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Department of Health and Aged Care  
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### **Consultation Paper No.2 – A new model for regulating aged care**

National Seniors Australia (NSA) welcomes the opportunity to make a brief submission in response to Consultation Paper No.2 – A new model for regulating aged care. This builds on our response to the Department of Health and Aged Care earlier process around Consultation Paper 1 – A new model for regulating aged care. We refer you to this earlier [submission](#) in which we made a number of specific comments that are also relevant to the current consultation.

As the peak body representing older people, NSA has been actively engaged in aged care reform over many years, drawing on evidence and feedback from older Australians. We do this through our research surveys and informal feedback methods and analysis of the wide range of research and commentary available on reforming the aged care system.

Our starting point for this and earlier contributions is support for the adoption of reform recommendations from the Royal Commission into Aged Care Quality and Safety, and a commitment to ensuring the voice of older people is heard in the implementation of reform processes.

NSA provides the following observations and comments about the proposed regulatory framework (outlined in the current consultation paper) for your consideration.

#### **National Seniors Australia response**

In general, NSA supports the intent, directions, objectives and main control features of the proposed new regulatory model outlined in Consultation Paper 2.

We also reiterate our support for the foundations proposed to underpin the new model, with a focus on placing older people at the centre of a system built around person-centred, quality, rights-based care.

In addition, we make the following comments.

#### ***The proposed stewardship approach***

NSA supports the proposed ‘regulatory stewardship’ model that engages all parts of the system and all stakeholders within it. Older people and their families should be able to participate in decisions around all aspects of the aged care system that impact on service user quality of life.

We view the proposed stewardship model as an important aspiration, but also consider it will require significant cultural and process scaffolding to implement, if it is to avoid becoming just a platitude or an unnecessarily contested space.

NSA believes the idea of ‘relational regulation’ (referring to an approach by the Regulator that emphasises meaningful engagement on the ground, between the regulator, providers, workers, and older people and their advocates) introduced into Consultation Paper 2 has merit. It has the potential to be an essential method or tool to support effective regulatory stewardship, provider and worker capability building and empowerment of older people. However, we caution that this method requires greater definition and more concrete description of implementation before becoming a realistic feature of the forthcoming model.

We also hold the view that relational regulation must be considered an additional source of dialogue, learning and solution building in the aged care system. It does not replace or diminish the need for rigorous, formal regulator market oversight and (if required) intervention, nor the bedrock of rules-based regulation and its enforcement.

### ***A rights-based approach***

NSA strongly supports a rights-based approach for the aged care system. We commend Consultation Paper 2 for the significant effort made to foreground the issue of rights and draw out the intended linkages between specific regulatory proposals and a rights approach. We also note the commitment that providers will be expected to act consistently with the Principles and Statement of Rights in the new Aged Care Act.

However, at this point in the development of a new Act and its regulations, we consider the time has come for a clearer explanation of what is meant by a rights-based approach.

It is notable that ‘rights’ is not defined in the body or the Glossary of Terms in Consultation Paper 2, although the term appears 48 times. Although the rights of the aged care user are promoted as explicitly central to many aspects of the proposed regulatory model, the definition and identification of these rights (and the framework from which they are drawn) is deferred to the forthcoming Principles and the Statement of Rights in the new Act. We believe this makes it difficult to test the accuracy of the claim that the proposed regulatory model is appropriately rights-based.

The final report of the Royal Commission into Aged Care Quality and Safety framed a rights-based approach by reference to the *International Covenant on Economic, Social and Cultural Rights*, firmly setting the call for a rights-based aged care system within a human rights framework. National Seniors supports this as the primary perspective on rights in aged care, necessary to address the widespread failures in quality and safety in the current system.

The current unspecified term 'rights' in Consultation Paper 2 could be understood as drawing on a consumer rights model, particularly given the dominance of consumer discourse in aged care over the past decade. NSA supports the guarantee of strong consumer rights in aged care but, like many other stakeholders, argues this is not a deep enough basis alone to reform the system.

NSA argues much greater clarity is required as to whether the new regulation model (and of course the Aged Care Act) is primarily intended to maximise consumer choice and control, or promote human rights, or a combination of both. The principles and regulatory practices underpinning these two approaches differ and stakeholders need to understand which approach is guiding regulatory design. The efficacy and legitimacy of the regulatory model as fit-for-purpose from a rights perspective will rest to a large degree on clarifying this issue.

### ***Transparency and accountability***

NSA is particularly concerned with the importance of provider and government accountability and transparency in the aged care system. We view strengthening these aspects of aged care as central to ensuring rights, quality and safety for users of aged care and increasing community trust in the system.

Therefore, we welcome the proposed new public register of providers and published sanction information, alongside the publication of Star Ratings and increased financial reporting obligations.

More broadly, the additional controls proposed in the new regulatory model related to provider registration, re-registration, monitoring, enhanced complaints and feedback management and regulatory oversight assessments (operating in tandem with the new Code of Conduct for Aged Care and the Aged Care Quality Standards) also have relevance to accountability and transparency.

Our reading of this package of control features is they are built around a risk management approach. Therefore, we reiterate the point made in our previous submission, supporting the move to a proportionate risk-based approach, provided there are effective mechanisms to guard against malfeasance from providers and workers deemed low-risk.

### ***Sector capacity***

Like many other stakeholders in the aged care system, NSA is deeply concerned about sector capacity. Ongoing problems with thin markets (especially in regional, rural and remote areas), shortage of workers in general and in culturally appropriate service delivery, means the new regulatory model walks a tight rope between ensuring quality and safety while not exacerbating service and labour shortages.

To that end, the proposal to allow non-corporations, such as sole traders and partnerships to be eligible to deliver Commonwealth subsidised aged care services in the home or community setting is an attractive development.

However, once again, a risk approach will need to be applied to this expansion of market players to ensure regulation recognises, anticipates, and mitigates any problems likely to occur with inclusion of this particular provider segment. We note the new, tailored approach to provider obligations (especially in home care) applied through the new registration model potentially offers an improved mechanism through which to manage this and many other aspects risk.

The moves towards harmonisation of various aspects of regulation between aged care and other care and support sectors may also go some way towards improving sector capacity.

***Empowerment of older people***

National Seniors welcomes the proposed improvements to complaint and feedback mechanisms and related powers around restorative justice and protection of complainants from reprisals. These features could be a game changer for service users and for continuous improvement processes and improved outcomes. However, they represent a significant shift in power relations and will need to be accompanied by education programs and strong support for all parties to change the existing culture of care.

In conclusion, thank you for the opportunity to contribute to this important consultation. Please contact us if you wish to discuss any aspect of this submission or the ideas and research contained in it.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Henschke', written in a cursive style.

**Ian Henschke**

Chief Advocate