



# Meals on Wheels<sup>TM</sup> Australia

## Submission on Aged Care Bill

27 September 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 35,000 active volunteers involved in meal delivery and social engagement with older people.

### Overview of Bill

MoWA supports the intent of the Aged Care Bill. It is critical legislation and brings overdue reform to Australia's aged care system.

### The Statement of Rights

MoWA welcomes amendments made to the Statement of Rights since the Exposure Draft. The Bill now recognises the obligation on service users to abide by WHS rules, which may place limits on choice. Also, in a group context, the Bill recognises 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.

### The Statement of Principles

MoWA supports the inclusion of person-focused, system-focused and governance-level principles in the Bill. It is one of the best parts of the Bill 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 improved on the version in the Exposure Draft.

### Appointment of Supporters

MoWA supports inclusion of a clear process for appointment of supporters and decision makers and the move to a supported decision making framework. Providers will need clear guidance on how the Commonwealth system intersects with State/Territory guardianship and powers of attorney. There is recognition of this in the Bill with a requirement on the System Governor to default to a guardian or power of attorney as a supporter/decision maker. It is unclear how providers will know who has been authorised by the Commonwealth as a supporter.

### **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. But there should be clear and carefully enforced rules about any aged care providers selected to be assessment agencies maintaining strict separation of their assessment operations from their aged care services.

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.

### **Registration categories**

MoWA is supportive of the placement of meals services in registration category 1. We look forward to engaging with the Department on the category specific obligations that will apply to meals.

We also endorse the decision to move social support into registration category 3. Many social support services are conducted by community-based organisations (including CALD communities) and will benefit from not having to comply with the Aged Care Quality Standards.

### **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 Bill. 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?

### **Definition of an aged care worker and the Code of Conduct**

The definition of an 'aged care worker' includes volunteers. Chapter 3, Part 4, Division 2, Section 173 states that failing to comply with the Aged Care Code of Conduct carries a 250 penalty unit (\$78,000) fine. This was raised as a concern by MoWA and others such as the Aged & Community Care Providers Association (ACCPA). We are concerned that such a penalty will act as a disincentive for people to volunteer in the future. As most who volunteer in our communities in this space are low to middle income people, many of whom are on pensions, the threat of fines of anything like such magnitude will cause major ongoing problems in the recruitment of volunteers. Such an outcome could signal the death of volunteering in services like Meals on Wheels. It is using a sledge hammer to crack a nut!

We also note that the penalty for responsible persons and aged care workers for a failure to comply with the Aged Care Code of Conduct is the same. It would only seem fair that it should be lower for aged care workers.

### **A new duty of care and compensation pathways**

MoWA is comfortable with the proposed wording of the duty of care. Following negotiations between the Government and Opposition, the Aged Care Bill has removed criminal penalties from the section about the statutory duty of care and moderated the financial penalties. The Bill also reverses the burden of proof, so that the prosecution and not the defendant bears the burden to prove conduct was engaged in without reasonable excuse.

### **Protections for whistle-blowers**

The framework for whistle-blowers looks reasonable. However, the provision allowing protected disclosure to an aged care worker should not proceed. It is unreasonable to expect an aged care worker (which includes a volunteer) to know how to handle such a disclosure. Reference to the aged care provider and their responsible persons is sufficient.

### **Extension of financial and prudential standards to home care**

Initially providers registered in category 6 (residential care) will have financial and prudential standards apply to them. The Explanatory Memorandum (p.317) states that is “the policy intention is that, over time, the application of the [financial and prudential] standards will expand to include providers registered in other categories.

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 and will do so for the Support at Home Program. Extending capital adequacy requirements to home care runs the very real risk of simply driving out small, local, community providers, which we presume is not the government’s intention. Again, the principle of proportionality should come into play.

### **Role of System Governor and Regulator**

The goal of “promoting a diversity of registered providers ... to enable individuals seeking funded aged care services to exercise informed choice between available providers” (Explanatory Memorandum p.298) is only one way to look at what we want out of the aged care system. Choice should be as much about the type of service to be provided rather than who provides it. For Meals on Wheels, client choice is more about the variety of meal options. 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 Bill).

### **Aged Care Worker Screening**

The Explanatory Memorandum (p.318-322) outlines the Government’s intent to harmonise worker screening across the care and support sectors, including the National Disability Insurance Scheme (NDIS). MoWA points out that the process should be simple for volunteers that work in the aged care sector.

### **Transition arrangements and timeline for implementation**

Changes to the requirements directly on providers will need to be phased in a sensible sequence. In particular, new Aged Care Quality Standards, new Registration requirements and new participant fees 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 the Bill. 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 October 2024). Many of the changes will require time, staff resources and finances to properly implement them.

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