

14 October 2022

The Department of Health and Aged Care  
GPO Box 9820  
Department of Social Services  
Canberra ACT 2601

Via email: [workerregulationsse@health.gov.au](mailto:workerregulationsse@health.gov.au)

**RE: A Code of Conduct for Aged Care - Exposure draft of the Aged Care Quality and Safety Commission Amendment (Code of Conduct and Banning Orders) Rules 2022**

Thank you for the opportunity to comment on the exposure draft named above.

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 capacity.<sup>1</sup>

I note that this code of conduct builds upon work undertaken last year towards the development of a care and support code of conduct across veterans, aged care and disability services.

While I note that timing and other circumstances may be preventing the pursuit of a multi sector code of conduct at this time, I remain in strong support of the concept, given the similarity of roles performed by staff within each sector and the consequent cross-sector employment that occurs.

The comments that I made in my submission during the consultation phase for this project also remain applicable to the current exposure draft. I have attached a copy of this submission to this letter for your review and consideration.

In summary, and in the interests of people with impaired decision-making ability who comprise a significant proportion of the aged care cohort, I recommend that the exposure draft give attention to:

- **Human Rights:** The provisions in the exposure draft that relate to human rights potentially do not cover the full range of rights that are held by people with disabilities in Australia as described in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).<sup>2</sup> Reference to the UNCRPD is suggested, potentially with a principle that reads 'I must promote and protect the dignity and human rights of people receiving care, support and services'.
- **Supported (as opposed to substitute) decision-making:** The UNCRPD also notes that all people with a disability have a right to participate in the making of decisions that affect them.<sup>3</sup> This concept and a respect for the will and preferences of individuals should be incorporated into the code, highlighting a requirement for workers and providers to provide appropriate access and supports to enable people to communicate and participate in decisions that affect them.
- **Application:** The exposure draft appears to adopt a reactive approach, outlining actions that the Aged Care Quality and Safety Commissioner may take in relation to non-compliance with the code, which is likely to be when a potential breach of the code is reported to the Commission. Consideration should also be given to how the code could be proactively enforced across the

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<sup>1</sup> *Guardianship and Administration Act 2000 (Qld) s 209.*

<sup>2</sup> UN General Assembly, *Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly, 24 January 2007, A/RES/61/106.*

<sup>3</sup> *Ibid.*

sector. There may be some potential for the Code to be linked to, for example, the Aged Care Quality Standards, that are audited on a regular basis.

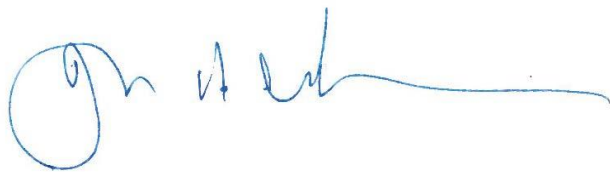
Issues I also raise for consideration relate to the practical implementation of the Code and include the need for:

- Training of aged care service providers in relation to the Code. Ideally, this training should be conducted or organised on a nation-wide basis by the Department of Health and Aged Care in the interests of sector wide consistency. The training also needs to incorporate elements like (at a minimum) consistent and workable definitions of key concepts including, for example, 'all reasonable steps' and 'violence, discrimination, exploitation, neglect and abuse' as well as relevant and applicable examples of the upholding of human rights (including supported decision-making) that clearly display what this looks like in an aged care service environment.
- Awareness and understanding of the code by the consumer and/or their support person. People in receipt of care, and those supporting them, need to know what to expect from providers and workers covered by the code, and what avenues are available to raise concerns when expectations are not met.

Thank you again for the opportunity to comment on the exposure draft.

If you require clarification of any recommendations raised in this correspondence, please contact my office on 07 3738 9513.

Yours sincerely



John Chesterman (Dr)  
**Public Advocate**  
Encl.