



**Carers Victoria submission**

**Aged Care Worker Regulation Scheme**

**Consultation Paper**

**Implement a registration scheme for aged care workers in Australia and change the status quo**

**JUNE 2020**

**AN AUSTRALIA THAT VALUES AND SUPPORTS ALL CARERS**

## ABOUT CARERS VICTORIA

Carers Victoria is the state-wide peak organisation representing people who provide care. We represent more than 703,300 family carers across Victoria, of whom 221,300 are primary carers – people caring for someone with a disability, mental illness, chronic health issue or an age-related condition.

A carer is a person who provides unpaid care and support to an older person. This may include assistance with physical and personal care, emotional support, household tasks, transport and communication. The term carer is **inclusive** of partners, family members and friends who are involved in the care of the older person.

People receiving care could be a parent, child, spouse/partner, grandparent, other relative or friend. Carers Victoria is a member of the National Network of Carers Associations. Carers Victoria is a non-profit association which relies on public and private sector support to fulfil its mission with and on behalf of carers.

Carers Victoria is a membership-based organisation. Our members are primarily family carers, who play an important role in informing our work, contributing to advocacy and strategic aims, and distributing information more widely to other carers.

This policy paper was prepared by Carers Victoria's Policy Team.

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*“The aged care facility continually reneges on its responsibilities, fails to have adequate staff ratios and effectively qualified staff. The facility does not even provide air-conditioning for residents” Carer respondent - 2020 survey*

Carers Victoria strongly supports the establishment of an aged care worker registration scheme which is robust and prioritises the safety and dignity of older people as recipients of aged care services, their carer(s) and other family members.

### **Introducing an Aged Care Worker Registration Scheme will be essential in sustaining Victoria’s over 700,000 family and friend carers. The Scheme will engender trust in workers who support older people with care needs.**

Carers are among the most important safeguards for their relative or friend through personal relationships and community connections. Carers Victoria regularly receives reports from carers who are concerned or have witnessed poor conduct or harm to their relative or friend.

The current Royal Commission into Aged Care Quality and Safety as well as numerous inquiries powerfully demonstrate harm is more likely to occur in closed settings and in contexts of poorly enforced regulation. Workers who seek to cause harm will do so if they believe adverse reports about them made by older people and carers will not be believed, investigations will be slow and inadequate or whistle-blowers (workers and clients) will be punished by management or co-workers who wish to maintain the status quo.

Safe and reliable aged care workers are also important for the sustainability of care relationships. While carers often lament the poor quality of workers, part of the function of a aged care workforce is to provide carers with the opportunity to look after their own mental and physical health or pursue their own goals of employment, study or volunteering.

Aged care worker registration is an important mechanism in addressing inadequate training and the significant level of harm which occurs every day against older people in their homes and residential aged care settings, their families and carers (we will use the term clients hereafter).

Carers Victoria expects worker registration to be one mechanism in a broader strategy to increase quality and safety in the delivery of aged care services. Minimum staff ratios which have been implemented in health and childcare settings are also an important means by which to increase safety and quality.

With a well-regulated sector and increased professionalism of the workforce, the community can avoid crisis-driven services for carers and instead provide early-intervention assistance.

*“Legislate mandated ratios and quality of staff for aged ‘care’ facilities so that carers don’t have to stress over obvious substandard conditions for their elderly family.” Carer respondent - 2020 survey*

This submission selectively responds to questions posed in the Consultation Paper. Carers Victoria recommends the strongest regulatory options to ensure the safety and dignity of older people receiving aged care services and their carers. The testimony of poor-quality care heard at the current Royal Commission should be a watershed moment and bring to an end the low expectations of the workforce – low expectations which would not be permitted from others providing services to older people.

The Government must demonstrate leadership to the aged care sector and carefully manage the introduction of a regulation scheme with an implementation strategy which prioritises a responsive, safe and quality aged care workforce.

## **What should be the key features of the scheme?**

To ensure the registration scheme is effective, it must:

- be mandatory to all workers in the sector who work directly with older people and who are not covered by the National Registration and Accreditation Scheme (NRAS),
- designate minimum qualifications,
- require all workers to demonstrate expertise in specific areas of practice, and
- be contingent on continuing professional development to maintain skills.

Rather than take the cynical attitude that regulation is an unnecessary inhibitor of individual choice and workforce growth, a registration scheme is a necessary quality-assurance mechanism and workforce development tool.

It is a strong promotor of consumer-directed care by providing an objective standard and baseline measure against which clients can determine the necessary skills and competencies of aged care workers.

*“The current system is appalling. No real redress for terrible care that doesn’t address basic human needs let alone those with complex medical needs.” Carer respondent - 2020 survey*

It also provides professional guidance about conduct between people in contexts which are usually devoid of clear boundaries – people’s homes and intimate care. While the ideal worker in the human services has a ‘good nature’, boundaries which reflect community standards are needed so clients can be confident of consistently safe services which prioritise their dignity. This also protects the worker from clients who may overstep boundaries because of social isolation.

*An aged care worker regulation scheme will contribute to a more agile and robust aged care workforce -able to handle the increased demand from an ageing population.*

Carers Victoria understands it takes time to embed new systems for those working in a sector known for poorly enforced regulation. However, we hope the Department of Health can be confident in setting a high bar and developing a registration scheme that is meaningful to clients and families and prioritises their safety and dignity.

### **Assessments of criminal history**

#### **Recommendation: Option A2 – Centralised assessment of criminal history for aged care workers**

A centralised assessment of criminal history will support alignment with the NRAS, reducing regulatory burden for employers and employees (if they wish to be employed by multiple organisations) as well as embedding consistent risk assessment criteria in line with community expectations, not providers’ commercial needs.

## Assessment of information other than criminal history

**Recommendation: That all options presented in the Consultation Paper be considered:**

Option B1 – Information from disciplinary bodies such as health complaints bodies, the NDIS Commission and National Boards

Option B2 – Information from relevant government agencies

Option B3 – Information from courts and tribunals

Option B4 – Information from employers

Information gathered from one or all sources are important additional screening mechanisms that should be available if required. The Consultation Paper's example of whether the relevance of dishonesty to the Australian Tax Office is relevant to aged care worker screening unfortunately illustrates a lack of understanding about community behaviour towards older people. Evidence indicates it is likely that between two and 14 per cent of older Australians experience elder abuse in any given year; Financial abuse appears to be the most common form of abuse experienced by elderly people.<sup>1</sup> Therefore, dishonest conduct in one's financial affairs may indeed be a risk factor for the aged care workforce.

## Adopting a Code of Conduct

**Recommendation: Option C2 – Adopt the NDIS Code of Conduct for aged care workers**

*“Do not assume that the person being cared for [in an aged care facility] is aged: my husband was 46 years old when he was disabled by a stroke, I have been caring for him for 27 years.”*  
*Carer respondent - 2020 survey*

Given that the prevalence of care needs from disability and older age in the community means many people are likely to support family members and/or friends who are utilising services in both sectors, a nationally consistent Code of Conduct will make it easier for clients to keep track of the obligations of workers in the aged care and disability sectors who deliver services.

*“I care for my Aunt is who is 68 years old and an NDIS participant mainly supporting her with some of her self-managed funds. I also care for my father who is trying to get more support at home since my mum died. It would be great to have one system for the workers they each use.”*  
*Rochelle, carer in Melbourne*

While the NDIS Code of Conduct was the subject of considerable consultation, Carers Victoria would like to have reservations about its current form noted. Carers Victoria recommends the obligations should be applied to all the people in the care relationship who are impacted by the delivery of services, not just to the consumer. This is consistent with the Victorian Carers Recognition Act (2012) which obliges care support organisations to “take all practicable measures to ensure that the care support organisation and its employees and agents reflect the care relationship principles in developing, providing or evaluating support and assistance for persons in care relationships” (Part 3 s. 11 (c)).

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<sup>1</sup> <https://aifs.gov.au/publications/elder-abuse/export>

Revision of The NDIS Code of Conduct should include obligations to communicate in a form, language and manner that enables the participant to understand the information provided and make known their preferences. This element has been integrated into the obligation to respect for individual rights; however, effective communication is essential to planning safe services and supports for older people and carers and should be a key component of the Code of Conduct.

Obligation 7: Take all reasonable steps to prevent and respond to sexual misconduct

This obligation should include sexual relations between service providers and participants, both consensual and non-consensual, expressly dealing with the power differential in such relationships. This obligation was previously contained in the indicative elements of an NDIS Code of Conduct developed in the Framework but has since been omitted in the adopted Code. This will make the Code consistent with other professional Codes of Conduct such as the Nursing and Midwifery Board of Australia which clearly stipulates its members: “avoid sexual relationships with persons with whom they have currently or had previously entered into a professional relationship. These relationships are inappropriate in most circumstances and could be considered unprofessional conduct or professional misconduct.”<sup>2</sup>

## **Proficiency in English**

### **Option D2 – Establish a requirement for PCWs to demonstrate their proficiency in English as part of a registration process (consistent with the National Scheme)**

The question of English language proficiency must be assessed against what we trust is the Department’s primary mission to improve the quality and safety of aged care and enhance protections for clients in a multicultural Australia. Over 36 per cent of older Australians were born outside of Australia and one in three older people were born in a non-English speaking country.<sup>3</sup>

While Australia is a multicultural country, its official language remains English and dilution of writing and speaking proficiency will have broader impacts on society and the economy for decades to come.

Currently, many carers report support workers (in the aged care and disability workforce alike) have only basic English language skills which impact on their ability to undertake their duties appropriately and safely. Proficiency in English is essential where workers are responsible for administering medication or advocating on behalf of the client. Workers need to be able to read and understand instructions communicated by others and implement them correctly to deliver care safely.

However, it is important to consider the opportunity for individuals who are fluent in languages other than English to be employed precisely because they can deliver aged care services to culturally and linguistically diverse clients. For older clients, this opportunity to speak their first language is vital for their physical, mental and emotional wellbeing. The body implementing the Registration scheme may be able to identify languages where temporary exemptions can be made for workers with basic English language skills.

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<sup>2</sup> <https://www.nursingmidwiferyboard.gov.au/>

<sup>3</sup> <https://www.health.gov.au/sites/default/files/documents/2019/12/aged-care-diversity-framework.pdf>

Moreover, Carers Victoria recommends a registration scheme which requires communication to be respectful to all people in care relationships as outlined in the Victorian Carers Recognition Act (2012).

Finally, we recommend a broad definition of communication be applied to include languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology. In this context we commend the Department of Health for introducing a national sign language interpreting service for aged care for the first time.

### **Minimum qualifications**

#### **Recommendation: Option E3 – Establish a requirement for PCWs to demonstrate their qualifications as part of a registration process.**

The aged care workforce will inevitably be varied to account for the individual needs and preferences of the client base. However, there are skills and capabilities which are necessary for all human service workers such as reflective practice, family-centred practice, manual handling, supported decision-making, effective communication skills including assistive technology, nutrition, person-centred positive behaviour support, working effectively with people with Dementia and other cognitive impairments, preventing pressure injuries and culturally safe and respectful practices. This is by no means an exhaustive list.

Attaining a minimum qualification is likely to be considered a self-education expense by the worker because it is incurred to gain or produce an assessable income. The course(s) must have sufficient connection to the employee's current work activities and:

- maintain or improve the specific skills or knowledge required in current work activities
- result in, or is likely to result in, an increase in income from current work activities.

Despite this existing mechanism, if the Department remains concerned about the potential barriers as set out in the Consultation paper, it has the opportunity to negotiate with:

- the Australian Taxation Office (ATO) to provide extra tax incentives to workers who undertake minimum qualifications and,
- Registered Training Organisations (RTOs) to provide recognition for prior learning for workers with paid experience, or
- Provide additional subsidies for free or low-cost courses directly to eligible workers

Lastly, to support casual workers for whom attendance at training is not only a cost to be borne by the worker but the loss of paid client-facing time, the registration scheme may include provision such as subsidies or scholarships to experienced/inexperienced workers to pursue their minimum qualification if they commit to remaining in the workforce for a specified period.

### **Continuing professional development**

#### **Recommendation: Option F3 – Establish a requirement for PCWs to demonstrate they have met specified minimum CPD requirements as part of a registration process.**

Carers Victoria supports a framework of continuing professional development (CPD) for the aged care workforce which is both practical and aspirational. We are disappointed the Consultation Paper emphasises the potential cost of undertaking CPD rather than taking a balanced view that it provides benefits to the worker, their employer(s), clients and community

as a whole. It is necessary to encourage the aged care workforce to view the expense of CPD as a necessary investment in their own skills and expertise.

*“Not only for the carers but for the people in the aged care system, the aged care homes in my experience, honestly only want to keep their name up there with the amount of ticks they get their accreditation for care to their residents which does not happen and if you ever spoke to the residents families in regional Victoria you would hear of horrifying stories.” Carer respondent - 2020 survey*

As stated earlier in this submission, there are mechanisms the Government can utilise to mitigate the financial costs of undertaking CPD within a sector which pays low wages such as the potential to deduct the cost of CPD considered as a self-education expense because it is incurred to gain or produce an assessable income. The course(s) must have sufficient connection to the employee’s current work activities and:

- maintain or improve the specific skills or knowledge required in current work activities
- result in, or is likely to result in, an increase in income from current work activities.

Further, the ATO allows claims related to the cost of attending seminars, conferences or education workshops which are sufficiently connected to work activities. This can include formal education courses provided by professional associations. Deductions for travel related to attendance is also allowed under some circumstances.

#### **Carers Victoria recommends:**

- **the Department of Health support providers and workers to understand CPD undertaken has potential to be deducted at the end of the financial year like workers in other sectors,**
- **a minimum 48 hours of CPD over a three-year period, and**
- **flexibility to complete CPD over a three-year period; for example 48 hours over three years may equate to 16 hours or two full working days of CPD per year.**

While registration standards for other professionals such as occupational therapists expect CPD to be completed on an annual basis, it is recommended aged care workers be given flexibility to complete a minimum number of hours over a three-year period. This will minimise pressure on workers who must temporarily reduce or withdraw from the paid workforce for a variety of reasons without adverse effects on their registration. As the peak body for unpaid family and friend carers, Carers Victoria is acutely aware of the challenges some family members face when trying to combine their care roles with paid employment. Sometimes, these challenges can be too great, and the individual withdraws from paid work. Time away from employment is a significant barrier to re-entering the workforce for many. A registration standard requiring continuing professional development within an annual period may unintentionally disadvantage workers who also undertake unpaid care roles.

*The basis of any CPD requirements set for the workforce should be that it **maintains, improves and broaden the skills, knowledge and expertise** of workers.*

Developing a broad CPD completion framework will ensure CPD is undertaken as a meaningful practice instead of a box-ticking exercise. In other words, workers may easily attend ten or even 20 hours of substandard training on a topic of little or no quality and value. Conversely, five hours spent on CPD delivered by qualified educators in a reputable training setting is more valuable to the worker, clients and community.

Carers Victoria recommends the registration scheme review and endorse potential training events offered by external organisations and individuals with established records of knowledge and competency to support the aged care workforce in their CPD with a general endorsement and sponsorship of training which is designed and delivered by older people and carers. This will provide clients with the opportunity to utilise their lived experience in a professional manner and encourage workers to view older people and carers as people who can direct services as well as receive them.

### **Should worker screening be a positive register of cleared workers and/or a list of excluded workers, and who should have access to the list?**

**Recommendation: Option G3 – A list of workers who have been cleared to work in aged care and a list of workers who are excluded from working in aged care**

## **How should the scheme be managed?**

### **Identifying the appropriate regulatory body**

The Consultation Paper's strong endorsement of the Aged Care Quality and Safety Commission being responsible for registration and screening of all workers would be an efficient mechanism to implement the Scheme.

Given the Government has also announced a Serious Incident Response Scheme from 1 July 2021, this and other complaints made by consumers can be analysed against registration applications to assist in workforce development.

### **How should the scheme intersect with other like schemes?**

As stated earlier in the submission, Carers Victoria believes greater integration between workers in the aged care and disability sectors as well as complementarity with nursing and allied health professionals will be positive for clients, workers and providers. The main benefit for clients is a larger, more experienced and qualified pool of support workers to draw from – mitigating a common experience of worker shortage, appointment cancellations at short notice and poor-quality and potentially unsafe care. Undertaking greater integration now – while the reformed disability and aged care sectors are still nascent – will be one way the greater demand these sectors will experience in the near future can be addressed.

## **Other issues**

### **Awareness of legislation**

There is a need for the aged care work force to develop an effective understanding of State and Commonwealth legislation regarding wholistic delivery of services to older people, their families and carers. This requires being informed about the relevant legislation, regulations and policies and how to **demonstrate** them in practice. We wish to emphasise the importance of the Victorian Carers Recognition Act (2012) and the Commonwealth Carer Recognition Act (2010) which provide a legislative basis for providing family centred and sensitive services. We highlight the purposes of the Victorian *Carers Recognition Act 2012*:

- (a) recognise, promote and value the role of people in care relationships; and
- (b) recognise the different needs of persons in care relationships; and

- (c) support and recognise that care relationships bring benefits to the persons in the care relationship and to the community; and
- (d) enact care relationship principles to promote understanding of the significance of care relationships.

### **Scope of practice**

Carers Victoria recommends the registration scheme involves a current list of workers who can demonstrate a specific scope of practice. We believe it is likely aged care workers will want to promote themselves on their point(s) of difference. Furthermore, setting standards about scope of practice facilitates a certain level of autonomy from employers; for instance, a worker may be employed by an organisation which specialises in service delivery to people with dementia; however, he/she may have qualifications and experience in service delivery to people with complex bowel care needs. If this information is publicly displayed, the worker may be able to independently connect with clients.

A cursory glance at the websites of two comparable organisations shows The Law Institute of Victoria and the Australian Association of Social Workers operate a public register of members. Both organisations host websites which allow the community to search for prospective professionals, 'drilling down' by location, client type/areas of law; specialist accreditations/expertise and biography.

Limiting an applicant's scope of practice is an important mechanism to ensure the safety and dignity of clients. It is also likely to develop the workforce by easily identifying areas of skills shortage. Those workers who are new entrants to the workforce can be supported to develop career pathways by pursuing interest in a scope(s) of practice

### **Recency of practice**

Carers Victoria recommends the development of guidelines around a break from practice of longer than two years being too long to demonstrate sufficient knowledge of current practices, legislation and regulations. The worker will need to demonstrate their knowledge has been refreshed through recognition of prior learning or work in an unregistered capacity. The guidelines should be universally applied so workers are aware of the implications their employment decisions may have.