

8 September 2023

Aged Care Legislative Reform
Department of Health and Aged Care
Via email: agedcarelegislativereform@health.gov.au

PO Box 4093
Ainslie ACT 2602
T (02) 6230 1775
F (02) 6230 1704
anglicare@anglicare.asn.au
www.anglicare.asn.au

Dear Aged Care Legislative Reform team,

Anglicare Australia thanks the Department of Health and Aged Care (DHAC) for the opportunity to provide input to the consultation on the foundations of the new Aged Care Act. A new rights-based Aged Care Act was the first recommendation of the Royal Commission into Aged Care Quality and Safety Final Report. Placing it as the first recommendation highlighted the importance and centrality of the new Act to truly transforming the current aged care system. It also emphasised the importance of placing the older person, and their rights, as central to aged care.

Anglicare Australia strongly supports the development of a rights-based Act. In general, the rights included in the consultation paper are appropriately drafted. We welcome the inclusion of rights to exercise choice and receive dignity of risk, fair, equitable and non-discriminatory treatment.

Anglicare Australia recommends expanding the second proposed right, from equitable access to aged care assessment to include equitable access to aged care services as well. We further recommend a reference to *timely* access to services, given the long-standing challenges under the old rationed system, where many people waited years for the right level of care. Even now, we hear reports of people's reassessments for higher level care being delayed or cancelled. Some Anglicare Australia Network members reported people in their care have not been reassessed for palliative care until after their death.

Aged care is about more than clinical care. Aged care services provide homes and communities for people in the later years of their life. There are a range of emotional, spiritual and human connection needs that should be in scope of the Act. Specifically, we recommend that the right to spiritual and pastoral care be reflected in the Statement of Rights.

The Statement of Rights should also include reference to people's housing situation. During consultations for the development of the Aged Care Homelessness Action Plan, older Australians called for the inclusion of a right to aged care services wherever they live, and regardless of the tenure or temporary nature of the accommodation, or the quality of their housing.

The Statement of Rights is about the rights of older people to access aged care, and within aged care services. There are a range of other rights that are not contained in the Statement of Rights, that are equally important to the wellbeing of older people. The United Nations Principles for Older Persons include the right to access basic needs like healthcare, adequate food and shelter, the right for older people to pursue opportunities for the full development of their potential, and to remain integrated and participate in society. The UK Human Rights Act includes a right to family that has, for example, been used to make sure an older couple could remain living together despite only one of the members being eligible for aged care.

While it may not be appropriate for these broader older person's rights to be included in the Aged Care Act, further consideration should be given to how they can be articulated and protected in other legislative frameworks. A federal Human Rights Act is one way to ensure that people's rights are codified, and they have an avenue to seek enforcement or accountability when their rights are infringed.

The Act and Statement of Rights alone will not be enough to deliver an aged care system that enable, enforces and protects the rights of older people as well as recognising and supporting their families and carers. This will require a workforce with the right numbers and skill mix to meet the needs of an older person. Workforce shortages across the nation are a major barrier to the delivery of high-quality care. Measures to address workforce shortages and strengthen the workforce pipeline into aged care will be necessary. There must also be ongoing commitment to education and skills development around rights-based practice, not just at the commencement of the Act, but permanently built into the system.

Regarding eligibility, we recommend that the homelessness threshold criteria be clarified to ensure access to aged care services for people aged 50-64 with histories of chronic homelessness, not just people who were homeless at the time they entered aged care. People who have experienced homelessness often have poorer health outcomes, die at a younger age, and have a higher need for care than other Australians. Preventable diseases, poor medical care, stress, and chronic disease all contribute to premature ageing and death among people who are homeless.

The new rights-based Aged Care Act must include mechanisms for monitoring and enforcing the rights of older people and there must be consequences for breaching these rights. A strong regulator will be needed to ensure the rights in the Act are promoted, respected and upheld.

Yet too often regulatory frameworks and regulators, including the Aged Care Quality and Safety Commission are focused on complying with policies and meeting targets, and not focused enough on building cultures of quality, safety and improving quality of care. For example, accreditation reports reflect the existence of policies and maintenance of processes, not actual outcomes. A 2021 survey of aged care providers by the Australian Aged Care Collaboration found the regulatory environment is overwhelming providers, with little perceived improvement in capacity to achieve consumer outcomes due to increasing compliance and reporting requirements without any resolution of structural funding issues.¹ Survey respondents urged the government to ‘focus the regulator on resident care not compliance for the sake of it’.

Australians need a well-resourced Commission and a strong regulatory framework that achieves a balance between protecting the rights, safety and wellbeing of those accessing services, while also encouraging provider innovation and culture change where necessary. The regulatory environment must not be so risk averse as to stifle the ability of older Australians to make choices, take risks and exercise autonomy.

The previous Australian Aged Care Quality Agency provided both regulatory functions and quality improvement services to the aged care sector. In doing so, they not only increased compliance, but encouraged providers to be proactive and innovative through identifying and rewarding sector-leading practice (for example, through the Better Practice Award Scheme). The Commission is in a unique position of being able to identify examples of rights based best practice from across the aged care sector, and share this with others, to build capability and quality.

The Consultation Paper proposes an ‘aspirational’ approach to high quality care provision, to be distinguished from a legislative duty to provide safe and quality care. We understand the rationale for applying this standard. As the discussion paper notes, it is important that high quality care remains something providers continuously strive for, and that innovation is encouraged and facilitated.

Further work is necessary to articulate the characteristics of high quality care and what distinguishes it from a legislated standard of safe and quality care. This definition must be consistent and align with funding reform, including that being undertaken by the Aged Care Taskforce and the Independent Health and Aged Care Pricing Authority. High quality care needs to be clearly defined, priced and costed if it is to be consistently delivered across the aged care system.

Anglicare Australia looks forward to working with you to inform the development of the Aged Care Act and its implementation, and would welcome the opportunity to answer any questions that you may have.

Yours sincerely



Kasy Chambers
Executive Director

ⁱ Australian Aged Care Collaboration (2021) [Aged care reform scorecard; December 2021](#)

