

Member briefing: COTA Victoria responds to Exposure Draft for New Aged Care Act

February 2024 – A major milestone in the reform of the aged care system was reached in December 2023 with the release of an Exposure Draft for a new Aged Care Act – the main legislation that will govern all Commonwealth-funded aged care services across Australia.

The Commonwealth Government has developed this new legislation to help improve and reorient the system as recommended by the Royal Commission into Aged Care Quality and Safety. The Act brings together the outcomes of several policy development and consultation processes on different aspects of the system.

An overarching feature of the new Act is to put older people’s rights and contemporary expectations of quality care at the centre of the regulatory framework across a more unified system. This reverses existing legislation, which is primarily focused on providers.

Among the significant elements of the Exposure Draft are:

- A Statement of Rights which outlines what older people can expect from providers in the aged care system.
- A Statement of Principles to guide the actions of government agencies to ensure that the whole system is directed towards its primary goals.
- A definition of the elements of High Quality Care which services should continue to work towards.
- An integrated framework for defining the services to be included in the funded aged care system and for registration of providers.
- The clarification of eligibility for funded aged care and a single common assessment process.
- The provision for a more effective complaints process, including a new Complaints Commissioner and expanded protections for whistle blowers.
- New arrangements for nominating Supporters and Representatives to improve supported decision-making.

Response from COTA Victoria and Seniors Rights Victoria (SRV)

COTA Victoria and Seniors Rights Victoria have a vital responsibility – in liaison with COTA Australia and a range of other peak bodies – to help ensure the reforms respond effectively to the needs of older Victorians and the features of the aged care system that operates within Victoria.

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To this end, we have closely reviewed the progress of the reforms and made a number of submissions building on what we have heard from our members and supporters.

[Our full submission on the Exposure Draft provides feedback on a selection of specific legislative provisions.](#) While applauding the many positive aspects of the Draft, we are clear that some significant further work is needed to realise a fully workable Act that meets the expectations of its key stakeholders: vulnerable older Australians.

We focus our feedback on how the Act could more strongly drive a system that gives older people optimal choice and control while protecting them from abuse. We want to see the Act reflect a more positive, socially engaged approach to care – one that embeds a meaningful response to the wide diversity of those in need of support.



We are particularly keen to see improvements to the design of arrangements for supported decision-making, and older persons' input to system planning and review at all levels.

Our recommendations

In all, we make 45 specific recommendations for further development or change to the Draft legislation. These include work to:

- Amend the language used to refer to participants in the Aged Care system and related terms to better promote a positive approach that supports older people to live their best lives as active citizens.
- State explicitly that the Aged Care system has a key function to provide disability supports to people over 65 (and people under 65 who qualify for Aged Care), and that being a NDIS participant does not preclude access to Aged Care.
- Strengthen the approach to individual service planning to promote a fully engaged, co-production approach involving the service participant, carers, and planners.
- Establish an expectation that mechanisms be available to involve older people proactively in system and service regulation, planning, and review at all levels.

- Clarify and add a number of elements to the Statement of Rights, including rights to home-based care, health, visitation, and freedom from elder abuse, and better align this with the Principles.
- Extend the services framework to ensure that key auxiliary services such as assessment, navigation support, facilitation, and advocacy are clearly recognised and resourced.
- Incorporate a statement requiring all involved to work towards the elimination of the use of restrictive practices and a more specific definition of what this encompasses.
- Reconsider the purpose and application of the definition of High Quality Care to ensure that all services are on a continuous improvement pathway and avoid services using it to justify charging a premium.
- Resolve a range of potential problems and confusions for Supporters and Representatives involved in supported decision-making in the proposed . This includes better alignment and streamlining with existing nominee schemes.

We are grateful to our COTA Victoria Board Directors and volunteers with extensive experience with the aged care system who kindly reviewed and helped inform our submission.

What happens next?

Following the current consultation, the Commonwealth will make changes responding to feedback, including sections not yet drafted on issues such as fees, payments, and subsidies, and accompanying Rules which will set vital operational detail.

A final draft in the form of a Bill will be introduced into Parliament mid-year, allowing for further review and public scrutiny before being passed into law.

Seeking more information?

As always, we are keen to hear from you. For input related to aged care reform, contact [Ben Rogers, our Policy and Advocacy Manager](#).

Please also feel free to contact us on aged care matters directly affecting you by emailing askcota@cotavic.org.au, or calling us on 1300 135 090.



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