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Regulatory Strategy Section
Harmonisation and Regulatory Strategy Branch
Department of Health and Aged Care
GPO Box 9848
Sirius Building, Level 9 South
Canberra ACT 2601

Via email: agedcareregmodel@health.gov.au

Submission to Consultation Paper – A new model for regulating Aged Care

Thank you for the opportunity to prepare a submission for consideration during the consultation period associated with the development of the new model for regulating Aged Care.

As the Public Advocate for Queensland, I undertake systemic advocacy to promote and protect the rights and interests of Queensland adults with impaired decision-making ability.[1] There are several conditions that may affect a person's decision-making ability, including intellectual disability, acquired brain injury, mental illness, neurological disorders (such as dementia) or alcohol and drug misuse.

Given the prevalence of neurological conditions like dementia amongst Australia's ageing population,[2] it is anticipated that the majority of people utilising aged care services either have a degree of cognitive decline associated with ageing, a diagnosis of dementia, or a related condition.

Impaired decision-making ability, like that associated with dementia, can make people extremely vulnerable to the actions of others, particularly when combined with conditions that reduce physical mobility or affect someone's ability to communicate verbally.

The comments I make regarding the proposed new model for regulating Aged Care have been provided in this context, with a focus on how the new model can better protect and uphold the rights of those vulnerable due to these conditions.

Most of my comments are related to the 'Holding Providers Accountable' component of the proposed regulatory model, however I have included some additional and more limited comments regarding other components of the model for the Department to consider.

Responsibilities of a provider

Under 'the obligations architecture for the provider registration categories' on p.41 of the consultation document, it is suggested that Registration categories 1-3 (Home and Community Service, Assistive technology and home modifications and Social Support) complete a digital declaration associated with a 3 year re-registration process. This implies that a statement for re-registration would be completed by the service provider and accepted by the regulator at face value.

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[1] *Guardianship and Administration Act 2000* (Qld) s 209.
[2] Australian Institute of Health Welfare (AIHW), *Dementia in Australia*, web report < https://www.aihw.gov.au/reports/dementia/dementia-in-aus/contents/summary>, 2023.

I understand that category 1-3 service providers within the aged care sector would generally provide less-invasive services for individuals that may potentially come with less overall risk to the person involved.

However, experience from the NDIS related to non-registered service providers (for which no regulations or safeguards are implemented with the exception of a Code of Conduct) suggests that risks to individuals when using these services can still be high, particularly in relation to potential fraud, the use of sharp business practices, and predatory pricing policies.

An appropriate balance may therefore be in the form of a requirement for the regulatory body to undertake an audit on a randomised sample of registration category 1 to 3 providers each year, compliance with which (if selected) becomes a requirement of registration. This audit could be based on key features of each of the service categories and used to drive continuous improvement, as well as imposing conditions on registration/ de-registration of the provider where necessary.

Definition of high-quality care

Based on consultation completed to date and the findings of the Royal Commission into Aged Care Quality and Safety, the definition proposed for high quality care (to be included in the Act) places priority on (as per the consultation paper):

- Compassion and respect for the dignity, life experiences, self-determination and individuality of the person accessing care;
- A trauma informed approach to the provision of services;
- Being responsive to personal needs, aspirations and preferences in service delivery;
- Clinical and non-clinical reviews to ensure services reflect individual needs;
- Enhancement of physical and mental health where possible; and
- Community connections and contributions.

I suggest that the definition also does the following:

- Links the definition of high-quality care to the rights of older people that are to be embedded into the new Act, implementing Recommendation 2 of the Royal Commission into Aged Care Quality and Safety.
- Specifically includes a number of these rights into the definition of high-quality care, in particular;
    - the right of recipients to provide feedback and complain about the services they receive free from reprisal;
    - the right of recipients to be centrally involved (with support where necessary) in the making of decisions that affect them including about the personal aspects of their daily lives; financial affairs and possessions; and
    - the right of recipients to have a person of their choice support them or speak on their behalf.
- Places a focus on not only the enhancement but also the *maintenance* of physical and mental health for people receiving services, which includes maintaining a person's sense of identity
- Uses the words 'being designed to address' rather than 'responsive' which changes the focus of the definition to being proactive rather than reactive.
- Provides that care will be delivered, as per the Commission's recommendations, by caring and compassionate people who are educated and skilled in the care they provide.

- Notes that high-quality care will be measured regularly, via a process that incorporates the views of aged care recipients, their supporters, aged care providers and the regulator.

Holding Providers Accountable

This section in the consultation paper details the safeguards that will form a critical component of the regulatory model – designed to manage risk.

It relies principally on the development of a complaints system by providers that is linked to and overseen by the Regulator. It is anticipated that the Regulator will then have the ability to combine complaint-based information with other intelligence (like information from the Serious Incident Response Scheme) to develop an accurate picture of individual service providers as well as to assist with the identification of broader systemic issues across the aged care sector.

The sector will be challenged by the shift in culture that is required to implement the proposed system and it is likely that a significant and resource intensive awareness, education and training program will be required for all staff across the sector (from management through to operational staff).

While the complaints model proposed for the sector is relevant to a continuous improvement cycle associated with the provision of services, programs and care for individuals, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission) has recently highlighted that complaint schemes are often not the most appropriate method by which people can report incidences and allegations of violence, abuse, neglect and exploitation.

A research report prepared for the Disability Royal Commission by researchers from the Universities of Sydney and Melbourne and the University of Technology in Sydney in November 2022, noted that 'the use of complaint mechanisms to report such experiences [violence, abuse, exploitation and neglect] creates a number of unique challenges, including whether existing complaint mechanisms are fit for purpose, whether complaint mechanisms are able to guarantee equality before the law and equal rights to justice for people with disability, how complaint mechanisms relate to other reporting pathways, in particular police and courts, and whether complaint mechanisms are able to protect individuals from violence and create system change to prevent violence'.[3]

The Royal Commission into Aged Care Quality and Safety also identified instances where older people have been subject to neglect, exploitation, violence and abuse within the aged care sector. It is therefore imperative that the difference between complaints about services and allegations of neglect, abuse, violence or exploitation be acknowledged and appropriate systems be put in place to capture both.

With this in mind, I propose that the new model for regulating Aged Care incorporate a safeguarding framework that identifies pathways to report incidents or allegations of violence, abuse, neglect or exploitation. This framework could include the proposed complaints mechanism referred to in the consultation paper.

Given the vulnerabilities that many people receiving services from the aged care sector experience (including not being able to communicate via traditional means like talking or writing), which make it difficult, if not impossible, for them to complain or to register incidences of violence, abuse, neglect or exploitation, I would also suggest that the Regulator consider introducing a Community Visitor Scheme across the aged care sector.

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[3] Wadiwel et al, *Complaint Mechanisms: Reporting pathways for violence, abuse, neglect and exploitation*, prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, < https://disability.royalcommission.gov.au/publications/complaint-mechanisms-reporting-pathways-violence-abuse-neglect-and-exploitation>, November 2022, p 3.

This scheme would be different to the social-connection based program operating at present (utilising volunteers), and instead would focus specifically on upholding the rights of people in receipt of aged care services or living in a residential aged care facility.

A strong example of this type of program currently operates in the disability service sector in Queensland under the *Public Guardian Act 2014* (Qld). Under this program, paid, skilled, and experienced community visitors monitor the treatment and services provided to vulnerable people living in defined types of accommodation (like authorised mental health facilities or level 3 supported accommodation) or receiving particular classes of support under the NDIS. They provide an on-going presence of external visitors (who can arrive to visit either announced or unannounced), with a complaints and inquiry function,[4] who may assist with identifying and raising issues for people with vulnerabilities and capacity issues and progressing them to resolution.

Community visitors have legislative authority to undertake functions such as lodging and resolving complaints on behalf of residents with impaired decision-making ability, talking with staff and residents to clarify issues and concerns, and reviewing documentation and programs relating to their support and care.[5] Community visitors can lodge reports with the Office of the Public Guardian[6] that also provides the reports to service providers for their information and follow-up action.[7] Independent advocates can perform similar functions to community visitors, although engaging their services generally requires proactive effort that may be beyond the capabilities of some aged care recipients. However, the need for, and critical shortage of, advocates within the sector is acknowledged in this context.

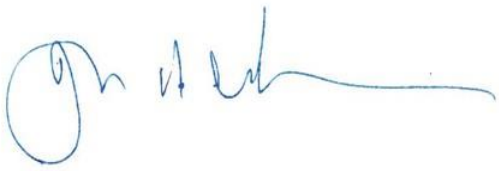
In conclusion, my view is that an adequate safeguarding system would be one that:

- utilises a community visitor scheme operated by the regulator or the Aged Care Complaints Commissioner;
- provides access to independent advocates to assist residents to move through complaint processes; and
- introduces restorative justice and compensation measures (as noted in the consultation paper).

This system would provide the appropriate level of protection required to uphold recipient rights and actively prevent cases of violence, abuse, neglect and exploitation.

Thank you for the opportunity to make this submission to the Department. Should you require further information regarding any of the matters I have raised, please contact my office on 3738 9513.

Yours sincerely,



John Chesterman (Dr)
Public Advocate

[4] S 41 *Public Guardian Act 2014*(Qld).
[5] Ibid.
[6] *Public Guardian Act 2014* (Qld) s 47(1).
[7] Ibid s 47(3).