

Consultation on Foundations of the New Aged Care Act SUBMISSION

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Acknowledgements

Community Industry Group acknowledges the traditional custodians of this land, and their Elders past, present and future. We acknowledge and respect their continuing culture, the world's oldest living culture, and the contribution they make to the life of this region and our country.

We recognise the strength, resilience, and capacity of Aboriginal people. Community Industry Group extends our gratitude and heartfelt thanks to our members and other service providers who openly shared their experiences of homelessness and housing instability with us through surveys, consultations, or other methods. Your perspectives are invaluable in identifying the impact of the ongoing housing and homelessness crisis on individuals, families, and communities experiencing vulnerability and disadvantage.



About Community Industry Group

Community Industry Group (CI Group) is the peak body working for not-for-profit community services and organisations in southern NSW. We support community organisations, promote expertise and innovation in community development, foster industry development, and advocate for social justice.

For 30 years, CI Group has taken a leadership role in the local community/human services sector. We regularly engage with those organisations, services, and individuals who support individuals, families, and communities experiencing disadvantage and vulnerability. We also advocate on behalf of not-for-profit community/human services organisations and vulnerable communities to raise awareness of the issues which are impacting service delivery and affecting the lives and outcomes of individuals, families, and communities experiencing disadvantage.

Our members include not for profit service providers who deliver:

- Residential Aged Care
- Home and Community Care & Commonwealth Home Support Programs
- Independent Living for Older People
- Homelessness Supports
- Women's and Domestic Violence Support Services
- Child and Family Services
- Youth Services
- Disability Services
- Generalist Community/Neighbourhood Centres

CI Group has gathered feedback from organisations in our regions to inform this submission.

Our Vision

We have an influential place at the table where decisions which impact on community service organisations and communities are made.

Our Mission

- ▶ Support community organisations
- ▶ Promote expertise and innovation
- ▶ Pursue social justice in the region
- ▶ Foster industry development

The Context

The southern region of NSW, represented by Community Industry Group covers coastal areas sprawled along the southeast coast and regional and rural areas along the hinterland of New South Wales. The region is extremely diverse, with urban centres such as Wollongong (NSW's third largest city), Shellharbour, and Goulburn; regional townships including Nowra and Batemans Bay; many outlying villages, and vast rural areas.

The region's economy has historically been centred around the manufacturing, mining, and agricultural industries, however, now the health and social services industries are the largest sectors across the region. This change is driven by the decline in the heavy manufacturing sector and the rapidly ageing population. Over the next 20 years health care is expected to remain the fastest growing industry in the region.

The population of residents in the region aged over 65 is already higher than the national average. Within 9 years it is expected that one in four people living in the region will be aged over 65.

Introduction

The formulation of a new Aged Care Act to replace existing aged care legislation is of particular importance to CI Group members who work tirelessly to support their communities with higher-than-average aging populations and workforce challenges that are significantly greater than those faced in metropolitan areas.

CI Group members welcome the opportunity to comment on the formation of a new Act and broadly agree with the need for a simplified legislative framework consisting of a single piece of primary legislation and a single set of rules.

CI Group recognises that aged care providers in our region are already striving to meet and deliver the highest standard of quality aged care possible, and have already made significant changes to their operations in recent years to implement new aged care reforms and to meet new provisions in the existing legislation.

Our members are adamant that the new legislation must provide a clear, consistent framework that is straightforward and easy for aged care providers to interact with, that sets out a clear roadmap for reform which includes a workable timeframe and relevant resources and supports, and that is supported by a fair and collaborative accreditation and quality assessment process and backed by adequate funding.

While we welcome the release of the New Aged Care Act exposure draft and the opportunity to provide feedback, CI Group members have noted that it is difficult to engage fully with this process, provide feedback or in-depth recommendations without seeing the accompanying frameworks, namely:

- The IHACPA Pricing Report - which will outline clearly who will receive what funding for what service provision.
- The Government's response to the Aged Care Taskforce's report and the strategies it outlined for a sustainable aged care system.
- Any Draft Regulations to the Act which would provide much needed detail on how the Act will work in practice.
- The finalised Aged Care Quality Standards. Despite assurances from the Department of Health and Aged Care (DOHAC) that the current Standards are unlikely to change, respondents are concerned they are being asked to engage with the Act and Quality Standards consultation without a fixed version and that therefore last minute changes could impact service providers.

- An initial deeming of providers into their Categories of Registration to allow providers to understand in certain terms what provisions of the Act and Quality Standards definitively apply to them.

As in our previous submission, CI Group members urge the Government to ensure that the provisions in the New Aged Care Act are informed by and responsive to the practical challenges of implementing the expectations and requirements of the new human rights/person-centered model, especially in regional and rural areas.

We again call for the Act's implementation to be supported by substantial, holistic, sector-wide government funding and support, targeted particularly to regional and rural providers to strengthen the capability, knowledge, skills, and resources of providers and their staff during and after the new Act and Quality Standards come into effect.

We also urge the Department of Health and Aged Care and the Aged Care Quality and Safety Commission to work closely with providers in a spirit of genuine collaboration, rather than a punitive way, to support, guide, and strengthen the sector's ability to make the necessary changes to transition to the new aged care system.

Over and above these concerns is the high level of anxiety about timeframes proposed by the Federal government for implementation of the Act and Quality Standards. The recent commitment by the Federal Government and DOHAC in various forums and online consultations/Q&As to a hard July 1, 2024 deadline for implementation of what is already shaping up to be a complex rollout is alarming for providers, and we ask that an urgent extension be given, or a sensibly staged rollout be committed to.

In this submission, we put forward both new recommendations and seek further changes in line with the recommendations CI Group made in our previous submission which have not yet been addressed in the new Aged Care Act exposure draft or the abovementioned frameworks and reports.

Recommendations

The Act should include provisions which recognise and support the rights of providers.

We recognise that the Royal Commission Report makes myriad valuable recommendations of provisions to be put into the Act to improve the safety and quality of care for older people.

We equally recommend that the Act also include provisions which recognise and support the rights of providers, other care recipients, and the alignment with other relevant legislation. There are a few examples of provisions within the Exposure Draft which uphold the rights of providers.

The Act should clearly define expectations of providers and avoid ambiguity.

Our members are concerned that key definitions and processes in the Exposure Draft of the new Act are vaguely worded and carry significant penalties for providers if they are not met.

One such significant term identified is the definition at Section 18, part 19, (a) which requires a registered provider to deliver care that ‘puts the individual first’ – an aspirational concept that is too vague to be in the legislation, particularly as pertains to Section 99 of the Act, which places a statutory obligation on a service provider to show continuous improvement towards achieving this or face sanction for breaching Section 99, including deregistration.

Members have also raised concerns that the terms “supporter” and “representative” are confusing, that the definitions are wordy and unclear, and difficult for providers to roll out. Our recommendation is to change the wording to better capture the different levels of responsibility and engagement each position has, suggesting that “primary” and “secondary” supporter are better suited.

The Act be changed to better enact a collaborative approach to compliance.

Namely, that Section 22, Part 13 (a) replace the term “promotes” with the term “supports” to enshrine the better support for providers by the Regulator and further embed a collaborative onus on both parties to meet the “continuous improvement” provisions.

This will play an important part in ensuring providers do not leave the sector in regional and rural areas, where there may be few other services to deliver care for older people.

The criminal penalties proposed for board members of seriously non-compliant service providers should be drastically revised down.

While CI Group members agree that enforcement mechanisms should promote stringent compliance and that consequences for serious offences should be enacted to better protect older people accessing aged care services, the penalties proposed are out of step with other similarly regulated sectors and community expectation.

Providers in regional and rural areas already draw from significantly smaller talent pools for their governance structures than their metropolitan counterparts, often relying on the generosity of local community professionals to fill their ranks.

CI Group members are seriously concerned that the penalty regime proposed will make it vastly more difficult to recruit the right people to boards when the potential punishment for future liability is so steep.

The definition of “high-quality” aged care should be separate from the Act.

CI Group members acknowledge that including the definition of ‘quality’ into the Act was a recommendation of the Royal Commission (#13). However, we recommend a broader definition of quality in the Act, with specifics included in the Standards.

As our member, Warrigal, is stating in their submission:

- Sections of law within an act generally set out the legal requirements or standards that must be met, acting as the minimum standards or obligations that entities are legally bound to comply with. These standards are designed to ensure safety, fairness, and compliance with established norms. Defining high-quality care so explicitly within the Act as a higher goal defies this norm.
- The specifics within the definition of high-quality care should not be written into the Act; rather, it should be a general definition. For example, the definition may refer to the Standards or rules for details. Instead, general concepts such as kindness, compassion, care, person-centred, and culturally safe may be utilised. The specifics for high-quality care then would sit within the Standards, allowing them to ebb and flow as best practice care models emerge.

- There are Sections throughout the Draft New Aged Care Act that can be interpreted as the definition of high-quality care being assessed as minimum requirements and compliance due to the term “quality” being used. See Sections 22 (6+13), 99, 132 and 142.
- Whilst we recognise that including the definition of ‘quality’ into the Act was a recommendation of the Royal Commission (#13), we believe this outcome will be best supported through the inclusion in the Standards into legislation and a broader definition of the characteristics and concepts of quality in the Act. This would allow for the intention of the ‘quality’ practices being above minimum standards and allow for the definition of quality to remain dynamic through updates to best practice models that can be included in the Quality Standards.

Some members have labelled the Act a “residential care act” and are concerned it does not provide clear and meaningful legislative direction for all providers of aged care services.

To this end, the definition of “high-quality”, wherever it is enshrined, should better recognize differing levels of service delivery and clearly exclude lower-tiered services from certain benchmarks which are primarily designed for more intensive, clinical-based forms of aged care service provision.

The Act should include a provision that identifies that care recipients have responsibilities too and that their rights will be supported but may be limited to what is reasonably practicable in accordance with other legislative rights.

While we welcome the inclusion of the Statement of Rights and Principles to the new Aged Care Act, and welcome the qualifier at s.21(2) which states providers “must not act in a way that is incompatible with the rights specified in section 20, taking into account that limits on rights may be necessary to balance competing or conflicting rights and the rights and freedoms of other individuals”, we recommend this be further strengthened to recognize the practical challenges that providers have when delivering quality services.

For example, Work Health and Safety rules may constrain the extent to which an older person's preferences or choices can be given effect. Similarly in regional and remote areas, workforce challenges and staffing shortages may also impact this principle, and thus we seek to have this section strengthened to better support providers.

The general protections for whistleblowers to stand.

CI Group does not support the inclusion in the new Act of specific whistleblower protections. Government should strengthen and streamline existing whistleblower processes instead of creating new and separate whistleblower provisions in the Aged Care Act. This will avoid an unnecessary duplication of work and ensure additional burden is not being placed on already stretched aged care providers for little practical gain.

Our members are concerned at the proposed inclusion of dedicated whistleblower provisions and protections being included in the new Act, when other legislation involving vulnerable people in care do not. These other Acts, like the Children and Child Protection Act, rely on the existing Commonwealth and Corporate whistleblower provisions already in practice.

The statement of intention first published in the *New Aged Care Act: the foundations paper* at page 28 be explicitly included in the new Aged Care Act.

“the new system needs to be constructed and managed to ensure registered providers are funded, supported, and incentivised to continually improve their services, and take into account, and balance the diverse needs of older people accessing aged care services and the challenges facing the sector, particularly in remote and regional Australia.”

Home Care Package (HCP), CHSP service providers, and residential providers in regional and rural areas are already finding the transition to a more complex and documentation-heavy system difficult with smaller teams and budgets to put to the task.

This additional wording would ensure that smaller CHSP and HCP providers in regional areas are funded and supported to deliver services and would enable a genuinely collaborative “continuous improvement” framework, rather than a punitive process, which could result in the net loss of services in thin market areas that cannot afford to lose them.

The new Act should have provisions that ensure people under 65, and Aboriginal and Torres Strait Islanders under 50, with complex care needs can, if necessary, access the care they need in an aged care setting, particularly in regional and rural areas.

CI Group urges the Department to reconsider any hard exclusion, as this creates a gap in the service system, particularly in thin-market areas like ours, and would significantly impact those people and their families/carers.

The Act enables older people to access support at home urgently and to have their needs and eligibility for ongoing services assessed later.

Flexible arrangements to access services such as Meals on Wheels should be included before an assessment establishes eligibility, especially in regional and rural areas where the wait times for assessment can be as long as 12 months.

Implementation

Develop and implement a realistic timeline for the commencement of the Act. Legislative reform must be staged and allow for a sufficient transition period.

Our members strongly suggest an extension. The proposed July 1, 2024 deadline for implementation of what is shaping up to be a complex rollout is beyond unrealistic.

The continued delay in the implementation of the Support at Home Program is of particular concern to HCP and CHSP providers.

The Act be delivered with funding that incentivises specialist staff to relocate and offer their services in rural and regional areas.

Funding must factor in the increased travel costs associated with providing services in these areas.

The Department devise a comprehensive policy to address the wait times and demand for aged care places, especially in regional and rural areas.

This policy would:

- Consistently fund more aged care places on an ongoing basis.
- Provide parallel investment in health, social, and community programs that support older people's wellbeing, social connection, and engagement.

The Regulations and supporting documentation must provide clear, practical guidance on how providers can meet compliance measures, and these must be made available well ahead of the Act coming into force.

Tailored funding should be provided for regional aged care providers to release staff to undertake training in new compliance areas, and to undertake the planning/adjustment work necessary to navigate new compliance complexities and new funding structures.

Commonwealth Home Support Providers (CHSP) members should be funded and supported to understand how the provisions of the Act will apply to them.

Introduce an interim Home Care Package funding arrangement (of 3 months) for older people in hospital to transition them back home.

While we welcome the Act outlining provisions for grants for urgent aged care needs assessments, we believe the introduction of a clear, consistent, and finite funding arrangement is needed to relieve hospital “bed-block”.

By providing guaranteed short-term funding for an older person post-discharge at Level 4, the Act would:

- Enable the older person to return home with domestic and personal care support,
- Activate a priority questionnaire, completed by the individual with support from family that identifies initial concerns in their home,
- Ensure funding is available for rapid modifications to be made to their home as needed,
- Provide adequate time for a full RAS or ACAT to be conducted/re-evaluated to assess ongoing funding requirements.

The Department conducts a review of the hard exclusion of vulnerable individuals in the proposed Act.

The new Act still does not have provision to ensure that young people with complex care needs currently being supported by "aged care" services can continue to have those care needs met - especially outside of metropolitan areas. CI Group urges the Department to review this hard exclusion as enforcing it will create an additional administrative burden on providers, and place unnecessary stress and burden on the young people and their families/carers.

Encourage access in the broadest possible terms and allow for a variety of forms of application (written, online, made by a supporter or advocate).

There is currently no mention other than a reference to the “approved form” in the Act that outlines how an application can be made, and we propose additional provisions be made to widen the scope of access to ensure the process does not put hurdles in the way of accessing care.

To assist providers transition to the new Act, the Regulator should provide:

- Better organized and easy-to-access benchmarking data to help providers compare their performance and identify areas for improvement in one, easy-to-access and use digital portal with dedicated online support and feedback mechanisms. Currently, this information ranges across 8 websites and portals.
- Access to free training packages for providers in regions.
- With the rollout of the new Aged Care Act, additional funding to help operators manage the impact that increased education and strategic activities, would have on staffing, rostering, and their unit costings under the new model.

The Act prioritises the assessments of consumers in rural and regional areas.

Older people living in regional, rural, and remote areas experience additional vulnerabilities including social and geographic isolation but the process from first assessment to service delivery is significantly longer for people in these regions.

Summary of Key Recommendations:

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The Act should clearly define expectations of providers and avoid ambiguity.

The Act be changed to better enact a collaborative approach to compliance.

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Summary of Key Recommendations (cont)

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