



HUMAN RIGHTS

TRANSPARENCY

REFORM

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DESIGNING A NEW APPROACH TO REGULATING AGED CARE

Response by: AGED CARE REFORM NOW (ACRN) 10-10-2022

ACRN is a grassroots organisation,¹ members have lived experience and advocate for aged care reform that delivers improved benefits to all Australians receiving residential and in-home services.

ACRN's vision is a transparent and effectively regulated aged care system that focuses on the human rights and quality of life of older people. We collaborate with other like-minded groups and organisations, to provide solutions and influence change.

¹ www.agedcarereformnow.com.au

CHALLENGES WITH THE CURRENT REGULATORY SYSTEM

Consistently, feedback from ACRN members indicates significant public mistrust in the ability and independence of the ACQSC to manage complaints and effectively regulate the aged care sector. The current regulator's approach isn't proportionate to risk, harms or breaches therefore exposing older Australians to further harm.

The current regulatory system is **not** effectively preventing or managing non-compliance with aged care standards. Current legislation, regulation and practices favour the needs of providers over consumer's needs and safety.

Most members who have had contact with the ACQSC complaints process and accreditation system have been traumatised by the process. Common issues raised include:

1. In all cases outcomes of complaints were unsatisfactory

- No meaningful consequences, penalties or sanctions imposed in any case, including where serious breaches of the Aged Care Quality Standards were found and where breaches resulted in serious injury or death. Penalties are imposed at the discretion of the regulator.
- Providers were able to commit to future actions, with no follow up with complainants about implementation.
- Light touch investigation of the cause of issues.
- Three main "remedies" are applied - conciliation, staff education, updating policies and procedures, irrespective of cause.
- A consistently drawn-out resolution process with multiple requests for information adding to significant trauma for complainants.
- ACQSC requesting families to deal directly with a facility even though they were already in conflict after being unable to resolve the matter with the facility added to trauma.
- Reviews of ACQSC original decisions are ineffective because outcomes are based on facilities' version of events, which are often inconsistent with complainants' experience and evidence. Several of our members have experience of services providing incorrect or fraudulent information to ACQSC.

2. Accreditation processes inadequate

- Considering 69% of residents "exit" a care facility within 6 to 9 months,² accreditation reviews are too infrequent given they are accredited every three years. Some services don't have resident survey responses available.
- In 2020-21 in over 50% of site audits, the service was non-compliant with one or more of the Quality Standards³. There is little information on what action occurs.

² Australian Institute of Health and Welfare Palliative Care Services in Australia 2022

³ Aged Care quality and Safety commission Annual Report 2020-21

3. Serious Incident and other reporting is not effective

- An inadequate percentage of incidents are reported and investigated. Serious incidents are not decreasing⁴.
- The information reported publicly is not detailed enough to enable consumers to make informed choices.

KEY POINTS RE CONSULTATION PAPER

ACRN does not believe the framework proposed in *A new model for regulation Aged Care Consultation Paper No.1*, will 'shift the dial' and result in significant improvements to the aged care sector needed to keep older Australians safe.

Specifically:

- A. The new model doesn't look different to the current regulatory system, doesn't reflect the relevant recommendations from the Aged Care Royal Commission and continues to favour provider needs over consumer needs.
- B. The consultation paper contains broad aspirational statements and defines success as consumers 'having confidence'. Consumers will have confidence when harm stops.
- C. It waters down the role of the ACSQC to actively regulate the system.
- D. It does not define harms and does not address how actual breaches of standards and codes of conduct will be responded to, or the penalties to be imposed in specific circumstances.
- E. It doesn't adequately or appropriately separate regulatory functions from other functions (such as capability building and education) that contribute to the overall functioning of the sector, but are not regulatory tools.
- F. It continues the failed approach to allow providers to become compliant over time, no matter how serious the harm they have caused.

RECOMMENDATIONS

ACRN believes a new aged care regulatory framework should:

- 1. Support the implementation of human-rights based legislation through a range of regulatory mechanisms ([Aged Care Royal Commission Recommendations 1,2](#))**

The New Aged Care Act must:

- Put the consumer and consumer rights first.
- Include supporting legislation and regulations needed to outline enforcement provisions and mechanisms to support their implementation.
- Provide clear definitions of abuse and neglect, what constitutes a serious incident or a breach, and outline a prescribed approach to serious incidents and breaches.

⁴ <https://www.agedcareinsite.com.au/2021/06/first-sirs-insight-report-released-half-of-providers-record-serious-incidents/>

- Specify rights for people receiving or seeking aged care. This should include an **enforceable** Charter of Rights.
- Remove existing secrecy provisions
- Include public reporting of complaints and a range of meaningful data that provide transparency on the performance of services.

2. Compel providers and aged care staff to act lawfully and deliver the services they are contracted to deliver through prescribed penalties ([Recommendations 14, 101, 102](#))

The Regulator should:

- Have a wider range of enforcement powers available and consequences for the provider when issues and breaches are identified
- Have the ability to award compensation to victims, impose civil and financial penalties on providers equivalent to other industries.
- Have prescribed enforcement actions for different harms, breaches and serious incidents.
- Compel providers to provide timely review of care plans and assessment of changing needs of consumers.

3. Encompass a rigorous complaints system and outline the standards and expectations for complaints resolution in the aged care sector ([Recommendations 94, 98](#))

A new complaints system should:

- Put older people's rights at the centre and deal compassionately with complainants.
- Include responsibilities measured against Quality Standards.
- Provide clear timelines and processes related to the investigation of complaints, including clear definitions of low and high-risk incidents.
- Keep resolution timeframes to a minimum, but commensurate with the complexity of the complaint, with clear escalation processes after 60 days.
- Be separate to ongoing monitoring or compliance for the provider.
- Trigger a pastoral care/counselling response where complainants are referred to advocates and community services.
- ACRN has proposed an independent triage system for complaints in its SIRS submission.⁵

4. Include mechanisms for sharing of medical and other information with families and across agencies ([Recommendations 24,97](#))

- ACQSC should have direct and timely access to information held by services, and not rely on services to provide information.

⁵ https://agedcarereformnow.com.au/wp-content/uploads/2021/08/Aged-Care-Reform-Now_Response-to-SIRS-for-in-home-aged-care-services_Aug_2021.pdf

- Provide mechanisms for consumers to grant families or carers' permission to access their records.
- 5. Outline roles and responsibilities for the regulator, providers, government agencies, health care practitioners and aged care staff to protect consumers ([Recommendations 69, 89](#))**
- Conflict resolution and complaints management require an independent body to deliver fair outcomes for consumers.
 - Including a national code of conduct and screening processes with national registration of all care/support workers. Registration should be by APHRA not by the ACQSC.
- 6. Provide information and standards regarding investigations ([Recommendation 98](#))**
- Investigation processes need to be standardised, rigorous and consistent. ACQSC currently relies on providers providing information and paperwork. Facility visits and staff interviews should be mandatory.
 - Clear and factual information should be provided to complainants. Specific details of incidents should be disclosed as they are uncovered.
 - If new issues are uncovered during the investigation, they should be examined concurrently or in the review process, rather than requiring a new complaint to be lodged.
 - Surprise audits should be established for high-risk services.
- 7. Provide standards for information and data collection, reporting and transparency within the aged care system, including appropriate public reporting on breaches, complaints and performance ([Recommendations 24, 105](#))**
- The system relies heavily on providers self-reporting. Currently 60,000 SIRS aren't reported in real time or at all. There **must** be consequences for failure to report.
 - Consumer experience surveys must be a minimum of 20%. The collection of consumer experience data **MUST** be independent of the facility and **MUST** include people who are most vulnerable or higher care needs.
 - Complaints should be reported publicly, reflecting the nature of the complaint, how they were managed and final outcomes.
 - Release and transparency of financial information and money spent on care for aged care services is essential.
- 8. Provide standards for accreditation and re-accreditation ([Recommendation 96](#))**
- Three-year accreditation cycles are too infrequent to keep consumers safe.
 - Providers who consistently exceed the quality standards and record a low level of complaints and serious incidents should be recognised by having less frequent audits. Facilities who fail to meet quality standards, have multiple complaints or SIRS reports should have a more stringent regulatory regime.

CONCLUSION

To improve confidence in the aged care system and keep people safe, ACRN calls on the Government to:

- implement all the recommendations from the Royal Commission relating to strengthening regulation, monitoring and compliance
- genuinely put the needs, experience and safety of older Australians at the centre of regulatory systems and processes
- overhaul complaints processes and deal fairly and compassionately with complainants with an independent complaints body.
- provide clear responses to complaints upheld and prescribe penalties for specific breaches.