



QACAG SUBMISSION

A New Aged Care Act: the foundations

Consultation paper No. 1

SEPTEMBER 2023

About QACAG

Quality Aged Care Action Group Incorporated (QACAG) is a grassroots community activist group that aims to improve the quality of life for people in residential and community aged care settings. QACAG is made up of people from many interests and backgrounds brought together by common concerns about the quality of care for people receiving aged care services.

QACAG Inc. was established in 2005 and became incorporated in 2007. Membership includes older people, some of whom are receiving aged care in nursing homes or the community; relatives and friends of care recipients; carers; people with aged care experience including current and retired nurses; aged care workers and community members concerned with improving aged care.

Membership also includes representatives from: Older Women's Network; Combined Pensioners & Superannuants Association of NSW Inc.; Kings Cross Community Centre; Senior Rights Service; Multicultural Communities Council of the Illawarra; Public Services Association; Carers Circle; Aged Care Reform Now; NSW Nurses and Midwives' Association and the Retired Teachers' Association.

QACAG members welcome the opportunity, through this submission, to provide input to *A new Aged Care Act: the foundations. Consultation paper No.1.*

Margaret Zanghi

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President

QACAG Inc.

QACAG members are pleased the focus of the proposed new Act places older people who need aged care at the centre of the aged care system. It will be vital to ensure these principles are not only embedded in the Act, but in any subordinate legislation and the system for regulating aged care. The foundations of the new Act will set the scene for years to come, we therefore urge this work is not rushed to ensure we get it right.

To ensure the consumer voice is carried in this submission we held a hybrid caucus for members, held individual conversations, invited handwritten and electronically submitted feedback and sought feedback from our organisational membership which includes consumer and workforce representatives. The feedback received is incorporated throughout.

We have focused our feedback on three of the four main areas identified:

Whether the proposed foundations of the new Act will support fundamental change in the aged care sector and ensure the needs of older people are placed at the centre of the new aged care system.

The proposed Statement of Rights and Statement of Principles and whether they clearly articulate what older people should be able to expect when accessing funded aged care services.

Whether the proposed foundations set out in this discussion paper will empower users of the aged care system and provide clarity for, and promote confidence among, older people, their family members, and representatives.

Whether the proposed foundations of the new Act will support fundamental change in the aged care sector and ensure the needs of older people are placed at the centre of the new aged care system.

We note there is debate regarding the definition of high-quality care. We have opted not to provide extensive feedback relative to this because we firmly believe the definition is of less value than the experience of the person receiving care. However, we know what high quality care does not look like, and we define this by the absence of well skilled, well-resourced, protected, and empowered workers leading to failure to uphold human rights. We suggest this be considered in finalising the definition of high-quality care.

The changes required to build a capable and robust workforce have not been considered to the depth we would expect in the proposals. **Reforms must consider interconnectedness between the aged care workforce and human rights.** Quite simply, there is no guarantee of quality, safe, rights-based care if the workforce providing this is too small, poorly skilled, and disempowered.

Whilst the role of provider governance, financial prudence and proportionate regulation are important components of a rights based aged care system, there must be acknowledgement and consideration of those who are the touchpoints for care recipients. Providers and regulators are distant, whereas workers are the human hands and face of the services we receive.

We expect a rights-based Act to lay the foundations to require a well skilled, well resourced, and empowered workforce which will be operationalised through any further revisions to the Aged Care Quality Standards. We know, through our personal experience and evidenced through the Royal Commission into Aged Care Quality and Safety, unless legislation explicitly requires safe staffing and skill mix, it will simply be another commodity providers rationalise to maximise profit.

Similarly, legislation needs to be operationalised through Aged Care Quality Standards and policy which clearly defines expectations round staffing and skill mix in measurable terms. Whilst care minutes and RN 24/7 are a good start, they are no guarantee of rights-based quality aged care. The Aged Care Quality and Safety Commission needs the tools and capability to be able to adequately monitor not only compliance with minimum care minutes, but determine when more staff, or more clinical input is required. Strong penalties prescribed

in the new Act must be available where failures to provide a sufficient workforce contributes to failure to provide safe, quality care.

Lower-level aged care workers need to be licensed through a regulatory body. it would make sense to have registration through Ahpra, since much of formal aged care is health care provided to those nearing end of life, cognitively impaired or with complex comorbidities. In addition, introduction of RN 247 means all aged care facilities will utilise a nurse led model of care. Home care is likely to involve greater delivery of health care as people remain in their homes longer, supported through primary healthcare services.

Currently the worker code of conduct creates duplication in the regulation of registered nurses, and in some states, this is triplicated through bodies such as HCCC. Having workers all aligned into one registration body would remove ambiguity, regulatory burden and ensure workers were appropriately skilled, insured and monitored.

“What we need is the right people, with the right attitudes to work in aged care, the right training, in the right place at the right time. You must have good remuneration too and reward for personal development. A pathway to progress. The right for the individual is one thing but the right path of the workforce is also important” QACAG member

“We need a separate role through Ahpra for care workers, an enrolment system like nurses with yearly re-registration and nationalised, harmonised training. Every year you would have to prove you have achieved the right training. You need to reward workers too with a career structure.” QACAG member

“Unless you have enough fully trained staff, and I don’t mean just one single RN, you will never get professional care because staff cannot do the job properly.” QACAG member

“Staffing is the number one issue, if they do not get it right nothing will really change, and care outcomes will not improve. There is a need for legislated staff ratios of RNs/ENs and Nurse Assistants. Otherwise, care cannot be delivered at the level residents and families expect and need. Do not leave staff levels to providers. It has never worked.” QACAG member

“Transparency and accountability need to be strongly legislated. Tighter regulation of the way money provided by the commonwealth is used to uphold rights including providing higher numbers of workers”. QACAG member

Recommendation One

The Act must legislate for a well skilled, well-resourced, and empowered workforce which can be operationalised through the Aged Care Quality Standards.

Recommendation Two

Strong penalties prescribed in the new Act must be available where failure to provide a sufficient workforce results in failure to provide safe, quality care.

Recommendation Three

The Act must make provision for care workers to be licensed and regulated through Ahpra, negating the need for duplication through the worker code of conduct arrangements and creating national consistency relative to worker training and conduct.

The second 'bigger picture' issue for our members is the distinction made in the new Act between commonwealth and non-commonwealth funded services. Our understanding is the Act and its provisions will have a sole focus on commonwealth funded services. Whereas the Royal Commission into Aged Care Quality and Safety highlighted the need for widespread reform relative to the way Australia provides for its older population.

Our question is, are we at risk of creating a two-tier system if we focus the new Act on just a small part of aged care? For example, the provision of privately funded care acquired through platform care agencies operating in the gig economy. Whilst not using commonwealth funds, there is still risk of abuse. Similarly, the retirement village creep into formal care provision cannot be ignored in the legislation.

There is a lack of clarity about 'right of reply' for those accessing care through platform care providers and retirement villages. **We believe the new Act needs to make provisions to bring broader care provision and self-funded services into some form of regulation.** The new Act must be future proof to recognise the digitalisation of the care industry and provision of formal care in settings other than residential aged care facilities.

"How can you have an aged care act for one element of the population and not the other? Just because I have paid for my care myself and not had that funded – does that mean I don't have same rights as everyone else?" QACAG member

Recommendation Four

The new Act must provide safeguards for those self-funding their care.

Recommendation Five

The new Act must recognise other self-funded care services as formal care provision and provide protections.

The proposed Statement of Rights and Statement of Principles and whether they clearly articulate what older people should be able to expect when accessing funded aged care services.

“The statement of rights is important, but we also need these to embed worker provisions. Without making the link between provider input and user-output any rights embedded are doomed to fail.” QACAG member

The second right states the person is entitled to equitable access to have their need for aged care assessed but doesn't say they have the right to aged care services. This is a fundamental flaw which needs to be clarified since **anyone entitled to receive aged care should have this right stated explicitly in the new Act.**

More broadly, **the rights need to be enhanced to ensure the needs of those from diverse backgrounds are not disadvantaged.**

Older individuals from Culturally and linguistically diverse (CALD) backgrounds encounter significant difficulties in accessing My Aged Care. Language barriers exist, with interpreters often unavailable or underutilised due to lack of awareness. Many individuals are unaware of how to choose interpreter options due to a lack of understanding the options in English.

To address these issues, it's crucial to ensure that My Aged Care provides language options for older CALD individuals. This would greatly enhance accessibility and empower them to make choices.

Similar barriers exist for the complaint mechanism. It's important that these pathways empower seniors from diverse backgrounds and allow them to give feedback and make complaints in their preferred language and format. This includes providing support through

advocates who understand their culture and beliefs. Some older people might prefer audio recordings if they have trouble with reading and writing in their native language.

Recommendation Six

The following changes to the Statement of Rights should be made to enhance their applicability to diverse communities (numbered to correspond with draft rights).

- 2. equitable access to older people living in Australia, including visa holders to have their needs for aged care services assessed. Culturally appropriate assessments ensure accurate understanding of their needs.**
- 3. exercise choice between available aged care services they have been assessed as needing, and how these services are delivered, that includes services that accommodate specific cultural diets, traditions, and practices.**
- 4. communicate in their preferred language or method of communication, with access to onsite interpreters, including in regional areas, and communication aids as required.**
- 9. equitable access to palliative and end-of-life care when required: older individuals should access palliative care that respects their cultural beliefs surrounding death and dying. This includes accommodating rituals and practices appropriate to their cultural experiences.**
- 11. have their identity, culture, faith, spirituality, and diversity (CALD, LGBTIQI, ATSI) valued and supported, including in accessing funded aged care services that are culturally appropriate, trauma aware, holistic, and healing informed.**

Whether the proposed foundations set out in this discussion paper will empower users of the aged care system and provide clarity for, and promote confidence among, older people, their family members, and representatives.

Our members have concerns about the proportionate system for regulation. Whilst not a focus of this consultation it will no doubt be considered in the legislation. We believe current

measures which include reportable incidents and enhanced complaints systems facilitate a race to the bottom approach which relies on things going wrong. A rights-based Act should ensure things go right. **We would expect the Act to make provision for prevention of incidents through capable and visible regulation, and significant and timely penalties for those not doing the right thing.**

We have concerns that registered aged care providers are to be given responsibility for operationalising the whistleblowing protections provided for through the new Act. **Obliging providers to have an internal whistleblowing policy and communicate the same, offers no guarantee of protection for both users of, and workers providing care.**

There is agreement among our membership that workers are the best people to drive quality and raise concerns. As the main contact for people using services, and main deliverer of services, **workers must be given a protected voice to raise concerns within the new Act.** For too long the workers have been the missing element but are such a vital part of ensuring rights-based care.

Workers are the daily eyes and ears of the service and are there when regulators, and visitors are not. They can provide a valuable real-time picture of the quality of care which is so important when operationalising a risk-based system for regulation.

We feel the consumer advisory body is a good idea. However, we are concerned the guidance for providers on how to operate a consumer advisory body¹ utilise vague terminology so problematic for ongoing regulation. Utilising 'choice' words such as 'can' and 'should' also allow providers scope to cherry-pick consumers who are unlikely to challenge systems. Similarly, the guidelines require providers to evidence records of discussions and outcomes, not consumers. **It would be better for the new Act to be more prescriptive and use partnership approaches to operational governance.**

In addition, having a consumer representative body such as OPAN as a source of advocacy should be embedded in the new Act. Given the power imbalance that exists and high numbers of cognitively impaired older people, it is unlikely a provider-led consumer advisory body will provide true empowerment for people accessing aged care services.

¹ <https://www.agedcarequality.gov.au/resources/consumer-advisory-body-fact-sheet>

Additionally, we need worker voice with **workers empowered to act as advocates**. Our members will go to the carer providing most of the care more than a facility manager. There's a real power imbalance that needs to be considered in the arrangements for whistleblowing. Our members would feel much more empowered speaking to a care worker, or nurse than a manager in an office.

A system such as work health and safety representatives, union representatives or occupational health and safety representatives formalised in the workplace as a point of contact for whistleblowing would ensure workers have protections. Workers making disclosures in good faith would be more likely to go to a union representative to raise issues rather than the regulator.

“Whistleblowing rights within the parameters of the organisation. Would these really help workers to make a complaint if they must do this within the management constraints?” QACAG member

“A care recipient in my support group came to me because they didn't know what to do, and I raised the complaint for them.” QACAG member

“People can think they are giving good care and if you challenge anything you are seen as the problem”. QACAG member

“People live in fear of retribution, I had no difficulty going to the Director of Nursing in a calm manner with my concerns, but employees are afraid to speak up, particularly those from CaLD backgrounds, they need support to speak up.” QACAG member

Medication safety needs to be brought out in the new Act, it is such a large component of the formal care delivered, it is a top area of complaint to the current regulator and yet there has been a failure to do anything for years about the systemic issue.” QACAG member

“Frontline workers are the experts in their field, when they say this needs to be fixed or this will happen, that voice needs to be heard way ahead of it becoming a complaint or concern or needing a whistleblowing issue. Workers have been damaged so badly they have had to leave their careers by being brave enough to stand up and raise concerns when things have been raised.” QACAG member

Recommendation Seven

The new Act must make provision for prevention of incidents through capable and visible regulation, and significant and timely penalties for those not doing the right thing.

Recommendation Eight

The new Act must be more prescriptive and use partnership approaches to operational governance.

Recommendation Nine

Workers must be considered key stakeholders in upholding rights embedded in the new Act and given a protected voice to raise concerns in good faith.