

Submission on a new model for regulating Aged Care: Consultation Paper no.1

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Overview

Volunteers are an essential but distinct component of Australia's aged care workforce.

In this submission, we argue that the development of the new model for regulating Aged Care needs specifically to consider how it will reduce the regulatory burden on volunteers and how it will promote and support volunteer engagement.

- The further development of the regulatory model, and the risk-based approach, should explicitly consider volunteers and ensure that the regulatory burden placed on volunteers and volunteer engagement is reduced for low risk interactions (for example, infrequent companionship visits).
- Whether volunteers are to be included under regulatory requirements (flowing from the Act), or have tailored provisions and / or sanctions, should follow detailed analysis of the distinct characteristics of volunteer engagement, balancing the benefits of volunteer involvement with the relatively low risk of most interactions (due to their voluntary nature, supervision, and infrequency). The ability to differentiate between paid workers and volunteers must be a feature of the new Aged Care Act.
- Any penalties for breach of compliance with regulatory tools should also allow for differentiation between different types of workers.
- Further consultation on the development of the regulatory model should involve specific and tailored consultation with relevant volunteering stakeholders, including volunteers, the peak volunteering bodies and providers that involve volunteers.

Introduction

Background and context

Volunteers are a vital part of the aged care workforce, as recognised in the Aged Care Workforce Strategy¹. The Royal Commission into Aged Care Quality and Safety recommendation 44² set out how the Australian Government should promote volunteers and volunteering in aged care to support older people to live meaningful and dignified lives.

Participation of volunteers in organisations has been declining for well over a decade, with aged care volunteering particularly badly hit since the onset of COVID19³. The Australian Government has funded Volunteering Australia to lead the development of a new National Strategy for Volunteering⁴ in response to this decline and other challenges being faced. Regulatory reform in aged care needs to be understood in this wider volunteering context and support the continued, and increased, engagement of volunteers in aged care.

¹ <https://www.health.gov.au/resources/publications/a-matter-of-care-australias-aged-care-workforce-strategy>

² The full list of the Royal Commission's recommendations available here
<https://agedcare.royalcommission.gov.au>

³ <https://www.volunteeringaustralia.org/wp-content/uploads/AGED-CARE-CENSUS-2020-factsheet-Final.pdf>

⁴ <https://volunteeringstrategy.org.au/>

About the consultation

The Australian Department of Health and Aged Care (the department) is leading the development of a wide range of reforms including a new Aged Care Act and regulatory model. This follows several reviews into aged care, including the Royal Commission into Aged Care Quality and Safety, which all found that the aged care system needs significant improvement.

Consultation Paper no.1⁵ is the first in a series of consultation papers that will develop the different components of the regulatory model. Stage 1 of the consultation involved a Concept Paper published in February 2022. We are now in Stage 2 which involves developing the details of how the new model will operate. This stage includes Consultation Paper no. 1 which sets out a high-level, end-to-end picture of a new model for regulating aged care. It discusses regulatory safeguards and tools that are the building blocks of the proposed model and the concepts and principles behind the proposed approach. Stage 3 will involve consultation on specific regulatory safeguards and tools of the model (for example, worker screening) and will occur through separate consultation papers. Stage 4 will involve consultations on what transition arrangements need to be in place to support the sector to move to a new regulatory model.

The design of the regulatory model is being undertaken alongside related activities and reforms in the aged care sector. These include: a new Aged Care Act; reforming in-home aged care; aligning regulation across the care and support sectors, and the introduction of a compulsory Code of Conduct⁶.

About the submission

This submission was drafted by Volunteering Australia in collaboration with the State and Territory peak volunteering bodies.

This submission first describes the roles that volunteers play in aged care and the scale of their involvement. This is important as the new regulatory model needs to work for this diverse and significant element of the workforce. The submission then highlights the potential challenges of the new regulatory model for volunteer engagement.

This submission complements previous ones concerning aged care and the wider care and support sector, most recently:

- Submission on the Aged Care data strategy⁷
- Submission on the Care and Support Sector Code of Conduct⁸

⁵ https://consultations.health.gov.au/best-practice-regulation/aged-care-regulatory-framework/user_uploads/dt0003052-re-new-model-for-regulating-aged-care-v10-final-20220902.pdf

⁶ <https://agedcareengagement.health.gov.au/blog/consultation-for-the-code-of-conduct-for-aged-care/>

⁷ <https://www.volunteeringaustralia.org/download/153/2022/30934/volunteering-australia-submission-on-the-aged-care-data-strategy.pdf>

⁸ <https://www.volunteeringaustralia.org/download/154/2021/26963/december-2021-submission-on-the-care-and-support-sector-code-of-conduct.pdf>

- Submission on Aligning Regulation across Aged Care, Disability Support, and Veterans' Care⁹
- Submission to the Royal Commission into Aged Care Quality and Safety¹⁰

Volunteers in aged care

Volunteers contribute in significant and diverse ways across aged care.

The 2016 National Aged Care Workforce Census and Survey estimated that volunteers were engaged extensively across aged care, with 83 per cent of residential facilities and 51 per cent of home care and home support outlets engaging the services of volunteers.

The roles volunteers undertake differ across residential and home aged care. For example, volunteers are more likely to undertake 'shopping/appointment assistance' and 'meal-preparation assistance' in home aged care than in residential facilities. Community aged care providers are more likely to engage volunteers in 'transport assistance' than residential aged care providers¹¹.

The more recent 2020 Aged Care Census¹² revealed that volunteers were disproportionately affected by the COVID-19 pandemic compared to the paid workforce, with volunteer activity decreasing significantly and not yet returning to pre-pandemic levels.

Earlier in 2022, volunteering peak bodies in each State and Territory worked with the Australian Department of Health and Aged Care to re-engage volunteers in residential aged care facilities. There remains a significant challenge to reinvigorate volunteering across aged care.

Volunteers also fulfill an important role within the context of the Aged Care Diversity Framework, formulated by the Department of Health in 2017 to guide consumers, aged care providers and the government to build inclusive practices in the aged care sector.¹³ Around one-third (37%) of older Australians are born overseas, with 18% speaking a language other than English and 6% speaking little or no English.¹⁴ Volunteers from culturally and linguistically diverse communities play an important role in the aged care sector. They work with older people from similar backgrounds to provide language support, interpretation, and faith-based services.¹⁵

⁹ <https://www.volunteeringaustralia.org/download/154/2021/26964/december-2021-submission-on-aligning-regulation-across-the-care-and-support-sector.pdf>

¹⁰ <https://www.volunteeringaustralia.org/download/142/2020/22701/july-2020-submission-to-the-royal-commission-into-aged-care-quality-and-safety.pdf>

¹¹ 2016 Aged Care Census

¹² <https://www.volunteeringaustralia.org/wp-content/uploads/AGED-CARE-CENSUS-2020-factsheet-Final.pdf>

¹³ <https://www.who.int/en/news-room/fact-sheets/detail/human-rights-and-health>; Aged care diversity framework pg. 2

<https://www.health.gov.au/sites/default/files/documents/2019/12/aged-care-diversity-framework.pdf>

¹⁴ Older Australians – Web Report, Australian Institute of Health and Welfare, 30 November 2021

30 November 2021, <https://www.aihw.gov.au/reports/older-people/older-australians/contents/about>

¹⁵ Actions to Support Older Culturally and Linguistically Diverse People, Department of Health, 2019 <https://www.health.gov.au/sites/default/files/documents/2019/12/actions-to-support-older-cald-people-a-guide-for-aged-care-providers.pdf>. National Ageing and Aged Care Strategy for People from CALD backgrounds, 2012. <https://fecca.org.au/wp-content/uploads/2015/06/national-cald-aged-care-strategy.pdf>

Volunteers and the new regulatory model

Consultation Paper no. 1 seeks feedback on whether the proposed new regulatory model and its design elements are: fit-for-purpose; address current challenges; and allow for flexibility to address future challenges and changes in the aged care system.

The new regulatory model¹⁶ includes: an overarching aim; four objectives; a series of safeguards and tools, and four underpinning foundations. The diagram illustrating the new regulatory model is included in the annex to this submission.

Volunteers are not specified in the documentation on the regulatory model. The term 'worker' is not defined in Consultation Paper no. 1 and this makes it difficult to engage in the consultation, and we urge the department to rectify this in all future engagements.

Challenges of the new regulatory model

Volunteers are different from paid workers in their role types, obligations and work expectations. Our main concern is for volunteers to be considered as an essential, but distinct, component of the aged care workforce in designing and implementing the new regulatory model.

For example, in implementing the proposed regulatory safeguards and tools¹⁷, consideration must be given to whether and how they should apply to volunteers and their potential impact on volunteer programs and organisations. Whether volunteers are included under regulatory instruments that flow from the new Aged Care Act should be considered on a case-by-case basis and should follow analysis of the impact on volunteer involvement.

The development of a risk-based approach (one of the four proposed foundations of the new model) needs to ensure the regulatory burden on volunteer engagement is lightened. Too often, new regulatory requirements are introduced without consideration of their impact on volunteers and typically increase the regulatory burden on volunteers. Some specific examples are provided below.

Volunteering SA&NT highlights the impact of mandatory first aid training across all staff and volunteers in direct care roles.

In October 2020, the Australian Government Department of Health issued an e-newsletter which included a statement that all Commonwealth Home Support Programme (CHSP) service providers were responsible for ensuring all staff and volunteers in direct care roles receive accredited first aid training and certification, including covering the associated costs.

Volunteering SA&NT worked with the SA Collaboratives to provide a report to the Department of Health and Aged Care, to provide information on the impact of mandatory first aid training requirements on the CHSP Workforce, and specifically on CHSP volunteers. CHSP providers reported they expected some volunteers would be unable to complete the requirements of first aid training

¹⁶ See page 19 https://consultations.health.gov.au/best-practice-regulation/aged-care-regulatory-framework/user_uploads/dt0003052-re-new-model-for-regulating-aged-care-v10-final-20220902.pdf

¹⁷ See page 20 of above.

because they could not lower themselves to floor level to achieve the CPR component, due to mobility issues, or would have difficulty with the level of physicality required. Providers also anticipated some volunteers would not undertake the first aid training, might need to change roles, or would discontinue volunteering as a consequence.

The requirement was clarified in the recent update of the manual, (July 2022, 6.1.4, p.77-8) and first aid training is no longer mandatory: 'All CHSP service providers are responsible for ensuring staff and volunteers in direct care roles receive accredited first aid training and certification as soon as practicable... it is the responsibility of individual service providers to factor into their business risk management strategies how many and which staff/volunteers need to hold and maintain First Aid Training qualifications to ensure the safe delivery of services to their clients'.

It is important that the volunteer cohort is considered as a distinct component of the CHSP (and aged care) workforce. If volunteering perspectives are considered prior to the creation of new regulatory requirements, the process of implementation might be smoother, and require less revision.

Volunteering WA highlights the potential impact of pursuing regulatory change without sufficient consideration of the volunteering ecosystem.

The *Transport (Road Passenger Services) Act 2018 (WA)* was introduced with an objective to promote the provision of safe, flexible passenger transport, partially in response to the introduction of ride share services in the market.

The legislation introduced significant changes to the licensing of volunteer transport drivers in WA including increasing administrative and financial burdens on volunteers and volunteer organisations and the risk of significant penalties.

Passenger transport is a commonly held volunteer role in WA including: • patient transport for hospitals, clinics, and nursing homes • seniors transport to shops, doctor surgeries, and appointments as community services delivered by many Local Government Authorities across the State • transport for people with disability provided by the not-for-profit sector, and, • transport to increase access to and participation in community events, including for culturally and linguistically diverse communities.

All the above roles involve volunteers giving their time freely to assist in the transport of disadvantaged members of our community.

The legislative changes caused considerable distress to impacted volunteers and threatened closure of a number of community transport services due to financial and administrative unsustainability.

Advocacy led to changes being introduced in 2021 to exclude volunteers from the scope of the legislation.

The new National Strategy for Volunteering is currently in development. In the discovery phase of the project, which involved over 400 consultation meetings and forums earlier in 2022, one of the key insights that emerged was the burden of current regulation.

In the Discovery Insights¹⁸ report, the volunteering ecosystem called for ‘fit-for-purpose’ regulation and highlighted several concerns with existing regulatory regimes in placing burdens on organisations and in discouraging volunteers. See box below.

INSIGHT: THE ECOSYSTEM NEEDS FIT-FOR-PURPOSE REGULATION

The current regulatory regime forces volunteer involving organisations to sacrifice relationship-building for administration and is a significant disincentive for prospective volunteers.

Organisations, companies with employee volunteering programs, and volunteers alike shared their criticisms of the current regulatory settings affecting the volunteering ecosystem. We heard examples of ‘over-regulation’ and that regulation across jurisdictions is inconsistent and duplicative. Organisations identified they were overcompensating risk because of the rigid requirements imposed on them by frameworks that never considered them in the first place.

Volunteers told us they are routinely trained to the highest level of risk management irrespective of their role. Volunteers who undertake roles with more than one organisation are usually required to undertake multiple background checks and repeat onboarding processes, hampering their enthusiasm for being involved. Some volunteers felt the system didn't treat them like adults with unique skills to contribute and instead operated from a basis of mistrust and scepticism.

These perspectives were balanced by strong agreement that some regulatory conditions are essential – especially around child protection and working with vulnerable people. Some stakeholders told us they felt that strong regulatory frameworks gave their volunteers more confidence in their programs. There appears to be a direct relationship between resourcing levels and the ability to effectively navigate and implement risk and regulation – organisations with few financial resources or those who did not have internal risk management capabilities found regulation more oppressive and onerous.

¹⁸ <https://volunteeringstrategy.org.au/wp-content/uploads/2022/08/National-Strategy-for-Volunteering-Discovery-Insights-Report.pdf>

Recommendations

- The further development of the regulatory model, and the risk-based approach, should explicitly consider volunteers and ensure that the regulatory burden placed on volunteers and volunteer engagement is reduced for low risk interactions (for example, infrequent companionship visits).
- Whether volunteers are to be included under regulatory requirements (flowing from the Act), or have tailored provisions and / or sanctions, should follow detailed analysis of the distinct characteristics of volunteer engagement, balancing the benefits of volunteer involvement with the relatively low risk of most interactions (due to their voluntary nature, supervision, and infrequency). The *Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022* inserted section 74AE (2) (b) (ii) into the *Aged Care Quality and Safety Commission Act 2018* to include the provision for the Code of Conduct to apply to “specified kinds of aged care workers of approved providers¹⁹”. The ability to differentiate between paid workers and volunteers must be a feature of the new Aged Care Act.
- Any penalties for breach of compliance with regulatory tools should also allow for differentiation between different types of workers.
- Consultation on the development of the regulatory model should involve specific and tailored consultation with relevant volunteering stakeholders, including with volunteers, the peak volunteering bodies and providers that involve volunteers.

¹⁹ <https://www.legislation.gov.au/Details/C2022A00034>

Annex

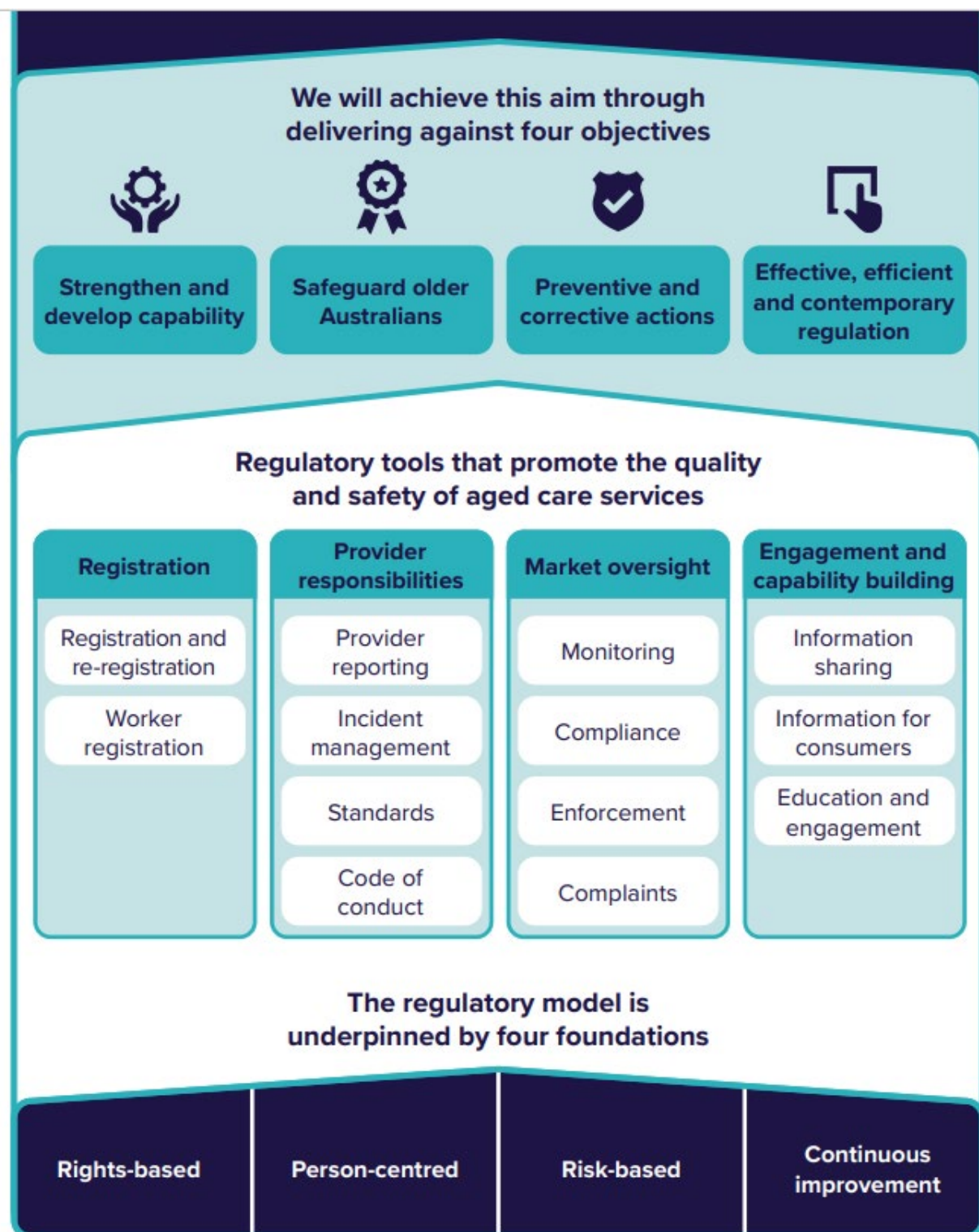


Figure 2. An overview of the new aged care regulatory model.

Authorisation

This submission has been authorised by the Chief Executive Officer of Volunteering Australia.



Mr Mark Pearce
Chief Executive Officer

Endorsements

This position statement has been endorsed by the seven State and Territory volunteering peak bodies.



About Volunteering Australia

Volunteering Australia is the national peak body for volunteering, working to advance volunteering in the Australian community. The seven State and Territory volunteering peak bodies work to advance and promote volunteering in their respective jurisdictions and are Foundation Members of Volunteering Australia.

Volunteering Australia's vision is to promote a strong, connected, and resilient Australian community through volunteering. Our mission is to lead, strengthen, and celebrate volunteering in Australia.

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