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Department of Health and Aged Care
Consultation Hub
AgedCareLegislativeReform@health.gov.au

Dear Colleagues

Aged Care Act Exposure Draft: Comments submission

Thank you for the opportunity to provide feedback on the exposure draft of the Aged Care Bill. National Seniors Australia (NSA) recognises the new Act presents a crucial milestone in long-overdue aged care reform.

NSA is the leading advocacy organisation for older Australians with 230,000 members and supporters. Through our research and advocacy activities, NSA works to improve the wellbeing of all older Australians.

Our organisation has collaborated with 11 other peak bodiesⁱ representing older people and carers in analysing the exposure draft of the Aged Care Bill and consulting broadly among our networks on its efficacy. We are a signatory to a Joint Submission from this collaboration.

In addition to this Joint Submission, NSA wishes to highlight separately two key issues: new funding arrangements for the aged care system; and the model to be used for the Aged Care Complaints Commissioner.

New funding arrangements

In mid-2023, National Seniors collected information about older people's views on aged care funding reform via a survey which went to around 10,000 seniorsⁱⁱ. We reflected these views in our [submission](#) to the Aged Care Taskforce in August 2023.

NSA is disappointed at the delay in making the report of the Aged Care Taskforce publicly available. Most concerningly, the deferral of a Government response to the recommendations of the Taskforce has had flow-on impacts, resulting in the section on funding in the Aged Care Bill Exposure Draft remaining blank.

We recognise that any changes to funding arrangements for the aged care system must receive close and rigorous attention by Government. Increased funding will be essential to improving the quality and safety of the aged care system and the model used to achieve this needs to be carefully calibrated to ensure system sustainability and fairness. However, the delay in public announcement of proposed changes to funding arrangements creates two key concerns for NSA.

Firstly, there must be an opportunity for consultation within the community on Government's specific proposals to alter funding arrangements.

Secondly, the passage of the new Aged Care Act through the Parliament must not be delayed while the details of new funding arrangements are resolved. Older people have waited long enough to receive their rights in aged care and we support the Government's commitment to implement the new Act by July 2024.

To ensure the passage of the new Act by July 2024, NSA would accept a compromise in which the Aged Care Bill reflects the existing funding model, with a commitment from Government to consult on changes to funding arrangements in the coming months, with a subsequent amendment to the Act at an appropriate time.

Aged Care Complaints Commissioner

NSA agrees with the recommendation in the consumer peak Joint Submission (to which we are a signatory), that there should be an independent, statutory position of Aged Care Complaints Commissioner, accountable directly to the Minister (not the Aged Care Quality and Safety Commissioner).

The current arrangement of the Aged Care Quality and Safety Commission (ACQSC) as both regulator of providers and complaints handler has, overall, not adequately met the needs of older people and their supporters who wish to make formal complaints about treatment or service and see action taken.

NSA agrees with the recommendations in the Joint Submission addressing matters such as pathways connecting the Statement of Rights directly with grounds for individual complaint and strengthening complaints resolution procedures. This brief submission does not re-prosecute those positions.

In contrast to the Joint Submission, NSA proposes a further step, that a separate, independent office of the Aged Care Complaints Commissioner be established rather than housing and administering the function within the ACQSC.

There is an inherent tension between the role of regulator and the role of complaints handler and adjudicator. This tension can be exacerbated within emerging regulatory models which emphasise education and continuous learning, improvement and innovation over strict or punitive compliance.

NSA supports the basic framework of the proposed new regulatory model for aged care which emphasises person-centred, rights-based, continuous improvement and risk-proportionate regulation, embedded in the legislation.

However, in our submissions (in [October 2022](#) and [June 2023](#)) to consultations around the new regulatory model we stressed the importance of keeping the right balance between the laudable facilitative approach aimed at improving the system overall and the compliance approach directed at specific service providers.

The compliance approach remains crucial to ensuring both the strong management of poor performers or removal of bad actors in the sector and as the pathway for individual aged care service users to complain about their experience of care if it falls short of standards and rules.

The proposed new regulatory model acknowledges and embeds both roles. However, NSA is concerned the change underway in regulatory cultures demonstrates more interest in individual complaints as a source of data for system learnings and improvement than a safeguard for individual consumers of aged care.

Complaints tend to increasingly be seen as ‘the canary in the coalmine’ and primarily as a source of intelligence for regulatorsⁱⁱⁱ. Indeed, the main argument often given for maintaining an Aged Care Complaints Commissioner inside the ACQSC is precisely for the ease of regulatory learnings that can be gained.

NSA argues that treating the individual complaint largely as a data point within regulatory learning might make good sense for a regulator but can be inconsistent with the principle of person-centred care and the individual rights that are to underpin the reformed system. Hence, we recommend a properly resourced, separate office of the statutory, independent Aged Care Complaints Commissioner with individual complainants as its focus and employing best practice contemporary complaints handling and resolution principles and procedures.

The regulator and the complaints commissioner do not need to be organisationally entwined to share information and insights. The establishment of good reporting, communication and data sharing between two closely associated organisations is entirely feasible.

In conclusion, NSA appreciates the opportunity provided by the Government to comment on the Aged Care Bill before it is presented to the Parliament.

Yours sincerely



Chris Grice
CEO

ⁱ OPAN, COTA Australia, Dementia Australia, Carers Australia, FECCA, Association of Independent Retirees, EAAA, NAPWHA, LGBTIQ+ Health Australia, PICAC Alliance, RSL Australia

ⁱⁱ National Seniors Australia & Catalyst July 2023. Unpublished data

ⁱⁱⁱ <https://anzsog.edu.au/learning-and-development/events-and-conferences/complain-complain-complain-how-complaints-can-and-should-change-regulatory-practice/>