

# Submission on a new Aged Care Act: Consultation Paper no. 2

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## Overview

Volunteers are an essential, but distinct component of Australia's aged care workforce. We welcome the considered inclusion of volunteers across the range of aged care reforms currently being implemented by the Australian Government.

The Royal Commission into Aged Care Quality and Safety (Royal Commission) recommended that the Australian Government develop a new Aged Care Act (new Act). The Aged Care Act is the main law that sets out the rules for the Australian Government-funded aged care system and includes services delivered to older people in their homes, in community settings and in residential care.

The exposure draft of the Act has been released for public consultation. This follows a first round of submissions and direct consultations. The Government will introduce the proposed new laws for the Act in 2024.

The closely linked proposed model for regulating aged care, which we have previously supported, provides a risk-proportionate approach to key issues affecting volunteering and has already been the subject of extensive consultation. This regulatory model and its laws are made under the authority of the proposed Act and will allow implementation of the Act in practice. It is important that the Act, as the broad law, signals where risk-proportionate approaches may be applied in the subordinate law for implementation.

In this submission, we continue to advocate for both the new Act (where practical) and the new model for regulating aged care to differentiate between paid and volunteer roles by allowing a risk-proportionate approach. To achieve this balance, we advocate for the new Aged Care Act to:

1. Retain specific acknowledgement of the important role volunteers play in improving individuals' experiences of the Commonwealth aged care system.
2. Clearly define volunteering in the definitions and provide context in the Explanatory Memorandum as to which parts of the Act could apply in a risk-proportionate way; or signal that a risk-proportionate approach will be addressed in subordinate law and regulation to avoid unintended consequences to volunteering in aged care.
3. Allow for a risk-proportionate approach to worker screening for volunteers in the implementation of the new Act. While we understand that these aspects will be dealt with in subordinate law, and are a feature of the regulatory model, the draft Act currently makes no reference to role differentiation for screening or training in application or practice.
4. Retain the proposed whistleblower protections under the draft Act, noting that they will apply to volunteers, and communicate these protections and related processes to volunteers during regular engagement, onboarding and training.
5. Commission an independent review of the Aged Care Act three years from commencement, with volunteers, volunteer involving organisations and peak bodies included in feedback and the review.
6. Continue consultation on the development and roll-out of mechanisms that flow from the new Aged Care Act with relevant volunteering stakeholders and peak bodies.

In general, it is vital that volunteer roles are clearly differentiated from those of paid workers. As the Act currently reads in isolation, all measures applied to paid workers would apply to volunteers. Noting that this is addressed in the regulatory model, we urge the Government to address the risk-proportionate approach either directly or in the Explanatory Memorandum. This is to ensure unintended consequences are avoided, volunteers are not exploited, subjected to unreasonable tests and barriers where risk is assessed as low, and do not perform duties which are the responsibility of paid workers. It will also ensure that volunteering programs in aged care can be sustained, without placing unnecessary barriers in the way for a) those wishing to volunteer in this space and b) volunteer involving organisations who may be involved in running such programs

## Introduction

### About the new model for regulating aged care consultation process

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<sup>1</sup> and regulatory model<sup>2</sup>. This follows several reviews into aged care, including the Royal Commission into Aged Care Quality and Safety<sup>3</sup>, which all found that the aged care system needs significant improvement. Consultation Paper no.2 is the second in a series of consultation papers informing the development of the new Aged Care Act.

The design of the new Act is occurring alongside related activities and reforms in the aged care sector. These include; reforming in-home aged care, aligning regulation across the care and support sectors, and the introduction of a compulsory Code of Conduct. We continue to engage with the department on matters relating to volunteers specifically as these reforms are developed.

### About this submission

This submission was drafted by Volunteering Australia in collaboration with the State and Territory volunteering peak bodies. It describes the roles that volunteers play in aged care and the scale of their involvement. This is important as the new Aged Care Act needs to complement the regulatory model so that it will work for this diverse and significant element of the workforce. It follows previous submissions concerning aged care and the wider care and support sector, most recently:

- Submission on the Aged Care data strategy<sup>4</sup>
- Submission on the Care and Support Sector Code of Conduct<sup>5</sup>
- Submission on Aligning Regulation across Aged Care, Disability Support, and Veterans' Care<sup>6</sup>

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<sup>1</sup> <https://www.health.gov.au/our-work/aged-care-act/about#about-the-new-act>

<sup>2</sup> <https://www.health.gov.au/our-work/new-model-for-regulating-aged-care>

<sup>3</sup> <https://agedcare.royalcommission.gov.au/>

<sup>4</sup> <https://www.volunteeringaustralia.org/download/153/2022/30934/september-2022-submission-on-the-aged-care-data-strategy.pdf>

<sup>5</sup> <https://www.volunteeringaustralia.org/download/154/2021/26964/december-2021-submission-on-aligning-regulation-across-the-care-and-support-sector.pdf>

<sup>6</sup> <https://www.volunteeringaustralia.org/download/154/2021/26964/december-2021-submission-on-aligning-regulation-across-the-care-and-support-sector.pdf>

- Submission to the Royal Commission into Aged Care Quality and Safety<sup>7</sup>
- Submission on a New Regulatory Model for Aged Care<sup>8</sup>
- Submission on the new in-home Aged Care Program<sup>9</sup>
- Independent Capability Review of the Aged Care Quality and Safety-Commission<sup>10</sup>
- Submission on a new model for regulating aged care<sup>11</sup>
- Submission on the Exposure Draft of the Inspector-General Aged Care Bill.<sup>12</sup>

## The National Strategy for Volunteering (2023-2033)

The National Strategy for Volunteering (2023–2033) is a ten-year blueprint for a reimagined future for volunteering in Australia. It is the first National Strategy for Volunteering in a decade, providing a strategic framework for enabling safe, supported, and sustainable volunteering. The National Strategy for Volunteering was developed through a 12-month co-design process with members of the volunteering ecosystem.<sup>13</sup> The reform of Australia’s aged care system, which includes working towards recommendation 44 of the Royal Commission into Aged Care Quality and Safety, specifically relating to volunteers, should consider alignment with the National Strategy for Volunteering. Two of the Strategy’s strategic objectives are particularly relevant:

- Strategic Objective 1.1: Focus on the Volunteer Experience
- Strategic Objective 1.2: Make Volunteering Inclusive and Accessible

## Volunteers in Aged Care

Volunteers contribute in significant and diverse ways across aged care.

The 2016 National Aged Care Workforce Census and Survey<sup>14</sup> 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 providers. The more recent 2020 Aged Care Census<sup>13</sup> 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. 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

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<sup>7</sup> <https://www.volunteeringaustralia.org/download/142/2020/22701/july-2020-submission-to-the-royal-commission-into-aged-care-quality-and-safety.pdf>

<sup>8</sup> <https://www.volunteeringaustralia.org/download/199/2023/44083/june-2023-submission-on-a-new-model-for-regulating->

<sup>9</sup> <https://www.volunteeringaustralia.org/download/153/2022/31550/november-2022-submission-on-a-new-program-for-in-home-aged-care-discussion-paper.pdf>

<sup>10</sup> <https://www.volunteeringaustralia.org/download/153/2022/31666/december-2022-independent-capability-review-of-the-aged-care-quality-and-safety-commission.pdf>

<sup>11</sup> Submission on a new model for regulating aged care

<sup>12</sup> <https://www.volunteeringaustralia.org/download/199/2023/37852/january-2023-submission-to-exposure-draft-of-the-inspector-general-of-aged-care-bill.pdf>

<sup>13</sup> <https://volunteeringstrategy.org.au/the-strategy/>

<sup>14</sup> <https://www.health.gov.au/sites/default/files/documents/2021/10/2020-aged-care-workforce-census.pdf>

facilities. There remains a significant challenge to reinvigorate volunteering across aged care; with the consideration of volunteering as part of ongoing reforms an important opportunity to facilitate this.

## About the new Aged Care Act

The consultation paper proposes a new Aged Care Act (via Exposure Draft) that will place older people in Australia at the centre of its design, increasing protections and empowering them to exercise their rights in the context of a reformed and improved aged care system. These rights will be outlined in a Statement of Rights to be included in the new Act. The Act will complement the proposed model for regulating aged care and the existing new Code of Conduct.

## Volunteers and the new Aged Care Act

### Key Considerations

The new Aged Care Act is necessarily wide-ranging and many areas, such as eligibility, costs and provider standards, do not impact volunteering directly, however some areas have the potential to significantly affect aged care volunteers.

### The role of volunteers in the aged care system

We welcome acknowledgement in the draft Act of the importance of volunteers in the aged care system in their own right (S 22 (c))<sup>15</sup> which states it, “recognises the important role of volunteers in improving individuals’ experiences of the Commonwealth aged care system.”

This recognition, in Chapter one, sets out that volunteers are an essential component of Australia’s aged care system and can be considered in instruments that flow from the Act.

### Clearly define volunteering and provide context in the Explanatory Memorandum for risk-proportionate measures

Volunteering is defined as ‘time willingly given for the common good and without financial gain.’ Volunteers are different from paid workers in their role types, levels of accountability and work expectations. While we support the need for screening and training, including of volunteers, to protect older Australians accessing aged care, our concern has always been for volunteers to be considered as an essential, but distinct, segment of the aged care workforce. A risk-proportionate approach to laws and regulations to reflect actual risk levels in low-risk roles will ensure volunteers will want to continue giving their time to the sector.

We acknowledge that the new Aged Care Act makes it explicit that the definition of aged care worker in law includes volunteers or work undertaken in a voluntary capacity. While this is positive in that it acknowledges volunteers and ensures they are covered by provisions, such as whistleblower protections, it is also problematic as without further differentiation of these categories the Act applies all aged care worker provisions to volunteers irrespective of role and the actual level of risk and accountability they carry in those roles.

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<sup>15</sup> <https://www.health.gov.au/resources/publications/exposure-draft-aged-care-bill-2023>

This appears out-of-step with the new regulatory model which proposes a risk-proportionate approach to implementation. The continued lack of differentiation is not ideal for recruiting and retaining volunteers, particularly in low-risk roles. Nor does it manage the risk of exploitation of volunteers. We have been supportive of the potential to mitigate these issues through the careful implementation of the risk-proportionate approach outlined in the regulatory model, however continue to flag the need for clearer differentiation in either the Act or in the Explanatory Memorandum of the new Aged Care Act to avoid unintended consequences and barriers to volunteering in aged care.

### Worker screening

We support the overall goal to build a safe and skilled workforce in the aged care sector. However, the new Act does not differentiate paid workers from volunteers in this regard. The regulatory, screening and training burden for volunteers, particularly in low-risk scenarios such as supervised companionship visits, must be proportionate to the risks and education requirements being addressed. It is critical that training is, where possible, role specific, practical and tailored to ensure that volunteering can thrive in the sector. While we understand that these aspects can be dealt with in subordinate law, and are a feature of the regulatory model, the draft Act currently makes no reference to role differentiation for screening or training in application or practice.

### Protecting whistleblowers

We welcome the proposed whistleblower protections under the draft Act and that they will apply to volunteers. We advocate for these protections and related processes to be communicated to volunteers by the Government and providers during regular engagement, onboarding and training. This will support a more transparent aged care system and ensure whistleblowers can report breaches or information without fear of being punished, treated unfairly or with legal ramifications.

### An independent review of the Act

An independent review of the new Aged Care Act is proposed five years from commencement. The Council on the Ageing Australia (COTA)<sup>16</sup> has advocated that the Aged Care Act be reviewed every three years. We acknowledge that implementation of the reforms is phased and that it will take time to embed new laws and processes, however given the enormity of change across the system we support COTA's position. This will allow for regulatory adjustment in response to any unintended consequences in the more immediate term.

Continued consultation on the development and roll-out of mechanisms that flow from the Act and regulatory model, such as worker screening, with relevant volunteering stakeholders, including volunteers, the volunteering peak bodies and providers that involve volunteers should continue. These groups should be specifically included in feedback mechanisms and the review.

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<sup>16</sup> [Aged-Care-Act-Exposure-Draft-Key-Issues-Paper\\_Jan-2024\\_FINAL\\_v1.pdf \(cota.org.au\)](#)

## Recommendations

Based on consideration of the proposed Aged Care Act (Exposure Draft) and our ongoing consultations with the department, we recommend:

1. Retaining specific acknowledgement of the important role of volunteers in improving individuals' experiences of the Commonwealth aged care system in the Act.
2. Providing a clear definition of volunteering in the Act and context in the Explanatory Memorandum as to which parts of the Act could be applied in a risk-proportionate way; or signaling in the Act that a risk-proportionate approach will be addressed in subordinate law and regulation to avoid unintended consequences to volunteering in aged care.
3. Allowing for a risk-proportionate approach to worker screening for volunteers in the implementation of the new Act. While we understand that these aspects will largely be dealt with in subordinate law, and are a feature of the regulatory model, the draft Act currently makes no reference to role differentiation for screening or training in application or practice.
4. Retaining whistleblower protections as provided under the draft Act, noting that they will apply to volunteers, Communicating these protections and related processes to volunteers during regular engagement, onboarding and training.
5. Commissioning an independent review of the Aged Care Act three years from commencement, rather than the proposed five, with volunteers, volunteer involving organisations and volunteering peak bodies specifically included in feedback processes and the review.
6. Continuing consultation on the development and roll-out of mechanisms that flow from the new Aged Care Act with relevant volunteering stakeholders and peak bodies.

## 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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