

29 June 2020

The Australian Government Department of Health
GPO Box 9848
CANBERRA ACT 2601

Aged Care Worker Regulation Scheme Consultation

As the Public Advocate for Queensland, I am appointed under the *Guardianship and Administration Act 2000* (Qld) to undertake systemic advocacy to promote and protect the rights and interests of Queensland adults with impaired decision-making capacity.

More specifically, I have the following functions:

- promoting and protecting the rights of adults (the adults) with impaired capacity for a matter;
- promoting and protecting the protection of the adults from neglect, exploitation or abuse;
- encouraging the development of programs to help the adults reach the greatest practicable degree of autonomy;
- Promoting the provision of services and facilities for the adults and;
- Monitoring and reviewing the delivery of services and facilities to the adults.¹

Many users of aged care services have, or will develop, impaired decision-making capacity as a result of a range of circumstances and conditions, including forms of dementia. In 2018 it was estimated there were 436,366 Australians living with dementia. Without new medical discoveries and interventions, this number is expected to increase to 589,807 in 2028 and almost 1.1 million by 2058.²

In 2015, more than half of people permanently living in residential aged care facilities (RACFs) had a diagnosis of dementia.³ This proportion is expected to increase over time as the number of people living with dementia increases as a proportion of the population.⁴ In light of this, it is likely that a significant proportion of aged care recipients will experience impaired decision-making capacity at some point during their engagement with the aged care service system.

I welcome the opportunity to be involved in this consultation regarding the development of an aged care worker regulation scheme. The knowledge and skills of aged care workers can have a significant impact on the lives of those receiving care, whether they reside in a residential aged care facility or their own home.

A worker screening and registration scheme will assist in ensuring aged care consumers receive quality care and are protected by appropriate safeguards. It should also contribute to the professionalism and reputation of the sector.

¹ *Guardianship and Administration Act 2000* (Qld) s 209.

² Dementia Australia, *Dementia Prevalence Data 2018-2058*, cited in Dementia Australia, *Key Facts and Statistics* (November 2018), Dementia Australia <https://www.dementia.org.au/statistics>. Accessed online April 2019.

³ Australian Institute of Health and Welfare, *Australia's Health 2016*, Commonwealth Government, 109. Accessed online January 2019.

⁴ *Ibid* 108.

The fundamentals of an effective worker regulation scheme

As noted in the consultation paper⁵, based on stakeholder interviews and the findings of various reviews, an effective worker regulation scheme needs to be underpinned by broad objectives including;

- Improving the quality and safety of aged care and enhancing protections for consumers.
- Avoiding unnecessary barriers to workforce entry and facilitating the attraction and retention of aged care workers.
- Promoting consumer directed care.
- Avoiding duplicative regulatory requirements for providers and workers operating across sectors (health, disability, and aged care).
- Protecting the rights of workers.
- Minimising the cost to workers, providers, and government.

In general, I support these objectives. Although it is covered to some extent in the 'improving the quality and safety of aged care' objective listed above, I would suggest that any scheme should also provide for minimum skill sets and training standards for workers that should be maintained and enhanced over time.

In response to the key questions posed in the consultation paper about the mechanics of an effective aged care screening and registration scheme, I have included comments and suggestions below.

Who should the Scheme apply to?

I respectfully suggest that the scheme apply, at least, to all aged care sector workers delivering direct care services that are funded by the Commonwealth Government, including workers employed in RACFs and those who deliver aged care services in people's private homes. All recipients of aged care services experience a level of vulnerability. Accordingly, the scheme should have broad application and not be limited to workers in RACFs.

What should be the key features of the Scheme?

Under this heading in the consultation paper five key features of a potential scheme are considered, namely; assessment of criminal history, assessment of disciplinary information or other misconduct, proficiency in English, minimum qualifications, and ongoing professional development.

In relation to assessment of criminal history, I support Option A2 in the consultation paper, which requires a centralised assessment of criminal history for aged care workers providing direct care services, in contrast to the current system, which relies on criminal history checks being undertaken at an individual provider level. Further, a criminal history screen, similar to that which will be used for NDIS worker screening⁶ from 1 July 2020, is also supported. The various characteristics of the NDIS scheme could also be adopted, including a screening process that considers the levels of seriousness of different criminal offences, the currency of a criminal history clearance (5 year maximum), the appeal and review procedures, and the operation of the scheme by an independent body (the NDIS Quality and Safety Commission) are also all relevant and applicable to a worker screening process that could be adopted in the aged care sector.

⁵ mpconsulting, Aged Care Worker Regulation Scheme, Consultation Paper, Report prepared for the Department of Health (Cth), May 2020, Canberra, accessed online 12 June 2020, <https://consultations.health.gov.au/++preview++/aged-care-reform-compliance-division/aged-care-worker-regulation-scheme-consultation/supporting_documents/Consultation%20Paper%20%20Aged%20Care%20Worker%20Regulation%20Scheme.docx>

⁶ Ibid.

The assessment of disciplinary information or other misconduct includes questions regarding whether information from specific disciplinary bodies, relevant government agencies, courts and tribunals and employers should also be considered and included in the screening process. Ideally, information from each of these sources would be included in the assessment process. However, it would need to be balanced against the risks and responsibilities associated with the particular role the worker will perform. For example, the criminal history screen and assessment of disciplinary and misconduct information would be set at the highest standard for personal care workers and those dealing directly with consumers.

In relation to the development of a code of conduct for aged care sector workers, the three options provided in the consultation paper include: retention of the current system which requires providers to ensure the conduct of aged care workers is in line with the Aged Care Quality Standards and Charter of Aged Care Rights; adoption of the NDIS Code of Conduct for aged care workers; or the development of a new code of conduct specific to aged care workers. Given the issues that have been raised in relation to staff conduct, education and training at the Royal Commission into Aged Care Quality and Safety and various other reviews conducted regarding the aged care sector over the past decade, I respectfully suggest that most benefit will be gained from the development of an aged care sector-specific code of conduct. Although a new aged care worker code of conduct could be based on the NDIS Code of Conduct and would be similar, it would also recognise the subtleties and specific concerns associated with working with aged care consumers. We would also support mandating compliance with the code by identified workers.

Proficiency in English, or a level of understanding of the English language, Australian cultural practices and idioms is also considered necessary, for appropriate communication and understanding between consumers and staff. As we have seen with the COVID-19 pandemic, it is also necessary for staff, at least those with direct contact with consumers, to have a basic proficiency in English, to be able to benefit from critical training about health risks, infection control and the use of personal protective equipment. Exactly what would amount to proficiency in English is a matter for the aged care sector to determine.

The issue of minimum qualification levels for aged care workers and, in particular, personal care workers, has also received significant attention in various reviews and the Royal Commission into Aged Care Quality and Safety. Based on the consultation paper, the consensus among stakeholders appears to be that personal care workers should need to hold, at a minimum, a Certificate III in Aged Care qualification and a confirmation of English proficiency.

Similar comments also apply to the continuing professional development and education of workers in the aged care sector. This type of initiative included within a registration scheme is important, and would allow the sector to address critical aged care knowledge gaps including; infection control, meal management (to reduce the incidence of choking by consumers with conditions that cause swallowing problems), positive behaviour support, which includes managing challenging behaviours, using diversion therapy, appropriate forms of restrictive practice and many other areas of care. The training requirements of the sector have already been identified in previous inquiries and do not require further exploration. It will be important, however, given that many employees within the aged care sector earn minimum wage, for any continuing professional development scheme to not place undue burdens or responsibilities on to staff.

Should worker screening be a positive register of cleared workers and/or a list of excluded workers, and who should have access to the list?

Under this feature, the most important consideration is accessibility, in terms of providing methods that make it efficient for prospective employers and/or employees to access relevant details when moving through the recruitment process, or providing information to update an employee's record (e.g. notice of disciplinary procedures, termination of employment, professional

development activities undertaken etc). Access to the list should, as a matter of course, provide for legislated confidentiality and privacy considerations and penalties for breaches.

What protections should be built into the scheme, particularly for aged care workers?

Similar to the NDIS Worker Screening program which is commencing in July 2020, it is imperative that a screening and registration scheme for aged care sector workers include provisions allowing and providing appropriate avenues for employees and potential employees to access their individual record, respond to any concerns registered in relation to a breach of the applicable Code of Conduct, and have a right of appeal against decisions that may impact their employment. The NDIS already has an appeal process in place, to the Administrative Appeals Tribunal, that could be used as a blueprint.

How should the scheme be managed?

As the body responsible for regulatory compliance by the aged care sector, it is respectfully suggested that the scheme be managed by the Aged Care Quality and Safety Commission. This will enable the Commission to use its experience responding to incidents of worker misconduct and breaches of the Code of Conduct to inform its information and resources for workers and aged care providers. Under this scheme, the Aged Care Quality and Safety Commission would screen and register workers and would deal with complaints against workers in the first instance (including own-motion complaints). The scheme would need to provide for procedural fairness and an appropriate appeal mechanism, similar to the provisions within the NDIS scheme.

How should the scheme intersect with other like schemes?

As an ultimate goal, the integration of this scheme with others in similar sectors, such as the NDIS, would be ideal. This would establish a consistent approach to worker registration and screening, complaints, disciplinary processes and appeal across both sectors. This could potentially, over time, reduce duplication of processes and resources, make applying for work in these sectors more consistent and could support the easy transition of appropriate workers between sectors. The logistics associated with this type of integration would be a matter for the individual agencies involved.

In summary, it is critical that a worker registration and screening scheme be developed for the aged care sector, to provide the very necessary safeguards and protections required for some of our most vulnerable community members. Without the adoption of appropriate protections, along with other vital industry reforms, we will continue to have incidents of substandard care and neglect such as those reported to the Royal Commission into Aged Care Quality and Safety during its 2019 hearings.

Thank you for the opportunity to contribute to this consultation.

If you would like to discuss any of the matters raised in this submission in greater detail, please do not hesitate to contact my office.

Kind regards



Mary Burgess
Public Advocate