



Meals on WheelsTM Australia

Submission on Draft Bill for a New Aged Care Act

14 February 2024

Who Are We?

Meals on Wheels Australia (MoWA) is the national peak body representing over 590 individual Meals on Wheels (MoW) outlets that provide meals to around 200,000 older Australians. MoW services represent one of Australia's largest users of voluntary labour, with over 45,000 active volunteers involved in meal delivery and social engagement with older people.

Overview of new Act

MoWA appreciated the opportunity to participate in a roundtable on the draft Bill for a new Aged Care Act on 24 January 2024. This submission is supplementary to our feedback at the roundtable.

MoWA supports the intent of the new Aged Care Act.

The Statement of Rights

MoWA broadly supports the Statement of Rights as proposed. The Act should stipulate responsibilities as well as rights. For example, a general obligation on service users to abide by WHS rules, which may place limits on choice. Also, in a group context, a responsibility to take into account the impact of choices and behaviours on other clients.

Service funding levels must be sufficient to match the aspirations expressed in the Statement of Rights.

There will be limitations on the practicability of older people exercising their rights, for example, regarding their preferred service delivery time. What is a provider to do to provide an efficient and safe service if the older person insists on their right to have their meal delivered 'on demand' at a different time each day? Or to have their meal delivered at 5am on a weekend on a regular basis?

There are likely to be differences of opinion about what "suitably qualified, skilled and experienced workers" means. This could be applied in a way that may force volunteer labour out of the aged care system – if the obligations on volunteers (time spent training, type of training) are impracticably onerous with respect to the nature of the tasks performed, or if VET certification becomes a minimum requirement.

Secondarily, what will the obligations of CHSP-only providers be pre- and post-July 2025 re providing consumers with information about their rights? For services provided within the older person's home, potentially via multiple providers, it seems unnecessarily duplicative

and confusing for the older person to receive multiple versions of information about their rights (or the same document multiple times). There would be great merit in discussion about and provision of information about the person's rights to be the responsibility of the single assessment system.

The Statement of Principles

MoWA supports the inclusion of person-focused, system-focused and governance-level principles in the new Act. It is one of the best parts of the new Act that the roles of each government participant in overseeing the system are clearly articulated and that they will have to operate under the Statement of Principles.

The definition of high-quality care

The definition is much improved on the earlier version during the consultation on the framework for the legislation. It remains somewhat unclear what purpose the definition has within the Act.

Registration categories

MoWA is supportive of the placement of meals services in category 1. We will be keen to discuss with the Department what category specific obligations will apply to meals.

We also query why social support is in category 4. Many of the services that provide meals on wheels also provide a social support service. We would speculate that a majority of social support services are delivered by volunteers and run by community groups including from CALD backgrounds. Perhaps these services should be reassigned to category 1.

ACCPA has reported that the Department had confirmed that CHSP-only providers would not be deemed into registration categories until commencement of Support at Home in July 2025. What, if any, other provisions of the new Act will apply to CHSP-only providers from the date the new Act comes into effect and 30 June 2025? For example, how will the new Aged Care Quality Standards be applied to CHSP?

Associated providers

It is unclear exactly which organisations will be captured by the definition of an "associated provider" and what their obligations will be. We note that many MoW services currently sub-contract to Home Care Package providers and would be thus captured by the Aged Care Act, irrespective of when CHSP providers are deemed into registration categories. Are public hospitals or private food production companies that provide meals to MoW services deemed associated providers? Or do they have to be substituting for the meal delivery part of the service to be considered an associated provider?

A new duty of care and compensation pathways

MoWA is comfortable with the proposed wording of the duty of care. But its potential application in an aged care context is fraught on a number of grounds.

First many older people using aged care services have a multitude of complex health care conditions. Any of these can result in older people sustaining injuries (e.g. falls) or even

dying. Sorting out what is natural and what is the result of provider staff negligence will not be easy.

Second the inclusion of criminal penalties was considered by the Aged Care Royal Commission but not deemed appropriate partly because of the evidentiary burden (proof beyond reasonable doubt) is difficult to establish e.g. with people with dementia. Also, the Royal Commissioners were concerned about the impact on board and senior personnel recruitment.

Third we are concerned about the application of civil and criminal penalties to responsible persons. This is already impacting attraction and retention of board members and key personnel and is likely to only get worse if the Act's provisions become reality.

Fourth the scale of proposed civil penalties for organisations appears excessive when you consider the capacity of small organisations, such as many MoW services, to pay such fines.

Fifth the application of criminal penalties to organisations is not consistent with related areas of health care or disability services.

Sixth overall the penalty regime will likely result in worse care being delivered across the board as it will severely disincentivise people from reporting incidents and following a continuous improvement approach. In health care, the approach is to encourage no-fault reporting.

Seventh a cause for concern is the inclusion of a clause which states "a defendant bears an evidential burden" to prove that they had a reasonable excuse. This appears to imply that organisations and responsible persons are deemed guilty unless they can prove otherwise, which is incredibly unfair given this is the government accusing them of a crime. The power imbalance is immediately evident.

Protections for whistle-blowers

Generally the proposed framework for whistle-blowers looks reasonable. However the removal of an 'in good faith' requirement will make it more difficult to prevent vexatious complainants from operating. This should be restored to ensure there is reasonable balance in the system.

Appointment of Representatives and Supporters

MoWA supports inclusion of a clear process for appointment of representatives and supporters. Limiting older people to a choice between having a representative or a supporter seems counter-productive. For example, an older person may need a representative to make decisions but want another family member (who may live closer) to be a supporter. Older people should be able to nominate someone to act on their behalf at any stage.

Providers will need clear guidance on how the Commonwealth system intersects with State/Territory guardianship and powers of attorney. There is at least recognition of this in

the draft Act with a requirement on the System Governor to default to a guardian or power of attorney as a representative.

It is unclear how providers will know who has been authorised by the Commonwealth as a representative or supporter. The Consultation Paper doesn't adequately address the practicalities inherent in home support service delivery. We are unclear whether MoW services will be able to respond when a family member or friend contacts them to cancel or change a single service episode (e.g. the person was hospitalised or has a medical appointment at the scheduled service time) through to providing advice about allergies, complaints/feedback, incidents etc, if that person is not recorded as a supporter or a representative. There are obviously times when the older person is incapable of making the call. Customer service staff are going to very quickly need to be able to ascertain whether or not the person they are speaking to is an authorised supporter or a representative, if not the client.

Eligibility for Commonwealth funded aged care services.

MoWA supports the introduction of a single assessment process for older people to determine eligibility and conduct an individual needs assessment.

It should be possible for older people to access support at home urgently and then have their needs and eligibility for ongoing services assessed at a later date. For example, a family carer might become ill and it becomes critical to provide meals quickly. The Productivity Commission argued in its 2011 report that services such as Meals on Wheels should be able to be accessed for up to 12 weeks before an assessment was conducted to establish eligibility for ongoing services.

Extension of capital liquidity and adequacy provisions to home care

MoWA opposes extending liquidity and capital adequacy requirements to home care services. The argument to have such protections is clear in residential care, where providers hold extensive amounts of resident funds in refundable accommodation deposits. But the case is not there for home care, especially since the government now holds unspent funds in Home Care Packages. Extending capital adequacy requirements to home care runs the very real risk of simply driving out small, local, community providers.

Role of System Governor and Regulator

The goal of "promoting a diversity of registered providers to enable people to choose between registered providers" is only one way to look at what we want out of the aged care system. It is equally if not more important to ensure the provision of aged care services equitably (which is a goal) and to support communities to provide care services which meet local needs (which is not a goal in the current draft).

Transition arrangements and timeline for implementation

The new Statement of Rights (when it has some responsibilities added in) and Statement of Principles could operate from the promulgation of the Act, which will meet some of the concerns of consumer representatives about timeframes.

Changes to the requirements directly on providers will need to be phased in a sensible sequence. In particular, new Aged Care Quality Standards and new Registration requirements should be implemented with sufficient time for providers to adapt. There will be considerable effort needed by providers to prepare for and implement the changes required by the new Act. For example, every policy document will need to be updated with new references to the new Act and to incorporate new expectations such as how to make their service trauma aware.

It is unclear whether the government itself is ready for the changes to come from a new Act. Already we have seen delays to the timeframes for CHSP to be incorporated in Support at Home (until at least mid 2027) and the Single Assessment System (with tenderers not appointed until at least September 2024). Many of the changes will require time, staff resources and finances to properly implement them.

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