



**RESPONSE TO CONSULTATION PAPER ON  
PROPOSED CHANGES TO THE AGED CARE ACT  
1997 AND RELATED LEGISLATION**

## Background

The Commonwealth Aged Care Act 1997 (the Act) articulates the Commonwealth Government's commitment to the community that will be enacted through its resourcing and oversight of services to older people.

A copy of the objects of the Act is provided below (emphasis added by the author).

(1) The objects of this Act are as follows:<sup>1</sup>

(a) to provide for **FUNDING** of \*aged care that takes account of:

- (i) the **quality** of the care; and
- (ii) the **\*type of care and level** of care provided;
- (iii) the need to ensure **access to care that is affordable by, and appropriate** to the needs of, people who require it; and
- (iv) **appropriate outcomes** for recipients of the care; and
- (v) **accountability** of the providers of the care for the funding and for the outcomes for recipients;

(b) to promote a **HIGH QUALITY OF CARE AND ACCOMMODATION** for the recipients of \*aged care services that meets the needs of individuals;

(c) to **PROTECT THE HEALTH AND WELL-BEING** of the recipients of aged care services;

(d) to ensure that aged care services are **TARGETED TOWARDS THE PEOPLE WITH THE GREATEST NEEDS** for those services;

(e) to facilitate **ACCESS** to aged care services by those who need them, regardless of race, culture, language, gender, economic circumstance or geographic location;

(f) to provide **RESPIRE** for families, and others, who care for older people;

(g) to encourage **DIVERSE, FLEXIBLE AND RESPONSIVE** aged care services that:

- (i) are appropriate to meet the needs of the recipients of those services and the carers of those recipients; and
- (ii) facilitate the independence of, and choice available to, those recipients and carers;

(h) to help those recipients to enjoy the **SAME RIGHTS** as all other people in Australia;

(i) to **PLAN** effectively for the delivery of aged care services that:

- (i) promote the targeting of services to areas of the greatest need and people with the greatest need; and

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<sup>1</sup> <http://www.comlaw.gov.au/Details/C2012C00914>

- (ii) avoid duplication of those services; and
  - (iii) improve the integration of the planning and delivery of aged care services with the planning and delivery of related health and community services;
- (j) to promote ageing in place through the linking of **CARE AND SUPPORT SERVICES TO THE PLACES WHERE OLDER PEOPLE PREFER TO LIVE**.
- (2) In construing the objects, due regard must be had to:
- (a) the **limited resources** available to support services and programs under this Act; and
  - (b) the need to consider **equity and merit** in accessing those resources.

## Discussion

Apart from fixing some nomenclature issues, a revision of the Act is needed to ensure it correctly articulates the new and changed commitments made by the Australian Government in the *Living Longer Living Better* package of aged care reforms, and the different context for provision of aged care services as a result of these changes.

A revised Act needs to underpin the move from government defining the scope and transaction of support funded and provided through aged care services. It needs to set the foundation for a paradigm shift, where Government ensures all older people and every community can get access to and choice of high quality services that support a decent life as they age; and the service system is sustainable, provides quality services that are accessible, flexible, responsive and adapt as needs and expectations change.

Another overarching issue that a revision of the Act needs to attend to is how best to articulate the Government role of providing a safety net, framing consumer entitlements, and extending expressions of choice within minimum standards whilst also freeing up supply of services so consumers can get best use out of a more open market being created as a result of the *Living Longer Living Better* package.

The Act also needs to evolve to put older people at the centre, rather than the relationship between government and providers (the “market”) being the centre of attention.



The Commonwealth Government has indicated the current Objects of the Act should remain unchanged. These objects provide for both process and impact measures of the Government's commitments, as outlined below.

Gaps in the Objects are revealed when analysing them using this approach. Significantly, there is no measure of sustainability of services. Changes to the Objects – and by implication the measures of impact - that would strengthen the Act have been suggested below in italics.

### **Process measures**

Funding (amount, eligibility, equity, merit, accountability)

Choice (types of services funded, types of funding arrangements)

Respite (availability)

Access (eligibility, equity, race, culture, language, gender, economic circumstance or geographic location)

Targeting to need (population groups, level of need and location)

Same rights as others

### **Impact measures**

Protect health and wellbeing –*Improve health and wellbeing*

Quality (care, accommodation amenity, *quality of life*)

Planning ensures equitable access, integrates with other sectors and reduces duplication, *and makes sense to people trying to enter and navigate service systems*

Promote independence and choice

Ensure services are diverse, flexible and responsive

*Respite contributes to other measures of impact*

*Rights are protected, upheld and enacted*

*Sustainable service system*

## **Responses to specific issues in the Consultation Paper**

The timeline for advice to Government from the Aged Care Financing Authority (ACFA) and the timeline for revision of the legislation are overlapping. How will input from the community to ACFA be incorporated into development of the revised legislation?

The draft legislation will need to be accompanied by illustrations of how the changes to legislation will impact collectively on consumer eligibility, entitlements and requirements for co-contributions. Illustrations will also be needed to explain how funding overall will flow to service providers (and how the flows will differ from current arrangements), how consumer

and government contributions will intersect and what quantum of funding will be reached in different circumstances and as consumer circumstances change.

How will changes in requirements for consumer and government contributions to costs be managed? Clarification of this is critical, especially in circumstances where consumers may be unable to continue to meet previously agreed costs so either choice or breadth of services will reduce and accommodation amenity may also reduce.

How will claims of hardship for consumers unable to meet co-contribution requirements be assessed? This should include an assessment of criteria, appeal processes, how to ensure both consistency and appropriate flexibility, what right will providers have to seek government funding to meet gaps in funding to meet assessed needs, especially with groups with specific needs such as people who have been homeless, Indigenous Australians, and Forgotten Australians?

The draft legislation is silent on the current requirement that providers cannot refuse access to community care on the basis of a care recipients capacity (or willingness) to pay a contribution to the costs of service provision. This matter needs to be clearly addressed in the legislation. It may be appropriate to use the same wording as is used with regards to residential care.

How will any improvements to consumer protections and provision of a safety net work? Will there be a streamlining of processes?

The proposed wording regarding the additional powers to the Department in relation to the Aged Care Financing Instrument to take action where in response "to an approved provider giving false, misleading or inaccurate information in appraisals and reappraisals" should be amended to read "to an approved provider knowingly and deliberately giving false, misleading or inaccurate information in appraisals and reappraisals using the Aged Care Funding Instrument".

Will any changes to the Act extend the use of sanctions across multiple sites in services when only a single site has been the source of an identified non-compliance? UnitingCare Australia does not support extension of sanctions in this way.