



ASU Submission

Department of Health and Aged Care

Consultation Paper No.1
A new model for regulating aged care

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Date: 10 October 2022

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The ASU

The Australian Services Union ('ASU') is one of Australia's largest unions, representing approximately 135,000 members. ASU members work in a wide variety of industries and occupations in both the private and public sector. Relevantly, we represent more than 50,000 workers in the community and disability sector (including mental health and aged services).

Executive summary

We welcome the Department's staged approach to the design and consultation of a new Regulatory Model for Aged Care. Age Care is a critical element of the primary public health care system and it has never been more evident than now, the need for a system of aged care that is equitable, transparent, and delivered at every stage with the public health interest as its central priority. Meeting the needs of older Australians must be the central objective to deliver the best care. A high standard of care is dependent on effective policy, an appropriate funding framework and an effective quality regulatory framework.

The essential characteristics of a Regulatory model for the aged care sector should be: A service model that respects clients and carers and the interdependence of their needs; A well-funded public system; Secure work and decent working conditions to develop and maintain a vocationally committed workforce; A system that is governed by a strong regulatory framework including standards that relate directly to the health and wellbeing of older Australians; and a system that values its workforce and invests in their training, development, and support.

Good care depends on secure and decent working conditions

A system of aged care that works for its clients must provide labour conditions that optimise a secure qualified and experienced workforce. Reform in the aged care system has been over reliant on the care industry mantra and policy framework of 'consumer choice', increasingly revealed to be a mechanism to marketize care. Consumer choice has pitted workers' rights against client's rights.

In a majority female industry characterized by low levels of unionism, insecure work and underemployment, consumer choice has been an effective means to further marginalise worker's interests. These factors combined with the increasing fragmentation of the care sector, atomisation of the workforce, insecure work and underemployment have all reduced the bargaining power and status of the age care workforce.

The Royal Commission into Aged Care found the aged care sector to be understaffed, underpaid and undertrained and identified the difficulty in retaining workers was due to low wages and poor employment conditions¹. Without secure and decent working conditions any attempt to introduce the new Regulatory model will be flawed and the quality of care to recipients will be at risk which is contradictory to the person-centred approach sought by this consultation.

Regulatory Safeguard 1 - Registration

Provider registration

¹ <https://agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-executive-summary.pdf>

We support the requirement that all aged care providers must be registered before they can deliver Government subsidised care and services to older Australians. We also agree that specific conditions must be met for providers to remain registered.

Worker registration

We recognise the need for a worker screening check for all who work within aged care to exclude any person who poses a risk to the safety of recipients. We believe that worker screening checks should be undertaken for all workers, volunteers and contractors who deliver aged care services that require contact with participants whether they are engaged by a registered provider or a non-registered provider. We believe that the status of the provider's registration does not reduce the risk a person may pose to the safety and well-being of aged care participants and that the worker screening check should be universal.

Regulatory Safeguard 2 - Provider responsibilities

Code of conduct

ASU members support a Code of conduct that ensures quality and safe supports are delivered to recipients of aged care. It is critical the Code developed: is clear and practical; that workers have a proper opportunity to understand their obligations, that workers are resourced to not only allow them to meet their obligations under the Code, but also develop the skills required to deliver high quality services to the recipients they support.

Investment in workforce development and training is paramount to ensuring the workforce is able to comply with the new Code and any applicable Standards.

The Consultation paper highlights the need for continuous improvement in aged care by regularly reviewing and enhancing processes and practices.² New and changing obligations set out in the Code will require workers to continuously develop new skills and qualifications. We fear that without significant investment of time and funding for training and education the Code will be ineffective in ensuring recipients have access to safe and quality supports.

The Code must be developed in conjunction with the workforce

The introduction of the Code represents a significant change to the regulation of aged care work. The consequences of a breach of the Code are significant and have the possibility of ending a worker's career.

Aged care workers are the people who have extensive experience in delivering support to the elderly day in and day out. Accordingly, aged care workers should be at the heart of the development of the Code, not merely afforded an opportunity to comment on a proposed Code that has been developed without them.

To ensure the efficacy of the Code there needs to be buy-in from the workforce. This is more likely to happen where the workforce are treated as a partner in the development of the Code, rather than having a Code that they were not involved in developing imposed upon them.

The need to ensure procedural fairness for workers as part of the Code

ASU members are very strongly of the view that the Code should contain clear commitments that workers will be afforded procedural fairness in the event of a complaint or investigation. It should be

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expressly set out in the Code that in the event that a complaint is made in relation to a worker's conduct or that an investigation is commenced that:

- The worker is notified of any allegations that are made against them (including particulars of the allegations);
- The worker has an opportunity to respond to any allegations made against them;
- The worker is entitled to be represented in relation to the allegations or in any investigation.

These principles are presently protected in our industrial relations system, and should not be undermined by the Code. These principles are even more important given the grave consequences that can flow to a worker for a breach of the Code. It is critical that workers are given an opportunity to respond to allegations at an early stage, to ensure that any information they are able to provide is as close as possible in time to the time of the alleged conduct.

There should also be a requirement that investigations are completed as soon as practicable (while not adversely affecting the quality of the investigation), given the impact uncertainty may have on a worker. We are also of the view that there should be some guidance provided in relation to circumstances in which a worker may be stood down or suspended. The impact of this would be particularly serious for casual workers, who would not be able to access any form of paid leave during such an investigation.

Conclusion

ASU members support the introduction of the Regulatory Model as an important step in ensuring older Australians receive high quality and safe aged care. It is critical that workers are at the heart of the development of the Regulatory Model, as they are ones most significantly impacted.

Good care depends on secure and decent working conditions. Without this any attempt to introduce the new Regulatory model will be flawed and the quality of care to recipients will be at risk which is contradictory to the person-centred approach sought by this consultation.

The Code must be underpinned with adequate funding for workforce development and training to ensure the workforce is able to comply with the new Code and any applicable Standards.

Further, the Code must expressly protect aged care workers' rights to procedural fairness in the event of a complaint or investigation.