

**SENATE STANDING COMMITTEE ON COMMUNITY AFFAIRS, LEGISLATIVE COMMITTEE**

**PRESENTATION ; ANDREA COOTE CHAIR, NATIONAL AGED CARE ADVISORY COUNCIL**

**PARLIAMENT HOUSE 3 OCTOBER 2024**

**OPENING STATEMENT**

Good Afternoon Senators

Thank you very much for inviting me as Chair of the National Aged Care Advisory Council (NACAC) to present to you today.

Like so many I was personally delighted and relieved when the Minister introduced The Aged Care Bill 2024 into the Parliament and want to take this opportunity to congratulate the Minister and all those involved ,many of whom are here today, in establishing this historic outcome.

NACAC has actively collaborated with the Government and are pleased to see our advice reflected in many aspects of this bill. We remain committed to continuing our advice on the implementation of the aged care reforms

NACAC was established in November 2021 with the purpose of providing independent advice to the Government to support the implementation of the significant aged care reforms.

There are 18 Members appointed as experts in relevant areas of aged care including workforce, providers, consumers, health and allied health professionals, training and education, dementia, First Nations and Ethnic communities , 4 of our Members were represented on Ministerial Taskforce.,

I have been honoured to have been the Chair since 2021 and we are proud of the working partnerships we have established with the Aged Care Sector, The Government and the Department of Health and Aged Care.

Senators we had a meeting last week and focused on 2 aspects of the Bill, 1Support for the Bill  
2Suggested amendments.

I am very happy to elaborate on these opinions during questions however in summary-

### **THE COUNCIL SUPPORTS**

- the rights-based focus of the Bill and the person-centred objectives. Plus the inclusion of supported decision making
- an independently appointed Complaints Commissioner –
- **CRIMINAL PENALTIES** Members recognise that many older people are seeking accountability and penalties where there has been abuse and neglect

- Feedback from providers and the workforce, was that that criminal penalties could be a risk to workforce supply.
- MINISTERS 2<sup>nd</sup> Reading Speech under Duties of Care she says; The duties are carefully targeted to the most egregious conduct.
- Leaders who fail to fulfill their duty of care without reasonable exception will face significant civil penalties

Council members welcomed these comments which supports the application of penalties whilst balancing unintended consequences.  
(Nutrition)

- Fully endorses the appointment of a First Nations Aged Care Commissioner

## **THE COUNCIL NOTED**

### **1.FINANCIAL CONSIDERATIONS AS PER THE TASKFORCE RECOMMENDATKNS**

- Council felt that while there is concern among older people about changes to fees and charges , moving toward a user pay approach, these same older people acknowledge that the system needs to ensure it is viable ,supports future generations and is sustainable.( Deep Dive what do baby Boomers want from Aged Care)

**2.NACAC EMPHASISED** The need for more communication with both the sector and the wider community about the reforms in order to avoid confusion and mis information

**3.TIMELINES NEED TO BE IDENTIFIED** to enable providers to prepare systems and implement training especially for Support at Home changes.

**4 REVIEW PROCESS** was welcomed by the Council .Council is aware of the success of David Tune's Legislated review into the 2018 Act which ensured the Act was adhering to its intention and expect a similar result with this Act.

#### **CLOSING STATEMENT**

Senator we applaud the review of the Standing Committee of the Community Affairs Legislative Committee and again on behalf of my NACAC Colleagues commend the Minister and all the people involved in the introduction of the Age Care Bill to the Parliament.

Once passed this historic Act will improve the lives of generations of Australians.

NACAC wishes the Bill a speedy passage through the Parliament

**ANDREA COOTE**

**CHAIR,**

**NATIONAL AGED CARE ADVISORY COUNCIL**

# **NATIONAL AGED CARE ADVISORY COUNCIL COMMENTS ON THE AGED CARE 2024 BILL**

**September 2024,**

The Council identified positives in the Aged Care Bill 2024 and suggested potential amendments.

The de-identified comments below reflect the diversity of the Council

## **CRIMINAL PENALTIES**

### **POSITIVES OF THE BILL**

- The removal of criminal penalties for breach of statutory duties (as had been proposed in the Exposure Draft) was welcome, thus removing a barrier to the sector retaining and attracting leadership talent.

### **POTENTIAL AMENDMENTS**

- Alignment of the whistleblower regime (Bill, Section 547 – 544) with the Corporations Act regime as dual regimes creates a significant resourcing challenge, and conflict of laws issue for providers to administer both regimes.

## **STATEMENT OF RIGHTS**

### **POSITIVES OF THE BILL**

- The Statement of Rights - think much more impact with being a positive duty, with clear articulation of the complaints commissioner role –

### **POTENTIAL AMENDMENTS**

- Expectations to uphold rights needs to extend to, and complaints able to be raised, regarding other parts of the system providing direct support to people 'seeking to access' or being supported in their access/use of aged care services e.g. Aged Care Needs Assessor, Care Finder or Independent Aged Care Advocate (could be achieved through codes of practice/conduct and complaints monitoring through complaints commissioner of other)
- Primary legislation must include the minimum and timeless framework of financial costs including:

- a. Support at Home Individual Contribution Steps (as occurs with residential means testing)
  - b. A primary legislation hook that the rules "must" include provisions for hardship
- While rights are more enforceable under the new bill compared to the exposure draft, some tweaks are needed:
    - a) Clauses around obligations on providers does not talk about upholding rights, merely processes and procedures that can uphold rights.
    - b) There is no direct clause for workers to uphold rights (noting not covered by code of conduct)
    - c) Legislative note on 24(3) needs to clarify it does not prevent Complaints Commissioner
    - d) Rights and complaints about rights must apply from when you apply for care (seeking to access) not simply once receiving (accessing care)
  - Choice and control for older people needs to be strengthened in the primary legislation
    - a) Everyone paying 19% care management off the top of all services but being pooled reduces autonomy/self-management options; including from 2027 when choice of provider will be included.
    - b) There is no requirement for the assessor to 'have regard' for the views of the participant in the services they will/won't accept - therefore not seen by the decision maker.
    - c) Ensure consequential amendments to the social security act to permit MyAC assessors to have pre-populated information that Services Australia holds as part of the assessment process (e.g. last income and asset updated date, current value of deemed income, current identified income, current identified asset) reducing duplication.

### **INDEPENDENT COMPLAINTS COMMISSIONER**

#### **POSITIVES OF THE BILL**

- Has been very well received by the community but need to see decisions to not take action on a complaint to be able to be reconsidered and reviewable.

### **SUPPORTED DECISION MAKING**

#### **POSITIVES OF THE BILL**

- An improvement and good that S/T included but needs adjustment as currently carve out for obligations and even if not 'activated' the S/T instrument will be relied on and the older persons Article 12 to be able to make their own decisions not upheld. - recognising the expectations of upholding supported decision principles should have an expectation on all supporters to follow (including those guardians highlighted in Clause 28) – open for ways that can occur while still supporting recognition of the S/T instruments and obligations. Currently confusing who Supported Decision Making applies to and who not creating two tier system and confusion for providers, families and older people

## **SUPPORT AT HOME**

### **POSITIVES OF THE BILL**

- Classification level 8 with Assistive Technology (with options for prescription for additional), Restorative Pathway and Home modifications a huge benefit for older people with a disability to remain in their home longer
- For Support at Home, a combination of additional packages, the introduction of new package levels, reduced wait times to more equitably drive care in the home aligned to need

## **RESTRICTIVE PRACTICES**

### **SUPPORT FOR THE BILL**

- Older people and families) remain very concerned on the management and level of monitoring of restrictive practices. The Restrictive Practice Decision Maker hierarchy and the liability waiver was only meant to be a temporary measure than was a sunset– it was supported by OPAN (and the clinical advisory committee) only as a temporary measure (waiver and hierarchy) as impacts human rights. At a very minimum the liability waiver needs to have a sunset clause as embeds in primary legislation and that was not supported.

## **RADS**

### **POSITIVES OF THE BILL**

- Accommodation Deposit retention regime, indexation of Daily Accommodation Payment and increase in the threshold to obtain room pricing approval from \$550,000 to \$750,000 – these initiatives uplift the viability of Accommodation and help spur the new developments much needed in residential aged care.

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## **POTENTIAL AMENMENTS**

- Re-insertion of the 28-day period for an accommodation/resident agreement to be entered into (current AA Act, Section 52-F2) which has been changed to a requirement to have an agreement in place before delivering services (Bill, Section 293). Given the nature of urgent decision-making that often occurs in aged care, the 28-day period provided flexibility for both residents and providers

## **WORKERS**

### **POSITIVES OF THE BILL**

- There is positive inclusion of workforce in many parts of the Act, including in the objects, rights, principles, definition of high-quality care and elsewhere.
- The inclusion of the hook for a minimum qualification and professional development for care workers at section 152, as part of a providers registration obligations, is welcome
- Welcome the balancing of individuals rights with workers' rights at section 24(2)(b), which will help to protect employment rights and the right of a worker to be free from abuse and violence at work.

### **POTENTIAL AMENDMENTS**

- A specific and separate Worker Registration section would be ideal – you could bring all the Royal Commission recommended worker registration parts together including the worker screening section and training requirements and legislate for a registration system for workers (rather than as part of providers obligations as currently suggested). Giving it a legislative basis would send a clear message about the direction of travel in professionalising the care workforce.  
Failing this, the professional registration aspect for workers needs to be provided for in a specific section somewhere, separate from provider registration as currently drafted. Care work as a regulated profession was the vision of the Royal Commission's



recommendations. The requirement for certain qualifications and other aspects envisioned at section 152 could be enabled here too. This could be as part of the worker screening section with a hook for the rules for the ACQSC to register workers and check minimum qualifications, rather than just screen them.

- A regulatory approach that brings digital platforms and associated providers under provider registration in some manner. We support a risk-based registration model. There is a distinct lack of clarity around the relationship
- provider registration in some manner. We support a risk-based registration model. There is a distinct lack of clarity around the relationship between associated providers and providers, and associated providers should more simply be registered providers with obligations according to their risk level. Meanwhile, the separate digital platform regulation does not go far enough. With the expansion in home care through Support at Home, there needs to be real thought put into how the regulation of digital platforms will work, otherwise it will lead to an explosion in the gig economy in this area, with the subsequent passing on of risk and liability to workers, and the race to the bottom in terms of wages, superannuation, leave entitlements and so on. The NDIS provider registration taskforce was able to say simply that digital platforms should be registered as providers, and we think there should be consistency across the various care sector registration frameworks.
- Responsible person section: the definition of responsible person including “any person who is responsible for the day-to-day operations of the registered provider” at section 12(1)(c)(ii) still concerns us, as we submitted to the exposure draft consultation. It remains unclear what this could cover, potentially including shift managers, or people filling in for executive management on leave. A more precise definition than “day to day” should be used, as it implies a lower level of operational activity than the other language in this section, such as those who make “executive decisions”.

## **NUTRITION**

### **POSITIVES OF THE BILL**

- The inclusion of nutrition is a plus++
- Definition of nutritional needs is required. Suggested wording:
- How registered providers must deliver food and drink to meet the general and specific nutritional needs and preferences of individuals;

## **OTHER ISSUES AND COMMENTS**

- Removal of the worker ‘Voice’ requirement.

- Incorporation of taskforce recommendations.
- The inclusion of whistleblower protections is unnecessary, and placing the burden on PWC's under the proposed legislation is unreasonable. This responsibility should instead be governed by the Corporations Act.
- Pastoral care and volunteer services should be appropriately recognized within the Mandatory Care Minutes.
- There are concerns about the implementation of the 'Supporters' aspect of the legislation (which relates to the undrafted Rules). While it is hoped that this framework will resolve existing issues regarding the representation of older Australians in residential care, the current draft suggests that:
  - There could be confusion regarding the interaction between State and Territory systems.
  - Multiple systems may persist, leading to sector-wide confusion.
  - The department, acting as the 'System Governor,' may not be adequately prepared in time.