

14 October 2022

Department of Health and Aged Care
AgedCareRegModel@Health.gov.au

Consultation Paper No.1 – A new model for regulating aged care

National Seniors Australia welcomes the opportunity to make a submission in response to *Consultation Paper No.1 – A new model for regulating aged care*.

As the peak body representing older Australians, National Seniors has been actively engaged in aged care reform over many years, drawing on evidence and feedback from older Australians through our research surveys and informal feedback methods.

We support the adoption of reform recommendations from the Royal Commission into Aged Care Quality and Safety of which this consultation is attempting to implement, in part.

National Seniors provides the following observations about the proposed regulatory framework for consideration.

Foundations of the new model

1. National Seniors supports the foundations put forward to underpin the new model.

Foundation 1: Rights-based and Foundation 2: Person-centred

2. We support a rights-based person-centred approach to aged care. Given that aged care is in effect a pillar of the broader health care system, a rights-based person-centred approach is consistent with the broader health care system (e.g. as is outlined in the Australian Charter of Healthcare Rights).
3. At the core of a rights-based approach is the expectation that all care recipients will receive an adequate level of quality care as a minimum, at all times – regardless of who they are or where they live.

Foundation 3: Risk-Based

4. We support the move to a risk-based approach within the new model and the use of a risk-proportionate model to ensure that regulation, and regulatory burden, is commensurate with

risk, provided there are mechanisms to protect care recipients against malfeasance from providers and workers deemed low-risk.

5. Risks should be relative to the provider but also the frailty or vulnerability of a care recipient.
6. In this regard, we support the intention to manage risk in ways that:
 - a. promote the rights of older Australians
 - b. protect the dignity, choice and independence of older Australians
 - c. maintain high-quality care and services for older Australians
 - d. build confidence in the aged care system.
7. Higher risk services with care recipients receiving higher levels of care will need increased resourcing to meet higher regulatory burden to ensure they remain operationally and financial sustainable.

Foundation 4: Continuous improvement

8. We support the inclusion of continuous improvement as the fourth foundation of the new model. There must always be opportunities for review to build on and improve processes and outcomes based on reflection on what works and doesn't work.
9. Implicit in this will be opportunities for ongoing feedback from care recipients, their carers and advocates.

Safeguards and Tools

Safeguard 1: Registration

10. We support the idea that provider and worker registration is risk based but that all providers and workers meet minimum requirements. This will reduce compliance burden for providers and workers offering low risk interventions, reducing costs and maximising services for care recipients. All workers should be registered to work in the sector and meet minimum suitability via a screening process.
11. Registration in thin markets, may require different registration criteria.
12. Workers engaged in higher risk activities, should have these qualifications registered.
13. Appropriate mechanisms to investigate complaints against registered workers should be available.

14. Will require effective monitoring systems to ensure that providers and workers are not operating beyond the scope of their approved mandate and are not delivering services requiring more stringent regulation due to higher risk.
15. We support the proposal to require re-registration to re-test the suitability and capability of a provider based on risk.

Safeguard 2: Provider responsibilities

16. We support moves to streamline reporting and use risk-based reporting regime, provided it is coupled with a random assessment regime. The regulator should be able, at any time, to undertake monitoring and checks on providers without notice to assess compliance and quality of care regardless of whether they are high or low risk. The threat of random assessment ensures that all providers and workers, regardless of their risk must operate to the care and quality standards required.
17. Incident reporting should be monitored to determine if there is specific staff member or care recipient involved in multiple incidents.
18. If there are multiple incidents attributed to a provider or worker, this should result in stricter reporting requirements to act as both a deterrent and risk management tool.
19. We agree that providers and workers must adhere to an appropriate code of conduct. In this regard, there must be a clear process to enforce adherence to a code of conduct, and clear guidelines to manage failure to meet the code of conduct, including sanctions, fines and otherwise and to facilitate deregistration when warranted.
20. There should be an obligation to ensure care recipients and their carers are aware of and able to understand the code of conduct and means by which they can raise concerns about failures to meet the code.

Safeguard 3: Market oversight

21. Transparency is critical in monitoring and compliance systems. The effectiveness of these systems relies both on the quality of information collected and whether this information is available for independent scrutiny. Information collected for market oversight purposes should be publicly available for scrutiny by advocates and other independent third parties.
22. As the Royal Commission has shown, complaints processes are ineffective without the means to detect mistreatment. It was only through the actions of carers setting up monitoring devices that situations of mistreatment were uncovered. This is especially important in situations where care recipients have capacity impairments (e.g. dementia) and are reliant on carers to make decisions on their behalf. Under a rights-based person centred framework, older Australians and their carers should have the right to request the use of monitoring processes and technologies to ensure care is being adequately provided.

23. The monitoring regime must be responsive to failures, and quickly able to provide support to turn around the performance of a provider to ensure the safety of care recipients, and include penalties for inaction. This means having clear triggers to shift a regulator's approach from:
- a hands-off monitoring and compliance approach to
 - a more rigorous interventions to support a provider failing to meet standards of care, to
 - situations requiring the regulator to take action to deregister a provider.
24. Monitoring should also include monitoring of the financial sustainability of providers.
25. Unless there is a requirement for providers to make their financial affairs available to regulators, there will be no mechanism to anticipate the closure of an aged care service facing fiscal pressures. This is critical to avoid situations where provider exits leaving care recipients without the support they need.
26. Providers should be obligated to alert the regulator if there are reasons why they may become insolvent or unable to deliver services in the future to:
- give the regulator time to assist them, or
 - give the regulator time to arrange alternative services
27. It is important the transition to the new regulatory framework delivers appropriate support and resourcing to allow providers and workers to manage change and maintain service quality. This will be especially important for smaller providers and providers in circumstances.
28. Providers will likely need a grace period as the new processes and obligations are put in place, with an emphasis on supporting providers rather than punishing them during the transition period.

Thank you again for the opportunity to contribute to this consultation. Please contact us directly if you require further information.

Yours sincerely



Professor John McCallum
Chief Executive