



LASA FEEDBACK TO THE AGED CARE QUALITY AND SAFETY COMMISSION BILL 2018

3 October 2018

*A strong voice and a helping hand
for all providers of age services*

Leading Aged Services Australia

Leading Age Services Australia (LASA) is the national peak body representing and supporting providers of age services across residential care, home care and retirement living. Our purpose is to enable a high performing, respected and sustainable age services industry delivering affordable, accessible, quality care and services for older Australians. We represent our Members by advocating their views on issues of importance and we support our Members by providing information, services, training and events that enhance performance and sustainability.

LASA's membership base is made up of organisations providing care, support, services and accommodation to older Australians. Our Members include private, not-for-profit, faith-based and government operated organisations providing age services across residential aged care, home care and retirement living. 57% are not-for-profit, 33% are for-profit providers and 10% of our Members are government providers. Our diverse membership base provides LASA with the ability to speak with credibility and authority on issues of importance to older Australians and the age services industry.

Introductory remarks

LASA takes the position that quality and safety are not negotiable in Australia's age services industry. LASA is absolutely committed to working to eliminate the risk of care failures and to continuously improve standards of care. LASA considers effective regulation to be fundamental to ensuring confidence in Australia's aged care system.

Older Australians and their families, age services providers, government policy makers and regulators share an interest in ensuring Australia's age services system delivers quality and safe care. This shared goal provides a platform for the collaboration needed for the new regulatory system to address any shortcomings identified and contribute to continuous quality improvement.

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LASA fully supports the intent underpinning the establishment of the Aged Care Quality and Safety Commission. In acknowledging this, LASA notes the significant difference between the functions of the Australian Commission on Safety and Quality in Health Care (ACSQHC) and the proposed functions for the Aged Care Quality and Safety Commission. All 14 functions of the ACSQHC listed under Section 9 of the National Health Reform Act 2011 are concerned with activities that 'promote, support and encourage the implementation of arrangements, programs and initiatives relating to health care safety and quality matters.' LASA would prefer that the Aged Care Quality and Safety Commission's functions include a similarly wider component of functions to support delivery of quality aged care in residential facility and home care settings which would include a focus on:

- wellness;
- re-ablement;
- quality of life;
- improving and maintaining consumers' good mental health; and
- integration of aged care, health and social care across all levels of government.

An ACSQHC function enshrined in legislation includes 'to formulate, in writing, indicators relating to health care safety and quality matters.' LASA would welcome inclusion of reference to the development and implementation of National Quality Indicators. Meaningful National Quality Indicators, regularly reviewed and amended, would provide greater responsiveness to emerging quality issues than the legislated statements of consumer outcomes under the new Aged Care Standards. Further, National Quality Indicators would enable a more fine-grained approach to specific quality issues to be taken. The National Quality Indicators would sit alongside accreditation outcomes, as is currently the case with the National Aged Care Quality Indicator Program.

1. Part 1 - Preliminary

Part 1, Division 1, Section 5

LASA agrees in principle with the content of **section 5, Object of this Act** but believes that this section should include reference not just to the consumer, but also the regulated providers. LASA believes that the Act should include functions supportive of providers' delivery of quality care (see LASA comment below to paragraph 1a for detail).

Object of this Act is to:

(1) establish a regulatory framework that will:

- (a) Protect and enhance the safety, health and well-being and quality of life of aged care consumers; and*
- (b) Promote aged care consumers' confidence and trust in the provision of aged care services and Commonwealth-funded aged care services; and*
- (c) Promote engagement with aged care consumers about the quality of care and services provided by:*
 - (i) Approved providers of aged care services; and*
 - (ii) Service providers of Commonwealth-funded aged care services.*

(2) It is Parliament's intention to further the object of this Act by conferring, through future legislative change, additional functions on the Commissioner relating to matters such as the approval of providers of aged care and compliance.

To paragraph (1 a): LASA would prefer that the Object of the Act would additionally include a component designed to support providers' delivery of quality aged care based on evidence. LASA believes that this function could be modelled on the ACSQHC which supports the safety and quality of care delivered by Australian health services (also see Introductory remarks above).

To paragraph (1 c): LASA believes that promotion of aged care consumers' engagement about the quality of care and services provided should include reference to My Aged Care. My Aged Care is the main information platform for consumers and its information contributes significantly to consumers' choice of provider.

Some consumers with advanced dementia and/or speech impediment will find it difficult to verbalise the experience of their care. LASA proposes adding legal representatives to the sentence:

*(c) promote engagement with aged care consumers **and/or their legal representatives** about the quality of care and services provided by.....*

By making engagement with the legal representative explicit in paragraph 1 (c), users of the Act are reminded to seek out and include the voice of consumers' legal representatives.

To paragraph 2: LASA would like to clarify which body will be responsible for the approval of providers of aged care and compliance until 2020?

2. Part 2 – Aged Care Quality and Safety Commission

No LASA comment.

3. Part 3 – Commissioner

Part 3, Division 2, Section 17

*The **consumer engagement functions** of the Commissioner are:*

- (a) *To develop, in consultation with aged care consumers, best practice models for the engagement of approved providers of aged care services, and service providers of Commonwealth-funded aged care services, with their aged care consumers;*

To (a): In LASA's reading of the above paragraph it is not clear that providers will be consulted in the development of best practice models for the consumer-provider engagement. However, providers of aged care are deeply involved with their consumers. They deliver the care their consumers require and providers of residential aged care also provide their consumers with a home. Therefore, providers of aged care are an interested party that must be included in consultations about best practice models of consumer engagement.

Also see LASA's comment to Part 1, Division 2, Section 7 in which LASA recommends that the definition of *aged care consumer* be amended to include a consumer's legal representatives. Engagement with substitute decision makers may be implicit in this legislation. However, including substitute decision makers in an explicit way may prompt users of the legislation to engage with substitute decision makers where appropriate.

Part 3, Division 2, Section 18 *Complaints functions of the Commissioner*

LASA believes that a distinct aged care complaints service within the new agency should be maintained. LASA believes that separating Complaints from Regulation would support a speedier complaints resolution process because it will be less mired in the deep investigative approach taken to regulative issues.

Part 3, Division 2, Section 21 *Complaints function and Regulatory functions*

LASA would welcome if this legislation included an external and independent body of review for aged care providers. This body's function would be to review decisions made by the Commission about complaint or accreditation issues disputed by the aged care provider. An external and independent body of review would thus ensure 'natural justice' for providers.

The Commission's regulatory functions may be strengthened by including an option of having the merit of the Commission's decisions externally reviewed. This strengthening may come into play because assessors may be more confident to make tough assessments if they know that providers can access an external and independent process of review.

Part 3 Division 2 Section 20

Currently, the Australian Aged Care Quality Agency (AACQA) supports providers of aged care with education programs covering issues such as accreditation, best practice, drivers of consumer focus and continuous quality improvement.

LASA would welcome if section 20 specifically identified educational activities targeting accreditation, best practice, drivers of consumer focus and continuous quality improvement. The aged care sector considers essential the continued availability of these educational offerings.

Part 3 Division 2 Section 23

LASA would prefer if the bill stipulated a formula for the setting of fees which would make the setting of fees transparent and predictable for providers.

4. Part 4 – Staff of the Commission

No LASA comment.

5. Part 5 – Aged Care Quality and Safety Advisory Council

Part 5, Division 3, Section 41

To paragraph 3: LASA notes that the composition of expertise for the proposed Aged Care Quality and Safety Advisory Council (the Council) is essentially the same as for the Aged Care Quality Advisory Council currently advising the AACQA. LASA proposes the inclusion of new areas of expertise for the new Council. This way the expertise available to the Commissioner will more closely reflect the government's reform agenda in the *Better Ageing – Promoting Independent Living 2018-19 Budget* measure. The reform agenda in *Better Ageing* focusses on improving access to:

- wellness, re-ablement in home care and short term restorative care in the residential and home settings;
- mental health care provision in residential aged care; and
- palliative care provision in residential aged care.

For this reason, LASA would welcome if membership of the Council would include the following areas of expertise:

- re-ablement/wellness;
- quality of life in old age and when living with frailty in residential care or as recipient of home care;
- mental health and mental wellbeing in old age and when living with frailty;
- grief and bereavement; and
- palliative care in residential and home care.

Further, LASA believes that the Council should receive input from people with expertise in integrating the health care, social care and aged care systems. Evidence suggests that access by residential care to GPs and outreach services advising on palliative care and emergency care do improve the quality of health care provided in residential care¹.

In the *Explanatory Memorandum* accompanying the Aged Care Quality and Safety Commission Bill 2018, LASA notes following paragraph in the commentary to clause 41 on page 14:

¹ Chapman, M, Johnston, N, Lovell, C et al. 2016 'Avoiding costly hospitalisation at end of life: findings from a specialist palliative care pilot in residential care for older adults'. *BMJ Supportive and Palliative Care* Published Online First 8 August 2016 doi: 10.1136/bmjspcare-2015-001071.

Johnston, N, Lovell, C, Wai-Man, L et al. 2016 'Normalising and planning for death in residential aged care: findings from a qualitative focus group study of a specialist palliative care intervention'. *BMJ Supportive and Palliative Care* Published Online First 14 July 2016 doi 10.1136/bmjspcare-2016-001127

Barnard, A, Hou, X-Y & Lukin, B 2016 'Director of nursing experiences of a hospital in the nursing home program in South East Queensland' *Collegian* 23, pp.341-348.

Fan, L, Hou, X-H, Zhao, J, Sun, J et. Al. 2016 'Hospital in the Nursing Home program reduces emergency department presentations and hospital admissions from residential aged care facilities in Queensland, Australia: a quasi-experimental study.' *BMJ Health Services Research* 16:46.

The terms of the current members of the Aged Care Quality Advisory Council will continue and transition to the Aged Care Quality and Safety Advisory Council with their terms to be served as set. Vacancies will be filled under the terms set out in this Bill.

In view of the recently highlighted performance issues by aged care providers, the AACQA and the Australian Complaints Commissioner, LASA considers that appointing a number of new members to Aged Care Quality and Safety Council may be beneficial. Given this, consideration should be given to transitioning some of the existing Aged Care Quality Advisory Council members to the new Council in order to maintain some continuity. Whilst also considering appointing new members to the Council in order to allow for the introduction of new expertise, underlining the change to the management of quality issues the government is introducing.

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6. Part 6 –Reporting and planning

Part 6, Section 54

To paragraph 3: LASA considers that preparation of the Commission’s annual operational plan should also include consultation with the aged care sector through an appropriate consultative body of aged care providers. The Aged Care Sector Committee may be one such body. Consultation with aged care providers ensures that emerging quality issues identified by providers may be investigated by the Commission.

Further, consultation with providers of aged care gives the industry an opportunity to contribute to the identification of Key Performance Indicators (KPI) for the Aged Care Quality and Safety Commission. LASA suggests that improvement of the consistency of quality assessments may be a suitable KPI for the new Commission. Members have told LASA that consistency of the AACQA’s quality assessment between quality assessors (inter-rater reliability)² and over time has been a key concern for the industry.

7. Part 7 – Information sharing and confidentiality

Part 7, Division 1, Section 55

The paragraph:

The Commissioner may make specified information about aged care service publicly available but that information must not include personal information

appears to contradict the next paragraph and section (b):

Information acquired under, or for the purposes of, this Act or the rules will be protected information under this Act if the information:

- (b) Relates to the affairs of an approved provider or service provider of a Commonwealth-funded aged care service.*

The addition of a clarifying statement and reference to subsection 60(2) and section 61 would make this section easier to understand for the reader.

² Inter-rater reliability is the degree of agreement among raters. It is a score of how much consensus there is in the ratings given by various judges.

8. Part 8 – Entry and search powers

No LASA comment.

9. Part 9 – Miscellaneous

No LASA comment.