



Submission to the Senate Standing Committees on Community Affairs

on the

**Aged Care and Other Legislation Amendment
(Royal Commission Response No. 2) Bill 2021**

Prepared by

COTA Australia

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COTA Australia

COTA Australia is the national consumer peak body for older Australians. Its members include State and Territory COTAs (Councils on the Ageing) in each of the eight States and Territories of Australia. COTA Australia and the State and Territory COTAs have around 40,000 individual members and supporters and more than 1,000 seniors' organisation members, which jointly directly represent over 500,000 older Australians.

COTA Australia's focus is on national policy issues from the perspective of older people as citizens and consumers and we seek to promote, improve and protect the circumstances and wellbeing of older people in Australia. Information about, and the views of, our constituents and members are gathered through a wide variety of consultative and engagement mechanisms and processes.

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Introduction

COTA Australia welcomes the Bill and supports its purpose of enabling essential reforms to the aged care system recommended by the Royal Commission. We strongly encourage its passage through the Parliament by the end of the year to ensure that these urgent reforms can continue to be implemented in a timely fashion.

The case for each of the various provisions in this Bill has largely been set out in the Final Report of the Royal Commission into Aged Care Quality and Safety. We do not repeat the substantive cases in this submission but are happy to talk to each if requested. Rather, in this submission, we address specific issues related to this Bill and the future subordinate legislation.

The Bill predominantly provides the policy framework for the development of subordinate legislation which will set out operational detail and requirements. COTA Australia strongly encourages consumer and sector consultation on the subordinate legislation.

These legislative amendments are to the current Act and will later need to be included in the new Aged Care Act recommended by the Royal Commission and to be in place by mid-2023. The preparation of the new Act needs to involve an extensive co-design process followed by a consultation process on the Exposure Draft of the Bill before it is introduced to Parliament.

Many older Australians are confused about the timing and process for Government consultation on aged care reform. COTA Australia has called for a clearer implementation and engagement approach that includes older Australians and their representatives, and we are pleased to advise that the Department has responded positively to this and established a collaborative process on this with aged care consumer peak bodies.

COTA Australia welcomes recent Government amendments to this Bill regarding the membership of governing bodies and restrictive practices, which followed our initial feedback on the draft Bill.

1. A new classification and funding model for residential aged care (AN-ACC) to replace the current ACFI

COTA Australia welcomes the shift to a new classification and funding model. We and provider peaks have been involved in the process from its inception. COTA does have some concern as to whether the case-mix based model will result in a disproportionate emphasis on clinical treatment and insufficient on social, intellectual and emotional support. Shadow assessments are currently underway, and we reserve our final position on the model when these assessments are completed. However this will be resolved in the consultative process and we support the legislation enabling a new funding system.

It is also important that Government communicate with consumers and their families about the functioning and implications of the new model particularly in relation to increased individualised choices and decision making. This should occur well in advance of the implementation of the new model.

Access to residential respite care under the new model should be carefully monitored and assessed. The increased flexibility of providers to determine how much residential respite is provided due to the removal of limits on the number of respite days has the potential of resulting in fewer genuine respite positions being available for older people.

Whilst supporting changes to the provision of residential respite, mechanisms should be put in place that ensure improved access and better outcomes for all aged care consumers.

2. Screening for aged care workers and governing persons of aged care providers

COTA Australia supports the introduction of the screening process for aged care workers and governance.

We are disappointed that currently there is no Government commitment to include a minimum qualification level in aged care, as recommended by the Royal Commission.

A clear plan and pathway towards this goal must be included in the Government's approach to the aged care workforce to increase the safety and quality of services for older people.

Whilst the single screening solution will replace the need for each individual organisation to complete a police check, it does not appear to replace the need for a Working with Vulnerable Persons Card currently in place in some jurisdictions. Jurisdictions need to play their role in sorting this out.

COTA Australia recommends that the national Aged Care (and NDIS) screening and state and territory Working with Vulnerable Persons regulatory processes be aligned. This should be on the agenda of the Meeting of Attorney Generals and a progress report produced by 1 March 2022.

3. Code of Conduct

COTA Australia recommends that, in the development of the new Aged Care Act and single home care system, the Government consider how the Code of Conduct can be applied to non Approved Provider individuals and organisations who deliver aged care services to enhance consumer choice, control and self-direction.

The NDIS Code of Conduct applies to both 'registered' and 'unregistered' providers empowering choice and control of NDIS participants to directly choose unregistered providers (e.g., local lawn mowing service) while ensuring that they continue to have some link to the NDIS Quality and Safety Framework.

In the aged care system, there is only a concept of 'Approved Provider' without any recognition of 'unregistered' providers in the legislation. This places the onus on the approved provider to ensure that any subcontractor of their organisation complies with their responsibilities. However, there is limited visibility and attention given by the Aged Care Quality and Safety Commission to 'unregistered' providers.

In the aged care system, the control that approved providers have to have over the work of subcontractors reduces the capacity of consumers to determine who can deliver services to them.

Older Australians who self-manage their home care services should have greater autonomy over who provides those services, particularly non-clinical services. Greater autonomy for older people in deciding who can provide their care should be a clear principle in the future Aged Care Act.

There are many examples of why older Australians may choose safe, unregistered providers to deliver non-clinical services. Older people may ask their neighbour to help get them into bed at 11pm because this is not offered by an approved provider. An older person may choose to continue

employ a cleaner they have used for many years. Through their own social networks, an older person may engage a local teenager for garden maintenance.

In this Bill, it is ambiguous whether the provisions apply to subcontractors of the approved provider. The Bill introduces a definition of an 'aged care worker' which may attempt to incorporate some type of 'unregistered' provider of services in sub clause b ii. However, the Code itself introduced in proposed paragraphs 74AA-74AD appears to only apply to aged care workers of approved providers.

COTA Australia notes that the proposed Code of Conduct is intended to apply to aged care workers. We note that some workers in aged care are already members of professional registration processes such as nurses and physiotherapists. It is unclear to us whether such registration via AHPRA would negate the need to have additional requirements through the proposed Code of Conduct or if Code of Conduct should only apply to workers not covered by an alternative recognised AHPRA process.

Further we note that individual civil penalties may apply to workers for non-compliance with the Code and draw the Committee's attention to the penalties associated, for consideration of whether such penalties are comparable for an individual on the salary of an aged care worker.

4. Extension of incident management and reporting to home-based care

COTA Australia supports the Serious Incident Response Scheme applying to appropriate home care situations and new responsibilities for home care providers to implement and maintain an incident management system, to report incidents to the Quality Commission and protect individuals reporting incidents.

We note that the specific requirements relating to the management, assessment and response to incidents will be included in the *Quality-of-Care* Principles.

COTA Australia calls on the Government to ensure there is an Exposure Draft consultation of the proposed principles, to have finalised Quality of Care Principles available no later than 28 February 2022 (four months prior to their commencement).

5. Changes to governance arrangements for approved providers

COTA Australia is very supportive of changes designed to ensure approved providers increase the independence and skills of their board or other governance body.

We recommend that targeted transitional support to meet new governance arrangements be implemented for appropriate Commonwealth Home Support Program (CHSP) providers.

Currently, CHSP providers, who support about 840,000 clients, are not under the Act and would not be subject to these requirements unless Government makes comparable changes to the CHSP Program Guidelines.

While we understand that in 2023 the separate Home Care Package program and CHSP will cease and become a new single Support At Home program, we encourage government to consider what transitional support they should provide to appropriate CHSP providers to prepare them for the future additional governance requirements they would need in order to be an approved provider under this new system; and also consider the appropriate proportional regulation that may apply to future single service CHSP providers, especially those that exclusively deliver non-clinical services (such as transport, meals, gardening, domestic assistance, etc).

COTA Australia looks forward to working through these issues with Government as part of its consultation of the future single home care system.

COTA Australia supports changes that will:

- introduce requirements for approved providers to report changes to the suitability of all key personnel associated with the approved provider and empower the Aged Care Quality and Safety Commission to make determinations as to the suitability (or otherwise) of key personnel. We support the broad range of “suitability matters” the Bill requires the ACQSC to consider in making such an assessment.
- require that all governing bodies of approved providers who have more than 40 clients must have most members be “independent non-executive members” and that at least one member has “experience in the provision of clinical care”.
- allow providers who have less than 40 clients AND less than 5 members of their governance body to be exempt from the governing body requirement (as per Government’s amendments sheet ZB120 introduced in the House of Representatives). Applications by providers to the ACQSC for exemptions should be publicly disclosed and monitored carefully. We are inclined to the view that providers should have to demonstrate that they have not had more than five Directors for at least the last 12 months.
- require that approved providers have a “quality care advisory body” and that the governing body of the approved provider receive a report from that advisory body no less than once every 6 months.
- require approved providers to offer to its consumers the opportunity to establish a “consumer advisory body” to provide feedback directly to the provider governing body. This offer must be made in writing to care recipients and their representatives at least once every 12 months. If established, this places a requirement on the governing body to provide written feedback to the consumer advisory body on how consumer information contributes to organisational decisions and actions.

Support for smaller organisations

COTA Australia supports the proposed amendments to strengthen aged care governance bodies and believes that all organisations should be required to have comparable governance arrangements. Nevertheless, we recognise the transitional issues facing some smaller organisations and suggest that dedicated training and support should be enabled by Government to support these organisations make the transition to the new system.

Further we note in anticipation of a streamlined Support at Home program, the Department should ensure that Commonwealth Home Support Programme (CHSP) providers who are smaller organisations are able to access this targeted training and support transition scheme to prepare for requirements to be an Approved Provider under a future Aged Care Act.

6. Information sharing between regulatory authorities

COTA Australia supports the sharing of information between regulators to ensure high quality protection of older Australians accessing aged care.

We are being actively consulted and engaged on consultation processes that identify opportunities for greater regulatory alignment across the care and support sectors, not just aged care.

7. Strengthened regulation of Refundable Accommodation Deposits

COTA Australia very strongly supports the changes to allow the regulator to receive additional information regarding the Refundable Accommodation Deposits. This is long overdue.

8. An independent pricing and costing function for aged care services – the Independent Health and Aged Care Pricing Authority

COTA Australia supports the establishment of Independent Health and Aged Care Pricing Authority.

We also support the creation of a Deputy Chair (Aged Care Pricing) who will also chair the Pricing Authority's proposed Aged Care Advisory Committee made up of six other members appointed by the Minister.

COTA Australia seeks some assurances and greater clarification about the publication of pricing information for aged care services.

We note that the publication of certain "independent information" appears to be at the discretion of the Minister, whereas the current Independent Hospital Pricing Authority has a legislated mandate to publish independent advice about Hospital Pricing, with or without the approval of the Minister (Section 4).

The legislation mandates that the new Authority will perform "health care pricing and costing matters" yet for aged care makes a non-specific reference to "aged care matters" (Clause 20) which is later discussed as "to provide advice about certain aged care pricing and costing matters to each relevant Commonwealth Minister" (Clause 5).

COTA Australia urges the Committee to consider whether it should recommend that there should be a legislated mandate on the Authority to publish a report each year for both hospitals and aged care.

We note that the Bill transfers the responsibility of appointing the Pricing Authority CEO from the Board of the Pricing Authority to the Minister. We note that this could be perceived as reducing the independence of the Pricing Authority.

9. Restrictive Practices

COTA Australia very strongly supports changes regarding the *Quality-of-Care* Principles and informed consent in relation to the use of a restrictive practice where care recipients lack capacity to give consent. Restrictive practices have been a major issue for decades and this is the strongest attempt to change that ever

We note that further definitions of who may approve restricted practices should be consulted on as part of the development of the relevant Principles.