



AUSTRALIAN MEDICAL  
ASSOCIATION  
ABN 37 008 426 793

T | 61 2 6270 5400  
F | 61 2 6270 5499  
E | ama@ama.com.au  
W | www.ama.com.au

39 Brisbane Ave Barton ACT 2600  
PO Box 6090 Kingston ACT 2604

---

## **A New Model for Regulating Aged Care**

### **AMA submission to the Department of Health and Aged Care Consultation Paper No.1**

[AgedCareRegModel@Health.gov.au](mailto:AgedCareRegModel@Health.gov.au)

The AMA welcomes and supports the Federal Government and the Department of Health progressing further the work on improving the aged care system, so that it better responds to the needs of our ageing population and so that it is fit for purpose into the future. The AMA submission will address the role of the Regulator, market exit for aged care providers and worker registration in aged care.

#### **Regulatory Safeguards and Tools**

##### The role of the Regulator

The AMA is supportive of the foundations for the new model as outlined in the Consultation Paper, that include a rights based, person centred, risk based approach, that aims for continuous improvement. However, while these high-level principles are welcomed, the AMA considers that nothing will change in the future unless the functions and capabilities of the aged care regulator are strengthened. The AMA understands that the role of the Regulator, currently the Aged Care Quality and Safety Commission, is defined by the policy and legal framework set by the Federal Government, and the AMA calls on the Government and the Department of Health to undertake a review of the role of Regulator within the new model.

The role of the private sector in dominating the aged care market has been such that it has been deemed 'too big to fail'. Having a Regulator that is limited in its capacity and constrained in the actions they can undertake to penalise those aged care providers that are failing to meet the care standards, has led to the disastrous situation we have seen unfolding in aged care. This resulted in the establishment of the Royal Commission into Aged Care Quality and Safety (Royal Commission) and unfortunately even after the Royal Commission's damning findings and

recommendations, particularly during COVID-19 pandemic, we have seen little or no improvement.<sup>1</sup>

The AMA has written extensively about the need for improvements in aged care in multiple submissions to the Royal Commission.<sup>2,3,4</sup> We have previously called for:

- More specific Aged Care Quality Standards, including the Clinical Care standard and an introduction of a new Medical Access Standard that helps to facilitate access to doctor services and other high-quality clinical care;
- Increase in the number of accreditation auditors who have experience in clinical care;
- Accreditation and compliance audits to focus more on quality care than documentation compliance – the accreditation process should ensure that quality of care is considered a more essential indicator of quality than the existence of paperwork.

Our position on these calls remains unchanged.

The AMA argues that the considerations of a rights-based approach enshrined in relevant legislation will have to be such that ensure there are mechanisms for enforcing and ensuring those rights are upheld. For example, the current Charter of Aged Care Rights, is a rights-based document that outlines the rights of aged care recipients, many of which are identical to what is proposed in the Consultation Paper under Foundation 1: dignity and respect, life without abuse and neglect, without discrimination, complaints without fear of retribution. At the moment, it is the role of the Aged Care Quality and Safety Commission, to ensure the Charter is implemented by the aged care providers.

Yet, the inability of the Regulator to enforce the rights enshrined in the Charter was plainly obvious during the COVID-19 pandemic outbreaks in aged care, when the Government and the Commission negotiated an Industry Code to “provide an agreed industry approach to ensure aged care residents are provided the opportunity to receive visitors during the COVID-19 pandemic, while minimising the risk of its introduction to, or spread within, a residential care home”.<sup>5</sup>

After the Government introduced restrictions in visitors to aged care homes, which were reasonable and supported by the AMA, many aged care providers implemented further restrictions that were beyond the requirements defined by the National Cabinet. In the AMA’s view, the complete banning of visitors in aged care would have potentially caused more harm

---

<sup>1</sup> Three quarters of all COVID-19 deaths in Australia, over 4000 deaths, were in aged care. See <https://www.health.gov.au/sites/default/files/documents/2022/09/covid-19-outbreaks-in-australian-residential-aged-care-facilities-30-sept-2022.pdf> and <https://www.health.gov.au/sites/default/files/documents/2022/09/coronavirus-covid-19-at-a-glance-9-september-2022.pdf>

<sup>2</sup> [https://www.ama.com.au/sites/default/files/documents/AMA\\_submission\\_to\\_the\\_Royal\\_Commission\\_into\\_Aged\\_Care\\_Quality\\_and\\_Safety\\_on\\_the\\_impact\\_of\\_COVID\\_19\\_on\\_aged\\_care\\_services.pdf](https://www.ama.com.au/sites/default/files/documents/AMA_submission_to_the_Royal_Commission_into_Aged_Care_Quality_and_Safety_on_the_impact_of_COVID_19_on_aged_care_services.pdf)

<sup>3</sup> [https://ama.com.au/sites/default/files/documents/AMA\\_submission\\_to\\_the\\_Royal\\_Commission\\_into\\_Aged\\_Care\\_Quality\\_and\\_Safety\\_FINAL.pdf](https://ama.com.au/sites/default/files/documents/AMA_submission_to_the_Royal_Commission_into_Aged_Care_Quality_and_Safety_FINAL.pdf)

<sup>4</sup> [https://www.ama.com.au/sites/default/files/2020-11/ACRC\\_Public\\_response\\_to\\_Counsel\\_Assisting\\_final\\_submissions%20\\_AMA\\_FINAL.pdf](https://www.ama.com.au/sites/default/files/2020-11/ACRC_Public_response_to_Counsel_Assisting_final_submissions%20_AMA_FINAL.pdf)

<sup>5</sup> <https://www.health.gov.au/resources/publications/industry-code-for-visiting-residential-aged-care-homes-during-covid-19>

than good, by having a detrimental impact on mental health and overall health of older residents. In many cases family members and friends provide care and support, including hygiene assistance and meals to residents. They also are important in raising any instances of inappropriate care. Yet, during much of 2020 and 2021 the residents were isolated or quarantined in their rooms, unable to see their closest ones, while family members, carers and friends had little or no visibility of the quality of care provided to their loved ones.

Consumer choice and control are the fundamental principles of the Charter of Aged Care Rights and the Aged Care Quality Standards. The Charter describes the right of consumers to “have control over and make choices about my care, and personal and social life, including where the choices involve personal risk”. In the AMA’s view, implementing visitor restrictions beyond the requirements and advice of National Cabinet was not consistent with this.

Instead of ensuring that the residents’ rights that are enshrined in the Charter were respected, the Department and the Aged Care Quality and Safety Commission negotiated an ‘Industry Code’. The AMA argued against this Code in our submission to the Royal Commission, stressing that it was problematic because it was voluntary, and not a legislated obligation<sup>6</sup>. This means that non-compliance does not have consequences. The AMA preferred approach would have been to see the Charter of Aged Care Rights and Aged Care Quality Standards implemented by those agencies whose role it is to ensure compliance and that rights of consumers are respected.

Therefore, the AMA argues that unless the role of the Regulator is strengthened and unless it is given powers and abilities to adequately reprimand the providers, as opposed to issuing notifications or resorting to negotiating ‘industry codes’ with aged care providers, nothing will change.

### Market exit for aged care providers

The Consultation Paper provides the overview of three regulatory stages, the final one being market exit as a choice or resulting from enforcement action. The AMA believes that securities must be put in place to ensure that when an aged care home closes, vulnerable residents are not left in limbo, being transferred to other homes that are not their choice or to hospital while they wait for a place in another aged care home.<sup>7</sup>

Furthermore, we have seen during COVID-19 outbreaks in aged care, that the decisions to evacuate the residents or transfer them to other homes or hospitals due to unsafe conditions commonly fall on health departments of relevant states,<sup>8</sup> even though States do not have a say in the regulation or the operation of the aged care sector. The AMA looks forward to contributing to future consultations to inform future reform in this space.

---

<sup>6</sup> <https://agedcare.royalcommission.gov.au/system/files/2020-10/CTH.4000.0001.1959.pdf>

<sup>7</sup> <https://agedcare.royalcommission.gov.au/system/files/2020-06/RCD.9999.0266.0003.pdf>

<sup>8</sup> <https://www.premier.vic.gov.au/support-aged-care-residents-and-aged-care-workers-across-victoria>

## Worker registration

The AMA welcomes the enshrining of the worker registration in the new regulatory approach as described in the Consultation Paper. The AMA has in the past supported the registration of workers in aged care, noting that other professions that have the responsibility to care for people have mandatory minimum qualifications and are regulated.

The AMA supports the risk-based screening prior to employment in aged care, as well as the development of Code of Conduct for aged care providers. A Code of Conduct directed at aged care providers will provide a framework of accountability the appropriate care of older people.

The AMA has previously warned against the Code of Conduct and the registration focusing just on aged care workers.<sup>9</sup> It is the AMA view that although the introduction of establishment of a national registration scheme for personal care workers is expected to introduce the concept of individual responsibility for care of older persons in aged care, personal care workers in aged care work under supervision and should not be expected to make isolated decisions about the personal care of older people in their care. The risk of going down this path entails potential transfer of liability for care from aged care providers to individual workers. The AMA is therefore supportive of the approach proposed by the Consultation Paper.

**12 October 2022**

## **Contact**

Aleksandra Zivkovic  
Senior Policy Advisor  
Medical Practice Section  
azivkovic@ama.com.au

---

<sup>9</sup>

[https://www.ama.com.au/sites/default/files/documents/AMA\\_Submission\\_to\\_Aged\\_Care\\_Worker\\_Regulation\\_Scheme\\_Final.pdf](https://www.ama.com.au/sites/default/files/documents/AMA_Submission_to_Aged_Care_Worker_Regulation_Scheme_Final.pdf)