheme)' as their preferred approach to English proficiency
- 14% did not answer.

Many stakeholders considered that the current mechanisms for establishing English proficiency are insufficient as there is no minimum standard or clear expectation that can be applied consistently across aged care providers in relation to their workers. It was also generally agreed that English proficiency is relevant to aged care workers, not just PCWs, but that it is particularly critical for PCWs to have sufficient English proficiency skills to communicate with consumers and to accurately engage in and record conversations about care.

Stakeholders who supported Option 1 (extension of the status quo with improved guidance as to the expected thresholds for proficiency) noted:

- the provider is best placed to determine the English language requirements for the different roles in their service, and that not all roles have an equivalent need for English proficiency
- English proficiency can be ascertained at interview, such that additional requirements/guidance are not required
- limited English proficiency should not act as a barrier to entering the workforce, particularly where workers have the other requisite skills and characteristics
- culturally and linguistically diverse consumers might benefit more from engaging with multilingual care workers with proficiency in the consumer's native language and this should be celebrated (not undervalued)
- in some contexts, such as in Aboriginal communities, fluency in the local language may be more important than proficiency in English
- setting minimum requirements for English proficiency may discourage culturally and linguistically diverse workers from entering the sector.

Stakeholders suggested that if minimum qualification and competency requirements are introduced (e.g. that all PCWs must have a Certificate III in Individual Support (Certificate III)) this should ensure workers have adequate English proficiency, as English language proficiency is an entry requirement to the course and otherwise required to successfully complete the training.

Many stakeholders noted the important role that training organisations that deliver qualifications play in ensuring English proficiency is satisfactory. Stakeholders flagged that current reviews of the aged care training packages and qualifications may lead to improved standards for English language skills for future workers as a consequence of checking English proficiency as an entry requirement (with any necessary bridging courses to support the development of satisfactory English language) and potentially as part of the units of competency required in the qualification. It may be that these

reviews improve English language at the training level to meet the current gap such that registration standards are not required, and that future workers' English language skills are more developed prior to employment.

Stakeholders who supported Option 2 suggested that:

- where workers are unable to communicate effectively, this puts the consumer at a disadvantage and can compromise the safety and quality of care delivered, particularly where consumers experience other communication challenges related to their age and/or where PCWs are delivering clinical care under delegation (including administering medications)
- while English proficiency is not always a barrier for face-to-face communication, it is necessary for reading and understanding internal policies and procedures and consumer care documentation and case notes.

Stakeholders variously raised the following considerations in relation to the implementation of Option 2:

- an appropriate 'English for aged care' standard measure should be developed, supported by specific training (developed and delivered by ESL specialists in partnership with the aged care sector) to help workers meet this standard
- a minimum IELTS score<sup>27</sup> of 6 be required to become an aged care worker
- flexibility must be applied in how workers demonstrate their proficiency in English (and government should not mandate a specific IELTS score)
- English proficiency requirements should include consideration of workplace context (including specific aged care/medical terminology) and Australian cultural practices and idioms
- emphasis be placed on the ability to communicate with colleagues and consumers, rather than reading and writing in English.

Other options to strengthen the English proficiency of PCWs in delivering aged care included:

- the recommendations from '*A Matter of Care: Australia's Aged Care Workforce Strategy*' be further explored, including the development of a qualifications framework that reflects the future state of the aged care workforce; and the introduction of job levels for PCWs based on skills and experience (whereby English proficiency is recognised as a skill)
- the government should subsidise targeted English language programs for aged care workers
- English language classes could be built into professional development plans for aged care workers that require them.

Stakeholders also noted the need for aged care providers to ensure there are mechanisms for communicating with consumers with diverse communication requirements beyond ensuring workers have proficiency in English, including through different languages, display of text, Braille, tactile communication, large print, accessible multimedia, audio, plain-language, human-reader and augmentative and alternative modes, accessible information and communication technologies.

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<sup>27</sup> International English Language Testing System, noting that the Nursing and Midwifery Board of Australia requires enrolled nurses to receive a minimum overall score of 7 and a minimum score of 7 in each of the four components (listening, reading, writing and speaking)) under the English language skills registration standard.

## Minimum qualifications and competencies

Of the stakeholders responding to online consultation:

- 10% selected Option 1, 'Providers must ensure that PCWs are competent and have the qualifications and knowledge to effectively perform their role (status quo)'
- 9% selected Option 2, 'Require providers to be satisfied that PCWs have certain minimum qualifications or competencies'
- 67% selected Option 3, 'Establish a requirement for PCWs to demonstrate their qualifications as part of a registration process (consistent with the National Scheme)' as their preferred approach to minimum qualifications
- 13% did not answer.

Many stakeholders who supported Option 1 (status quo) considered that placing additional requirements on aged care workers and providers would act as a barrier to recruiting staff, noting that:

- it can be costly and challenging for providers to recruit appropriately skilled staff without the added burden or disincentive of ensuring minimum qualifications are met. Some stakeholders noted that some workers may be attracted to aged care specifically because there are no minimum qualification requirements
- the introduction of minimum qualifications has the potential to discourage potential workers with the required skills and attributes but without the ability to pay to complete a course
- providers should be able to determine what training is needed for their staff based on the consumers and the staffing profile at the service
- formal qualifications cannot provide PCWs with the same level of competency as on the job training and experience
- the quality of the training itself needs to be lifted rather than placing additional requirements on workers (i.e. the requirement should be placed on RTOs to improve the quality and consistency of training provided).

Some stakeholders expressed concerns about the large variation in the qualifications, skills and experience of aged care workers and the perceived poor quality of training provided by approved providers (particularly in home care) and considered that minimum qualification requirements were needed to lift quality in the sector.

Stakeholders who supported Options 2 and 3 variously noted that:

- standardised training is needed for PCWs to ensure they have the necessary skills and competencies to effectively manage the diverse needs of aged care consumers
- the mandatory training must be fit for purpose, enable innovative models of care and encompass specialties (such as dementia care, end of life care and remote care)
- while certain qualifications may be considered important, formal qualifications alone are insufficient (e.g., PCWs also require personal qualities such as aptitude, empathy, resilience and customer service and these should be considered as part of registration)

- requiring minimum qualifications may also address concerns relating to the English proficiency of workers.

Stakeholders strongly agreed that minimum qualifications must not act as a barrier to becoming (or remaining) a PCW. It was noted that for existing PCWs in particular, a transition or grandfathering arrangement would be required to ensure skilled and experienced staff are not 'pushed out' of the workforce due to the lack of formal qualifications. Some stakeholders also noted that the requirement for minimum qualifications may act as a barrier to some Aboriginal and Torres Strait Islander people working as PCWs in their local community.

Stakeholders suggested various options for managing these concerns, including:

- establishing a mechanism for the recognition of prior learning and experience to ensure the existing workforce are not disadvantaged or exited from the sector at a time when demand for their services is increasing
- providing flexible pathways for entering the PCW workforce (including through formal and informal training and recognition of on the job learning)
- allowing new workers to work in the sector for an initial period (e.g. 3-6 months) prior to commencing their minimum qualifications and enabling workers to continue to work in the sector while obtaining their minimum qualifications
- enabling existing workers, that have operated in the sector for a defined period of time and without issue to be 'grandfathered', while only new workers must meet the minimum qualification requirements
- enabling providers that may struggle to recruit PCWs with the required minimum qualifications (e.g. providers in rural and remote areas) flexibility in how they determine suitability (i.e. the requirements may not apply in some geographic regions).

Noting the additional administrative and financial burden imposed on workers and providers, some stakeholders suggested that if Option 2 or 3 were to be implemented, the Commonwealth Government should offset the cost of compliance (and help attract PCWs to the sector) by:

- introducing incentives for PCWs to upskill, such as financial support or tax incentives
- offering government funded traineeships or VET courses
- providing subsidies or scholarships to workers pursuing their minimum qualification.

Other options suggested to strengthen the skills and knowledge of PCWs in delivering aged care included:

- creating a national suite of mandatory training for aged care and disability care workers
- establishing mentoring, supervision and on the job learning requirements for workers or providing greater funding and accessibility to onsite learning
- 'tightening' the training package rules for the Certificate III to ensure appropriate electives and adequate on the job assessment are undertaken (to reduce reliance on simulated training over real life experience)
- establishing a system for the independent assessment of PCW competencies on the job
- paying PCWs for any formal, relevant training they undertake

- providing free training for aged care workers to obtain their Certificate III (noting that New Zealand has recently announced free training for the next two and a half years to encourage people into the aged care workforce<sup>28</sup>)
- developing a qualifications and skills matrix (similar to that used in the disability care sector)
- creating a list of minimum (and additional) competencies against which PCWs must declare their competence.

## Continuing professional development

Of the stakeholders responding to online consultation:

- 17% selected Option 1, 'Retain existing arrangements whereby providers must ensure that PCWs are recruited, trained, equipped and supported to deliver the outcomes required by the Aged Care Quality Standards (status quo)'
- 8% selected Option 2, 'Require providers to be satisfied that PCWs meet specified minimum CPD requirements'
- 60% selected Option 3, 'Establish a requirement for PCWs to demonstrate they have met specified minimum CPD requirements as part of a registration process (consistent with the National Scheme)' as their preferred approach to CPD
- 14% did not answer.

Many stakeholders who supported Option 1 felt that providers and workers needed the flexibility to determine the CPD required based on each worker's skills and knowledge gaps, the environment they are working in and their role. Stakeholders suggested that the existing requirements are sufficient to ensure CPD is undertaken on an as needed basis, while requiring PCWs to provide evidence of CPD undertaken (as per Option 3) would be 'overkill' and challenging for workers to sustain.

However, others felt that establishing minimum CPD requirements is important to ensure providers are adequately training staff to address 'critical sector-wide knowledge gaps'. Some stakeholders noted that aged care workers often feel underprepared to meet the needs of consumers and a lack of structural and systemic support makes it challenging for workers to attend quality, relevant training.

Stakeholders who supported Options 2 and 3 noted that:

- continued investment in CPD for staff should be viewed as a necessary and core part of business for aged care providers
- improved training and CPD would support the 'professionalisation' of aged care work
- affordability must be considered to ensure CPD requirements align with the generally low remuneration of PCWs and that relevant CPD undertaken could be tax deductible
- specified requirements could include that any CPD undertaken:
  - must include a portion of face-to-face learning
  - must be provided by qualified trainers in a 'reputable' training setting
  - must have sufficient connection to the employee's current work activities

<sup>28</sup> Under the Targeted Training and Apprenticeships Fund (TTAF) initiative.

- maintains or improves the specific skills or knowledge required in the person’s current work activities and/or may result in an increase in income from current work activities
- must address critical sector-wide knowledge gaps such as infection control, meal/swallowing management, wound management, fall prevention, dealing with challenging behaviours, use of restraint, dementia care, palliative care and cultural diversity
- minimum CPD requirements must be set in consultation with industry and should provide flexibility for workers to choose training that meets their needs and is able to be accessed (particularly for those workers in regional and remote areas).

In relation to Option 3, stakeholders suggested that workers could complete an annual attestation that they have completed the required hours or units of CPD to demonstrate compliance with this requirement. Stakeholders variously suggested a minimum of 48 hours over a three year period; a minimum of 10-20 hours per year; and that 20 hours per year is insufficient. One stakeholder suggested mandatory annual, independent assessment of PCW skills and competencies be required to retain registration.

Other options suggested for strengthening CPD for PCWs and others delivering aged care included:

- placing educators onsite in aged care homes with responsibility for upskilling staff or assigning specified experienced PCWs with responsibility for training all new recruits and supporting ongoing CPD
- funding certain aged care providers to provide specified CPD to PCWs
- reviewing the training/courses available to aged care workers to endorse certain quality training and events
- co-designing training that draws on the lived experience of consumers and their representatives
- that qualification/training and CPD requirements would be best addressed through the Aged Services Industry Reference Committee and the Human Services Care Skills Organisation Pilot.

While the impact of COVID-19 on the aged care workforce continues to evolve, experience to date indicates soft skills (such as effective communication and good judgement) are as relevant as core skills, like infection control. Soft skills that enable a workforce to respond to issues as they arise are arguably better managed at the local level where issues can be identified and understood in context.

## Who should manage a registration scheme?

Stakeholder feedback regarding who should be responsible for a registration scheme predominantly fell into two categories:

- that registration should be an extension of worker screening and be managed by the body overseeing worker screening clearance decisions (e.g. ACQS Commission or a new national body), or
- that worker regulation against registration standards should be monitored by a national board under the National Scheme (NRAS).

A limited number of stakeholders made submissions about the involvement of industry or the establishment of an association to oversee registration standards separate to any national body

conducting worker screening, noting that there is room within the regulatory environment to entertain alternative options for monitoring workers against nationally determined standards.

### **National body responsible for registration in addition to worker screening**

As discussed in Chapter 4, stakeholders were keen to look to existing regulatory bodies to support the implementation of a worker regulation scheme. Many stakeholders commented that the natural extension of whichever body was responsible for the worker screening element (including the monitoring of workers against a code of conduct) could also be the body to monitor registration if it were to be mandated.

In practice, this would see the functions of the national body selected to administer and oversee registration standards that involve not only criminal and suitability screening, but also minimum qualifications, CPD and English proficiency requirements.

Given that a national body may also oversee compliance with the code of conduct and manage complaints, stakeholders saw advantages to this function sitting with the one body; in particular, so that complaints that go to requirements of the registration standard can be assessed and fed back into the suitability assessment of a worker.

### **National board under the National Scheme**

In relation to adopting the National Scheme model for registration, stakeholders noted the following advantages:

- the existing accreditation aspects of the National Scheme in identifying equivalent and appropriate levels of training, noting that the specific aged care qualifications would need to be reviewed
- the ability to draw on the existing registration standards from similar national boards (e.g., the Nursing and Midwifery Board of Australia) in designing appropriate standards for PCWs
- the possibility of aligning the work of PCWs with that of RNs and ENs, noting that many stakeholders, particularly community members, referred to PCWs as providing 'nursing care' under delegation from RNs and ENs
- the benefit of introducing PCWs to pathways to becoming ENs and RNs and early acquaintance with the National Scheme approach
- that it could increase competition and wages for PCWs
- the National Scheme already has the infrastructure for a positive and negative public register.

However, stakeholders also identified the following limitations of the National Scheme approach:

- if a national board was set up specific to PCWs, other aged care workers would be excluded
  - If a new national board under the National Scheme was the body responsible for a PCW registration scheme (or the scope of the Nursing and Midwifery Board of Australia was expanded to include PCWs), then the regulation would be limited to PCWs, as defined by their scope of practice, which may lead both providers and workers to sidestep the definition of a PCW in order to avoid regulation.



- the significant costs of registration associated with a national board and the potential that these fees would be borne by PCWs (and potentially providers) without government funding or subsidies
- the distinction between clinical care and personal care was flagged by stakeholders who noted that there are distinct skills required by PCWs in comparison to health practitioners, and that the regulatory operations of the national boards are expressly designed to support the regulatory functions needed to achieve the objectives of the National Scheme for health professions rather than another workforce
- that it would be difficult to align the federated system of health regulation with the Commonwealth regulation of aged care
- the decision to approve a new profession into the National Scheme is made by the Ministerial Council in accordance with the criteria set out in the *Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions* and as such, would need to be considered in light of these criteria.
  - Assuming the sector meets the criteria, there would be an extended timeframe and costs to the implementation as a consequence of the National Law being amended to take account of a new protected title, the establishment or expansion of an applicable national board and a full suite of registration standards that would need to be developed. In 2016 it was estimated that it would cost about \$8.2 million to register an estimated 15,730 professional social workers under the NRAS including the fixed cost of establishing a national board which was estimated to be around \$1.4 million.<sup>29</sup>

Despite comments about the potential for a national board under the National Scheme to be established, on the whole, it appeared that stakeholders considered that the significant work that would need to be undertaken to progress a national board for PCWs, in addition to the limitations of this approach, meant that other options for managing the registration of PCWs should continue to be explored.

### Registration bodies

Some stakeholders also noted the potential for a mandatory requirement for PCWs to be a member of a registration or accreditation body, such as the Australian College of Care Workers (which has designed its own registration scheme for member workers).<sup>30</sup>

Under this arrangement, a single registration authority (either industry or government run) would be created or specified registration bodies would be permitted to sit separately to the national body overseeing the worker screening scheme. A registration body would be responsible for managing the registration of PCWs, and reporting outcomes to the national body for the purposes of flagging any concerns about suitability to enter or remain in the sector.

While the advantages and disadvantages of this option were not fully explored, stakeholders expressed some interest in industry bodies or private organisations performing a registration function informed by national guidelines set by government. PCWs would be required to register with a registration body of their choosing. A registration body would be responsible for monitoring

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<sup>29</sup> Deloitte Access Economics, *The Registration of Social Workers in Australia* (2016).

<sup>30</sup> Australian College of Care Workers, <https://www.careworkers.org.au/>.

member compliance against the registration standards and reporting to the national body about any concerns or complaints.

## Design and implementation considerations

Given that the focus of the Consultation Paper was on the conceptual issue of whether there should be a registration scheme and, if so, its features, rather than who should manage a registration scheme, further consideration is needed regarding the appropriate body to manage registration (noting that this will be significantly influenced by the question of who will manage worker screening).

Specifically, stakeholders noted that further consideration will be required in relation to:

- when registration would be introduced (as compared to the worker screening component of the scheme)
- the progress and outcomes of other reviews and initiatives (e.g. by the Aged Care Workforce Industry Council) in relation to improving qualifications, skills and competencies in the aged care sector that may resolve the need for a registration scheme
- whether registration should be mandatory or whether it could commence as a voluntary option for PCWs
- the specific requirements of the registration standards (e.g., what level of English proficiency will be required and how this will be tested)
- concerns about the cost of establishing a registration scheme and how costs associated with becoming registered or maintaining registration (e.g. paying for CPD) will be borne
- scoping any consequences of introducing registration requirements for the subset of workers that are PCWs, for example:
  - differential treatment of registered health practitioners and allied health workers across different sectors
  - the impact on the pay grade for PCWs under the modern awards<sup>31</sup>
- concerns that mandatory CPD will remove the focus and responsibility of providers in relation to the development of workers
- the potential for initial trials and testing the appropriateness of registration standards while screening is being strengthened
- whether there would be changes to the aged care legislation to provide a legislative basis for regulating individual workers directly, or if the responsibilities to ensure the workforce meet registration requirement would sit with providers
- the transition stages and grandfathering arrangements including recognition of prior learning and experience to support the existing workforce, particularly those in regional and remote areas and specialised providers.

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<sup>31</sup> For example, under the Aged Care Award 2010, a PCW who holds a relevant Certificate III qualification (or possesses equivalent knowledge and skills) and uses the skills and knowledge gained from that qualification in the performance of their work falls under 'Aged care employee level 4 – PCW grade 4'. Imposing minimum qualifications would therefore possibly increase the relevant employee levels for PCWs who do not currently meet the description for grade 4.

## Chapter 6 – Preferred model for further consultation

### Overview of preferred model

Based on the stakeholder feedback detailed above, the following diagram illustrates the key features of a preferred worker regulation model which comprises a worker screening scheme as a priority reform, followed by the inclusion of a registration scheme for PCWs.



## Key elements of the preferred model

The model illustrated above can be implemented in two (or more) distinct phases. This is consistent with stakeholder feedback regarding staging implementation to:

- first strengthen the baseline safeguards in relation to aged care workers through a centralised system of assessing criminal histories and suitability to work in the sector (noting that the development and implementation of worker screening and a code of conduct could be undertaken in parallel), and then
- implement a national approach to qualifications, skills and competencies (and further professionalise the workforce) by introducing registration standards for PCWs.

The key features of the worker screening scheme are proposed to be similar to the NDIS model in terms of what criminal history and conduct is being screened (which could largely be in accordance with the NDIS approach to tiering), the use of a code of conduct to drive and measure worker behaviour and to inform suitability assessment, and the use of a (positive and negative) register to record screening outcomes and decisions made in relation to suitability to work in the sector.

Consistent with the NDIS Code, an aged care code could include requirements to:

- act in accordance with consumers' rights as described under the Charter of Aged Care Rights
- provide care in a safe, competent and high quality manner with care and skill
- act with integrity, honesty and transparency
- promptly take steps to raise and act on concerns about matters that might have an impact on the quality and safety of care provided to consumers
- take all reasonable steps to prevent and respond to all forms of abuse and neglect of consumers.

The key way in which stakeholder preference diverged from the NDIS model was the preference for an aged care model that recognises and automatically accepts workers regulated and cleared by the National Scheme and NDIS Worker Screening Check as having satisfied the aged care screening requirements.

By recognising and accepting screening outcomes under the National Scheme and the NDIS Worker Screening Check for the purposes of aged care screening, this would mean that only those aged care workers who are not cleared or subject to other screening regimes would need to undergo assessment). This acknowledges that a worker screening scheme for some 366,000 people currently working in aged care, with the potential to expand to 980,000 workers by 2050, needs to be sustainable. It also needs to recognise and intersect seamlessly with other like schemes to avoid regulatory duplication (in the interests of workers, providers, consumers and government).

The second stage of an aged care worker screening and registration scheme would focus on the details for registration specific to PCWs. Noting that PCWs make up 70 per cent of the direct care workforce in aged care<sup>32</sup>, stakeholders acknowledged the potential to raise the quality of care provided to consumers through registration standards for PCWs.

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<sup>32</sup> National Institute of Labour Studies, *op. cit.*

Introducing registration as part of future reform (rather than immediately) was well supported by stakeholders, particularly noting the significance of the reform needed to achieve the initial and strengthened worker screening component and the ongoing parallel work of the Aged Care Workforce Industry Council in relation to reviewing opportunities to improve skills and capabilities within the sector. It was also acknowledged that providers remain responsible for workforce skills and capacity in the meantime, such that the urgency to implement registration was not as pivotal as worker screening.

Noting the significant impact of the COVID-19 pandemic on the aged care sector, there may be support for strengthening the expectations of providers (and provider peak bodies) to ensure workforce competencies in critical areas (such as infection control), while further work is undertaken to review qualifications and skills within the sector and in advance of a registration scheme being developed and implemented.

## Design and implementation considerations

As described in the design and implementation considerations in Chapters 4 and 5, the specific features and operational implications of a new worker regulation scheme will require further consideration and consultation. For example, there are several considerations yet to be explored in relation to the preferred model set out above, noting in particular the elements that are still open 'for consideration'.

In summary, for any model adopted, the following operational matters will be key:

- which body will oversee and be responsible for the scheme (including how that body will be resourced)
- whether the same body will be tasked with undertaking the screening function as well as consolidating and managing screening and suitability assessment outcomes for the purposes of a register, and setting and managing any registration standards for PCWs in the future
- how the aged care scheme will intersect with (and complement) like schemes (particularly the NDIS model and the National Scheme), including how information is shared and mutual recognition is enabled
- how the roll out of the scheme will be staged, including implementation timeframes and transitional arrangements for workers
- the impact of parallel initiatives and reviews, including the outcomes of the Aged Care Workforce Industry Council and the Royal Commission, and
- legislative implementation details (including how the scheme could be applied to individual workers within the aged care legislation framework).

## Attachment A: Profile of stakeholders responding to online consultation

In total, 264 submissions were received in response to the *Aged Care Worker Regulation Scheme Consultation* online survey. The data in this attachment relates to the responses to the online survey and does not include the further 12 submissions that were not submitted through the online platform. Please note that the number of responses reflected in some of the tables below, does not correlate with the number of surveys completed because stakeholders were able to select multiple responses to some questions.

**Table 1 Role of stakeholders responding to the survey**

Stakeholders were asked what stakeholder category they most identified with.

Category of stakeholder	Online survey responses
Aged care consumer, including family and/or carer	25 (9.5%)
Personal care worker	13 (4.9%)
Other aged care worker/professional	107 (40.5%)
None of the above	16 (6.1%)
Not Answered	103 (39.0%)

**Table 2 Groups that stakeholders identify with**

Stakeholders were asked if they identify with or belong to one or more of the following groups. Stakeholders were able to select all categories that applied.

Group(s) identified with	Online survey responses
People from Aboriginal and/or Torres Strait Islander communities	6 (2.3%)
People from culturally and linguistically diverse (CALD) backgrounds	21 (8.0%)
People who live in rural or remote areas	43 (16.3%)
People who are financially or socially disadvantaged	10 (3.8%)
People who are veterans of the Australian Defence Force or an allied defence force including the spouse, widow or widower of a veteran	10 (3.8%)
People who are homeless, or at risk of homelessness	1 (0.4%)
People who are care leavers (which includes Forgotten Australians, Former Child Migrants and Stolen Generations)	6 (2.3%)
Parents separated from their children by forced adoption or removal	5 (1.9%)
People from lesbian, gay, bisexual, trans/transgender and intersex (LGBTI) communities	13 (4.9%)
People living with dementia	18 (6.8%)
Not Answered	195 (73.9%)

**Table 3 Location of stakeholders (by state and territory)**

Stakeholders were asked which state or territory they currently reside in.

Location of stakeholders	Online survey responses
NSW	43 (16.3%)
VIC	41 (15.5%)
QLD	30 (11.4%)
WA	13 (4.9%)
SA	24 (9.1%)
TAS	5 (1.9%)
ACT	3 (1.1%)
NT	1 (0.4%)
Other	1 (0.4%)
Not Answered	103 (39%)

**Table 4 Location of stakeholders responding to the survey (categorised by metropolitan, regional or remote)**

Stakeholders were asked to specify whether they lived a metropolitan, regional or rural/remote area.

Location of stakeholders	Online survey responses
Metropolitan	72 (27.3%)
Regional	65 (24.6%)
Rural/remote	24 (9.1%)
Not Answered	103 (39.0%)

**Table 5 Category of stakeholder**

Stakeholders completing the survey on behalf of an organisation were asked to specify which of the following categories best describes their organisation.

Category of stakeholder	Online survey responses
Aged care service provider	56 (21.2%)
Advocacy service	4 (1.5%)
Peak body - Consumer	5 (1.9%)
Peak body - Provider	5 (1.9%)
Peak body - Professional	11 (4.2%)
Peak body - Workers/unions	2 (0.8%)
Health and/or disability service provider	3 (1.14%)
Government department/agency or statutory authority	3 (1.14%)
Other	14 (5.3%)
Not Answered	161 (61%)

**Table 6 Organisations that provided support or services to certain groups**

Stakeholders completing the survey on behalf of an organisation were asked to select whether their organisation provided support or services to any of the following groups.

Group(s) providing support or services to	Online survey responses
People from Aboriginal and/or Torres Strait Islander communities	52 (19.7%)
People from culturally and linguistically diverse (CALD) backgrounds	71 (26.9%)
People who live in rural or remote areas	50 (18.9%)
People who are financially or socially disadvantaged	60 (22.7%)
People who are veterans of the Australian Defence Force or an allied defence force including the spouse, widow or widower of a veteran	35 (13.3%)
People who are homeless, or at risk of homelessness	31 (11.7%)
People who are care leavers (which includes Forgotten Australians, Former Child Migrants and Stolen Generations)	16 (6.1%)
Parents separated from their children by forced adoption or removal	15 (5.7%)
People from lesbian, gay, bisexual, trans/transgender and intersex (LGBTI) communities	47 (17.8%)
People living with dementia.	72 (27.3%)
Not Answered	178 (67.4%)

**Table 7 Location of organisation (by state and territory)**

Stakeholders completing the survey on behalf of an organisation were asked where their organisation operates.

Location of stakeholders	Online survey responses
NSW	26 (9.9%)
VIC	29 (11.0%)
QLD	24 (9.1%)
WA	12 (4.6%)
SA	16 (6.1%)
TAS	7 (2.7%)
ACT	4 (1.5%)
NT	2 (0.8%)
Australia-wide	30 (11.4%)
Not Answered	161 (61.0%)



**Table 8 Location of organisations (categorised by metropolitan, regional or remote)**

Stakeholders completing the survey on behalf of an organisation were asked to specify whether the organisation operates in a metropolitan, regional or rural/remote area.

Location of stakeholders	Online survey responses
Metropolitan	82 (31.1%)
Regional	59 (22.4%)
Rural/remote	38 (14.4%)
Not Answered	161 (61.0%)

**Table 9 Type of aged care service provider**

Stakeholders who provide aged care services were asked to specify what types of care their service delivers and were able to choose more than one.

Types of care	Online survey responses
Residential care	32 (12.1%)
Home care	36 (13.6%)
Commonwealth Home Support Programme services	26 (9.9%)
Transition care	11 (4.2%)
National Aboriginal and Torres Strait Islander Program services	2 (0.8%)
Multi-purpose services	6 (2.3%)
Innovative care services	5 (1.9%)
Short term restorative care services	10 (3.8%)
Not Answered	208 (78.8%)

**Table 10 Size of aged care service provider**

Stakeholders who provide aged care services were asked to specify the size of their organisation.

Size of aged care service provider	Online survey responses
Small	24 (9.1%)
Medium	18 (6.8%)
Large	11 (4.2%)
Very large	3 (1.1%)

## Attachment B: Responses to key online consultation questions

In total, 264 submissions were received in response to the *Aged Care Worker Regulation Scheme Consultation* online survey. The data in this attachment relates to the responses to the online survey and does not include the further 12 submissions that were not submitted through the online platform. Please note that the number of responses reflected in some of the tables below, does not correlate with the number of surveys completed because stakeholders were able to select multiple responses to some questions.

### Table 2 Approach to criminal history screening

Stakeholders were asked to select their preferred approach to aged care worker criminal history assessments.

Option	Total	Percent of all
Option A1 - Providers continue to assess criminal history for workers in line with aged care legislation, funding agreements and guidance	75	28.4%
Option A2 - Centralised assessment of criminal history for workers (based on NDIS model)	146	55.3%
Not Answered	43	16.3%

### Table 2 Information relevant to criminal history and risk assessment

Stakeholders were asked to select the types of information that they would want routinely taken into account should there be a centralised assessment of criminal history for workers.

Option	Total	Percent of all
Option B1 – Information from disciplinary bodies such as health complaints bodies, the NDIS Commission and National Boards	197	74.6%
Option B2 – Information from relevant government agencies	145	54.9%
Option B3 – Information from courts and tribunals	149	56.4%
Option B4 – Information from employers	152	57.6%
Not Answered	41	15.3%

### Table 3 Code of conduct

Stakeholders were asked to select their preferred approach to a code of conduct.

Option	Total	Percent of all
Option C1 – Retain existing arrangements requiring providers to ensure the conduct of aged care workers is in line with the Aged Care Quality Standards and Charter of Aged Care Rights (status quo)	71	26.9%
Option C2 – Adopt the NDIS Code of Conduct for aged care workers	42	15.9%
Option C3 – Develop a new code of conduct specific to aged care workers	114	43.2%
Not Answered	37	14.0%

#### Table 4 English proficiency

Stakeholders were asked to select their preferred approach to strengthening English proficiency in aged care.

Option	Total	Percent of all
Option D1 – Require providers to be satisfied that PCWs have the necessary English proficiency to effectively perform their role (extension of the status quo with improved guidance as to the expected thresholds for proficiency)	53	20.1%
Option D2 – Establish a requirement for PCWs to demonstrate their proficiency in English as part of a registration process (consistent with the National Scheme)	173	65.5%
Not Answered	38	14.4%

#### Table 5 Minimum qualifications

Stakeholders were asked to select their preferred approach to minimum qualifications.

Option	Total	Percent of All
Option E1 – Providers must ensure that PCWs are competent and have the qualifications and knowledge to effectively perform their role (status quo)	27	10.2%
Option E2 – Require providers to be satisfied that PCWs have certain minimum qualifications or competencies	25	9.5%
Option E3 – Establish a requirement for PCWs to demonstrate their qualifications as part of a registration process (consistent with the National Scheme)	177	67.0%
Not Answered	35	13.3%

#### Table 6 Continuing professional development

Stakeholders were asked to select their preferred approach to continuing professional development.

Option	Total	Percent of all
Option F1 – Retain existing arrangements whereby providers must ensure that PCWs are recruited, trained, equipped and supported to deliver the outcomes required by the Aged Care Quality Standards (status quo)	46	17.4%
Option F2 – Require providers to be satisfied that PCWs meet specified minimum CPD requirements	21	8.0%
Option F3 – Establish a requirement for PCWs to demonstrate they have met specified minimum CPD requirements as part of a registration process (consistent with the National Scheme)	159	60.2%
Not Answered	38	14.4%

**Table 7 Register of workers**

Stakeholders were asked to select their preferred approach to the presentation of a register of workers.

Option	Total	Percent of all
Option G1 – A list of workers who have been cleared to work in aged care (positive list)	46	17.4%
Option G2 – A list of workers who have been excluded from working in aged care (negative list)	10	3.8%
Option G3 – A list of workers who have been cleared to work in aged care and a list of workers who are excluded from working in aged care	167	63.3%
Not Answered	41	15.5%

**Table 8 Automatic clearance if cleared to work in disability sector**

Stakeholders were asked whether a person cleared to work with people with a disability should be automatically cleared to work in aged care.

Option	Total	Percent of all
Yes	121	45.8%
No	105	39.8%
Not Answered	38	14.4%