Aged Care and Other Legislation Amendment (Royal Commission Response No. 2) Bill 2021

Australian Community Industry Alliance

2021

Contents

Introduction

Australian Community Industry Alliance (ACIA) welcomes the opportunity to provide this submission to consultation on Aged Care and Other Legislation Amendment (Royal Commission Response No.2) Bill 2021.

Background on ACIA

ACIA is the national peak body representing community care and support providers, including private, not-for-profit and charitable organisations. Nationally ACIA represents over 100 provider organisations, which collectively employ more than 150,000 FTE workers. ACIA also supports the disability and aged care sectors and works with government departments and authorities, including:

- State Disability Agencies such as Department of Family and Community Services, Ageing Disability and Home Care NSW, Department of Health Human Services Victoria and Disability Services QLD
- iCare NSW which includes: Lifetime Care and Support Authority, Workers Insurance, Dust Diseases Care, Self-Insurance and Builders Warranty.
- Lifetime Support Authority South Australia
- Motor Industry Accidents Board, Tasmania
- Transport Accident Commission Victoria
- Workers Compensations Schemes in multiple states
- Representation at the National Aged Care Alliance
- Department of Health
- Department of Social Services

ACIA's vision is for a community care and support industry that is known and respected as a provider of quality services. To achieve this vision, ACIA provides education, resources and support to the industry, as well as developing and administering its own quality standard and scheme (endorsed by the Joint Accreditation System for Australia and New Zealand JAS-ANZ).

ACIA seeks to be involved in the future development of policy and service reform, by bringing to the discussion our experience and expertise, including:

- Membership of over 100 provider organisations and individuals nationally, representing around 150,000 FTE workers
- Membership across the disability and aged care sectors
- Specific expertise in the delivery of support to people living at home or in supported and shared accommodation arrangements
- Lengthy provider experience of delivering individualised support according to the wishes of the individual in line with their funding
- Experience in compensable and business markets
- Experience in the development implementation and administration of quality certification systems that meets the national standards for disability services and home and community care standards (for example the ACIMSS 2008 and the ACIS 2013)
- Proven track record of engaging positively with reform processes, and working collaboratively with governments, providers, consumers and interested stakeholders.

Thank you for the opportunity to consider our response to the Amendment Bill. It is critical they we get this right in order to progress key aspects of the legislation and ensure adequate safe guarding for our frail and vulnerable in the community.

Australian National Aged Care Classification

ACIA supports the introduction of the AN-ACC tool from 1 October 2022 as we commend the Government taking a research based approach to the needs of our most vulnerable in society. The utilisation of University on Wollongong has enabled a strong evidenced based approach to funding. We support the acknowledgement of separated needs where there is active palliation, homelessness and indigenous care and service provision.

However, the reality of the way it has been presented, and from a risk based approach to care and service provision, there is likely to be a significant shit in the intake of residents with dementia. The way the tool reads, it doesn't support a truly wandering and highly needs based resident for reorientation, behavioural support and safety provision. You will see, as we are consulting actively in the area, a shift in the intake of these residents as the funding will discourage supporting these residents in the higher than staffing and specific environments that is what is required. Facilities will shift to a greater dependency model to attract great funding.

Aged Care Quality and Safety Commission

ACIA supports the intention to place current national police check requirements with nationally consistent pre-employment screening checks. However, we note that these checks must continue to be undertaken every three years. ACIA also recommends there be a transition period where both are suitable over the coming 3 years otherwise the cost to both employees and employers will be cost prohibitive.

The intent further to introduce a national code of conduct provides reasonable rationale for such an imperative. However, to ensure all staff have undertaken suitable training in such (similar to the NDIS Commission) has proved challenging and almost a tick box activity due to the time frames rather than supporting providers to imbed withstanding change. It is unreasonable to assume that the introduction of a code of conduct will change practices though. The code of conduct needs to be embedded within the standards and more than notionally applied to practice.

ACIA would like to support the implementation of a national database of workers however the complexity of such analysis will require considerably more preparation and we do not support a knee jerk response such as presented in this proposal. It requires a heavily consulted and highly governed approach to a national database of workers.

ACIA would like to recommend that the services and oversight of the Commission are innately unsatisfactory and unprofessional in their approach. There consistency for implementing the new standards are reflective of a largely incapable assessment and Commission leadership workforce. The Commission has not adjusted to remote auditing and indeed has largely approached home care in an unsafe and inappropriately risk assessed manner. Whilst many documents refer to the role of the commission there is no Quality Assurance over the Commissions role and performance, nor is there an non political quality framework that provides assurance for the approach and outcomes.

ACIA supports the intention to demand information within a reasonable period and disclose relevant information.

Serious Incident Response Scheme

Bringing national reporting to home care and flexible care is supported by ACIA. Home care has been largely un-governed and not assessed by the Commission against the new standards, leaving a challenging status quo for the home care sector. It is ACIAs experience that the home care sector is predominately still in its infancy to implement open disclosure and required significantly more support and oversight to facilitate this transition. Homecare will require an extended stage 1, as revealed in the residential aged care legislation.

Reportable incidents as defined by the Commission will need to be reconsidered in homecare. It is unclear where a consumer is funded by NDIS and a homecare consumer whether ther is dual reporting. This is often very difficult to pick up by the systems in place by a provider. There is frequent episodes where unreasonable use of force against a consumer is identified and can not be defined to a particular member of the consumers family or key stakeholders. This level of domestic violence is regular and extensive, however it is often unsafe for either the police or the provider to engage at times where it is not consented by a consumer. Unexpected deaths have been largely miss reported by residential aged care as this can be seen as quite subjective where the death certificate does not quantify the root cause analysis or mortality and morbidity lens to a death. This is even more challenging in homecare. The concept as currently described in the guidelines is that any death or incident that occurs outside of care and service provision must be reported is impossible to think that where choice and control is in place that consumers will want investigations in domestic violence, falls that they don't want to tell close family about, theft that they don't want to disclose nor do they want to have to be reported to the police every time they have forgotten an appointment. One has to be mindful that the consumers choice and control is paramount, which is interpreted and supervised in a different manner to that of a consumer in residential aged care accommodation. Furthermore, many of the examples provided for in the current guidelines are both unreasonable for homecare and absent of choice and control rights.

New Governance Responsibilities

ACIA credentials and providers oversight across care and service provision for some of the most complex clients in Australia. Australian Community Industry Standards 4.0 has recently reviewed its governance requirements of providers to align with Australian Institute of Company Directors and AXS requirements. These are embedded in ACIS 4.0 and have been attached to Appendix 1. We would strongly suggest that improvements in the standard align to the evidenced based and risk managed approach of ACIS which has been around long before homecare and NDIS standards in Australia.

ACIA Supports the requirement that an approved providers governing body require:

- The governing body to have majority of independent non executive members and
- At least one member to have experience in the provision of clinical care

However, the requirement of having a minimum of 40 consumers should be broadened to 40 consumers in total regardless of care funding.

Financial Management

ACIA supports the provisions mentioned in the proposal for improving the management of RADs and DAPs.

Restrictive Practices

A new schedule 9, ensuring that where consumers don't have capacity, that the substitute decision maker must consent, begs the question that there are processes in place to ensure that a substitute decision maker is in place in all cases within residential and home care? ACIA

supports the intent of such but is concerned that the frameworks for supported decision making may not have been well embedded. That being said, power of attorneys are well embedded, just the guardianship element is challenging at times. The legislation should further support this measure with time frames for regular review and consent by substitute decision makers to ensure there is regular communication and engagement of current practices and evolution of behaviours.

Kind Regards

Dr Nicole Brooke

RN, BN, GradCertResComm, MaAdEd, MaLead, PhD

Appendix1: ACIS 4.0 Standard 2: Corporate Governance

Standard 2 – Corporate Governance

2.1 Operational Management

Outcome- Clients access supports through effective governance and operational management systems relevant (proportionate) to the size, scope and complexity of supports delivered by the service provider.

2.1.1 The governing body defines and implements a governance structure to meet their financial, legislative, regulatory and contractual responsibilities, to monitor and respond to quality and safety matters associated with delivering supports to Clients.

2.1.2 The governing body demonstrates clarity over all roles and responsibilities.

2.1.3 The service provider develops and maintains processes and practices that manages perceived and actual conflicts of interest.

2.1.4 The governing body demonstrates consistently acting ethically and responsibly.

2.1.5 The governing body ensures they have the right people, having regard to each individual's background skills and experience and how the addition of an individual builds the collective capability and effective functioning of the board.

2.1.6 The governing body ensures strategic and business planning sets the vision, purpose, and strategies for the organisation, assisting the organisation to understand these and adapting the direction or plans appropriate.

2.1.7 The governing body establishes a sound risk management framework and periodically reviews the effectiveness of such.

2.1.8 The governing body shall monitor organisational management performance including responses to individual problems and achieving continuous improvement.

2.1.9 The service provider is managed by suitably qualified and/or experienced person/s with clearly defined responsibility, authority and accountability for the provision of supports.

2.1.10 The service provider has a documented system of delegated responsibility and authority to another competent person in the absence of a usual position holder.

2.1.11 The governing bodys' effectiveness is reviewed to ensure it is effective in its operations, performance, succession planning and efficient use of sub committees.

2.1.12 The governing body ensures a system is in place to ensure an efficient and transparent flow of information aids decision making, thereby supporting improved accountability, integrity and safeguarding of information.

2.1.13 The governing body acknowledges its role in enhancing capacity and capability in the organisational they serve.

2.1.14 The governing body demonstrates a commitment to setting the tone for ethical and responsible decision making throughout the organisation.

2.1.15 The governing body actively and effectively engages with key stakeholders.

2.2 Risk Management

Outcome– Potential and actual risks are identified and managed.

2.2.1 Risk management is demonstrated across all organisational activities.

2.2.2 A structured and comprehensive risk management approach is in place to contributes to consistent and comparable results.

2.2.3 The risk management framework and process are in place. These have been customised and proportionate to the organisation's external and internal context related to its objectives.

2.2.4 Appropriate and timely involvement of stakeholders can be demonstrated. This enables their knowledge, views and perceptions to be considered. This results in improved awareness and informed risk management.

2.2.5 Service providers risk management anticipates, detects, acknowledges and responds to those changes and events in an appropriate and timely manner.

2.2.6 Service providers inputs to risk management are based on historical and current information, as well as on future expectations. Risk management explicitly takes into account any limitations and uncertainties associated with such information and expectations. Information should be timely, clear and available to relevant stakeholders.

2.2.7 Human behaviour and culture are demonstrated to be considered as part of the risk management practices.

2.2.8 Risk management is demonstrated to be is continually improved through learning and experience.

2.2.9 The service provider identifies and analyses, prioritises and treats risks to the organisation, including organisational, financial and occupational risks, as well as risks associated with provision of supports.

2.3 Quality Management

Outcome – The service provider shall establish, implement, maintain, and continually improve a quality management system including the processes needed and their interactions.

2.3.1 The service provider maintains a documented system that defines how the requirements of legislation and this standard are met. The system includes policies, procedures and other information within the quality and risk management systems. The system is reviewed at regular intervals and updated as required to improve supports delivered to Clients - relevant to the size, scope and complexity of supports delivered.

2.3.2 Core components of supports delivered are linked to the quality management system including:

- Customer focus;
- Leadership;
- Engagement of people;
- Process approach;
- Improvement;
- Evidenced-based decision making;
- Relationship management.

2.3.3 The service provider shall demonstrate leadership and commitment with respect to the quality management system by way of:

- Accountability for its effectiveness;

- Ensuring that the quality policy and objectives are established for the systems are compatible with the context and strategic direction of the service provider;
- Ensuring the integration of the system requirements into the service providers business processes;
- Promoting the use of the processes approach and risk-based thinking;
- Ensuring that the resources needed for the system are available;
- Communicating the importance of effective quality management and of conforming to the system requirements;
- Ensuring that the system achieves its intended results;
- Engaging, directing and supporting persons to contribute to the effectiveness of the system; and
- Promoting improvement.

2.3.4 The service provider shall demonstrate a commitment to maintaining and enhancing Client satisfaction.

2.3.5 The service provider ensures information is kept confidential and with appropriate access, transfer, storage, security, retrieval and retention relevant to the size, scope and complexity of supports delivered.

2.3.6 The service provider has a written program of internal audits that include all areas of the business.

2.3.7 The service provider maintains a continuous improvement program using outcomes, risk related data and feedback from Clients and workforce/contractors/volunteers.

2.4 Information Management

Outcome – Client information is identifiable, accurately recorded, safe, kept up to date, confidential and is easily accessible when required by the Client and relevant workforce.

2.4.1 Client informed consent is required to collect and retain their information or to release their information to other parties.

2.4.2 The service provider enters Clients Information into the information management system in an accurate and timely manner, appropriate to the service type and setting.

2.4.3 The service provider's workforce use up-to-date and relevant Client records.

2.4.4 The service provider safeguards Client's information through the collection, handling and storing in accordance with relevant legislation.

2.4.5 Digital safeguards are in place to ensure that information is continually protected. These are closely monitored and risk managed accordingly.

2.4.6 Archiving is undertaken consistent with legislative requirements.

2.5 Complaints Management

Outcome –Clients have a right to complain and give feedback to a service provider is recognised, respected and well managed.

2.5.1 The service provider maintains a complaints and feedback system that a Client has access to and knowledge of, that is documented and complies with any legislative requirements.

2.5.2 The service provider provides a safe and positive environment for Clients to make complaints by:

- Ensuring that complainants are not subject to negative consequences or retribution
- Enabling the complainant to nominate a contact person within the service with whom to correspond
- Providing information about how to contact external bodies to which the complaint may be referred

2.5.3   The service provider demonstrates continuous improvement in complaints handling by:

- Regularly reviewing complaint handling policies and procedures including seeking Clients views on the accessibility of the complaints system.
- Including a standing item on complaints and their implications for planning and improvement at meetings of the governing body.

2.6 Incident Management

Outcome – All adverse, unplanned or untoward events are systematically recorded by the service provider. When necessary or appropriate, notifications are given to regulatory and statutory agencies.

2.6.1   The service provider and staff, contractor, volunteers understand their legislative and statutory obligations in relation to reporting of unplanned, adverse or untoward events and the notification of the correct authority where required.

2.6.2   The service providers adverse event/incident reporting system is a planned and coordinated process that links to the quality and risk management systems.

2.6.3   The service provider has organisation-wide incident management systems and investigation systems, and:

- Supports the workforce to recognise and report incidents;
- Supports clients, and stakeholders to communicate concerns or incidents;
- Involves the workforce and cclients in the review of incidents;
- Provides timely feedback on the analysis of incidents to the governing body, the workforce and clients;
- Uses the information from the analysis of incidents to improve safety and quality;
- Incorporates risks identified in the analysis of incidents into the risk management system; and
- Regularly reviews and acts to improve the effectiveness of the incident management and investigation systems.

2.6.4   The service provider uses an open disclosure program and monitors and acts to improve the effectiveness of open disclosure processes.

2.7 Workforce Management

Outcome – Clients support needs are met through human resource management processes which are conducted in accordance with employment practices that meet legislative requirements.

2.7.1   The service provider identifies and documents the skills and knowledge required for each position together with the responsibilities, scope and limitations of each position.

2.7.2   During the absence or vacancy of staff (including managers), a suitably qualified and/or experienced person performs the role.

2.7.3 The service provider maintains records of staff, subcontractors/contractors and volunteer qualifications and competencies and compliance with legislative and contract requirements. Professional qualifications are validated, including evidence of registration and scope of practice.

2.7.4 The service provider has an orientation and induction process that is completed by workforce prior to delivering supports.

2.7.5 The service provider has a system to identify, plan, facilitate and record training and education for workforce so that they meet the needs of Clients. The system identifies training that is mandatory and includes training in relation to legislative obligations.

2.7.6 The service provider has a system in place to determine the competency of workforce relevant to the support they provide.

2.7.7 The service provider identifies the scope and limitations of supports delivered by workforce to safely meet the needs of Clients.

2.7.8 The service provider ensures that supervision, support and resources are available to workforce appropriate to their roles and the complexity and risk associated with the supports provided.

2.7.9 The service provider has a regular, valid and reliable performance review process for its workforce regarding their performance. Records of the feedback are maintained.

2.8 Leadership Capability

Outcome- Leadership is fundamental to the success of a sustainable and capable organisation. Embedding leadership fundamentals as a part of the structural approach to the standards supports such an intent.

2.8.1 Leaders demonstrate an understanding of, care for, and overall relationship with self.

2.8.2 Leaders demonstrate an ability to community with, relate to, and work effectively with others.

2.8.3 Leaders demonstrate an ability to articulate and promote the service providers spirit, purpose and strategic direction in ways that engage and empower workforce, clients, and stakeholders.

2.8.4 Leaders demonstrate an ability to manage business resources to achieve organisational goals within a dynamic operating environment.

2.8.5 Leaders demonstrate a capacity to foster a working environment that supports and encourages creative, holistic approaches to improvement, innovation, and transportation in the organisation.

2.9 Frontline Leadership

Outcome- The frontline leader is a formidable and crucial role in the makeup of our workforce.

2.9.1 Frontline leaders demonstrate that they think and work strategically.

2.9.2 Frontline leaders demonstrate that they achieve results and drive accountability.

2.9.3 Frontline leaders demonstrate that they engage people to build positive relationships.

2.9.4   Frontline leaders demonstrate that they exemplify personal drive and integrity.

2.9.5   Frontline leaders demonstrate that they communicate and collaborate with influence

2.10 Professional Boundaries

Outcome- The provision of safe and effective care and services, and the reduction of legal risks is possible, when staff are well informed of their professional boundaries, and therefore can make clear decisions. Boundaries are best described as the scope of practice and the limits surrounding appropriate behaviour in personal and professional relationships. The responsibility must be placed on the service provider to ensure a therapeutic relationship is maintained.

2.10.1   The clients plan of care demonstrates meeting the therapeutic needs of the client.

2.10.2   Workforce can demonstrate an awareness and ability to describe the therapeutic purpose of care that is aligned to both the care plan and clients needs.

2.10.3   Workforce can demonstrate that they do not use confidential information or their position of power to advantage themselves in any way.

2.10.4   Clients and workforce are familiar with the service providers requirements on accepting / receiving gifts, and the use of monies on behalf of a client where required.

2.11 Change Management

Outcome- Change has been systematically planned for improvements that will achieve improved care and service delivery outcomes for the client, workforce or stakeholders.

2.11.1   Change management is aligned to support core business functions;

2.11.2   Change is agile to develop systems and processes to enable integrations and improvements.

2.11.3   Change is supporting changing core behaviours.

2.11.4   Change is sustainable.

2.12 Benchmarking and Monitoring

Outcome- Monitoring and benchmarking in place to adequately support the needs of the clients care and services.

2.12.1 Care and services are monitored to ensure minimal adverse events occur and these are minimised to impact on client outcomes.

2.12.2 Benchmarking activities are carried out to support improved practices.