COTA
For older Australians

Submission to the Royal Commission into Aged Care Quality and Safety

Governance

Prepared by COTA Australia

July 2020

COTA Australia

COTA Australia is the national consumer peak body for older Australians. Its members include State and Territory COTAs (Councils on the Ageing) in each of the eight States and Territories of Australia. COTA Australia and the State and Territory COTAs have around 40,000 individual members and supporters and more than 1,000 seniors' organisation members, which jointly directly represent over 500,000 older Australians.

COTA Australia's focus is on national policy issues from the perspective of all older Australians as citizens and consumers and we seek to promote, improve and protect the circumstances and wellbeing of older people in Australia. Information about, and the views of, our constituents and members are gathered through a wide variety of consultative and engagement mechanisms and processes.

Edited, co-authored and authorised by:
Ian Yates AM
Chief Executive
iyates@cota.org.au
02 61549740

Prepared and co-authored by:
David Wright-Howie, Senior Policy Officer, Aged Care Reform

COTA Australia
Suite 9, 16 National Circuit
BARTON ACT 2600
02 61549740

Table of Contents

Introduction

The Aged Care Royal Commission (the Commission) has significantly and substantively noted that aged care services are not consistently delivering good outcomes for older people in Australia. The Commission has highlighted failures by both organisational and systemic governance in protecting and enhancing the health and wellbeing of the people who use aged care - both residential and home care - and has heard evidence of institutionalised service cultures that embed poor or inadequate practice.

In our submission we discuss the key elements of governance and how such elements should incorporate a human rights based approach to delivering consumer outcomes. We discuss the important role of Governance in ensuring consumer choice, consumer protection and consumer engagement.

We caution against a new 'System Governor' being the first step towards improving system governance and instead propose a series of strengthening current mechanisms in the first three years after the Royal Commission's final report. After the enhancement of existing mechanisms have been implemented would be an appropriate timeframe for any new system governor to be implemented.

Finally, in the submission we develop in some detail seven of the key principles for governance, for the Commission's consideration:

1. Any future system must be measured by consumer-centric outcome measures (including any system Governor)
2. Consumer Engagement and Service Co-Design must be embedded in the culture and processes of governance
3. Transparency and Accountability must be ensured to enable genuine consumer choice
4. There must be National Consistency in achieving consumer outcomes and delivering consumer choice
5. Regulation must be effective and responsive to protect consumers
6. Services must ensure access and quality services for all consumers by responding to Diversity
7. All system governance must ensure it focuses on building the highest quality Workforce Capability

KEY ELEMENTS OF GOVERNANCE

Leadership Critical to Transformation

Transformation of aged care in Australia requires values based strategic leadership at all levels. This will be critical. The governance task will be to drive culture change that moves aged care from a generic, over-institutionalised, templated service approach to a consumer-centric system that is:

- enabling
- personalised

- responsive
- flexible
- committed to the highest standards
- continuously improving
- delivering support and care services co-designed with consumers
- totally focused on achieving excellent consumer outcomes.

Systemic and Organisational Governance: Same Goal, Different Roles

The goal of system and organisational governance of aged care in Australia should be to ensure the best possible life for the people who use it. Services should be of the highest quality, continuously innovating and improving and achieving nationally consistent outcomes that improve the lives of the older people who need and use aged care.

In order to achieve this goal, the aged care system must be founded on rights based and outcome focused principles that = shape and direct the operations of systemic governance provided by national governance entities including the Department of Health, the Aged Care Quality and Safety Commission, and the Aged Care Financing Authority.

Those same principles need to guide the Boards and Executive management of aged care providers and system rules must require them to be applied. System governance should also provide the regulatory environment that will enable, rather than (as now) impede the pursuit of the highest levels of achievement in the application of such principles.

In aged care reform much attention is quite properly placed on initiatives such as improved standards, better workforce remuneration, training and skills development, much better funding, stronger consumer protections, etc, etc. These are all important. However, in thinking through the variable performance of aged care providers in terms of both quality and financial metrics one is eventually forced to ask that if some are doing an exemplary job and others are not up to scratch, then isn't the quality of Management a key issue?

That is a correct conclusion. But then, who appoints Management? And having appointed Management isn't it the governing Board or other body, that must hold them to account? Does governance require measurable performance against a comprehensive range of key indicators – additional to the finances? And to whom are many of the Directors actually responsible? How are they held accountable?

Organisational governance (and Management) is significantly influenced by decisions at the system level. For example, we have regularly raised with government the wide variance in financial and quality performance of otherwise similar providers. Government controls the distribution of residential care beds through the ACAR system which does not allow good providers to expand to meet consumer preference and protects poor quality providers who can hang onto their bed licences even when consumers don't want to go to them. Government made a decision in the 2018 Federal Budget to change that and put funding in the hands of consumers, but has dragged its feet on implementing that and is still sitting on the Impact Study that tells it how to put this change into effect. This system protects a provider cartel of mediocrity, something about which most of the public and media are substantially unaware. Government regulation has created a system that makes it effectively captive to providers and puts it in the position of playing "catch up" to try and

raise standards, rather than setting up a system that requires accountability from provider governance. It is time for transformational change.

Governance shaped by legislation that embeds the human rights of consumers and delivers excellent consumer outcomes

Systemic and organisational governance should be shaped by the provisions of a new Aged Care Act that will:

- embed the human rights of consumers in legislation
- spell out the outcomes the system should achieve
- broaden the scope and scale of aged care services to respond to and improve consumer choice
- enable comprehensive regulation of services to protect consumers and
- establish regulatory functions and roles.

A new Aged Care Act will support and strengthen the responsibilities of aged care governance in Australia and ensure its effective stewardship of a new, rights based service system. That system must provide for consumer choice to drive the service menu and design, consumer control over care planning, meeting consumer preferences and delivering consumer outcomes.

A key step in the establishment of this new governance role will be to change industry management. This will occur through the abolition of the government-controlled allocation of residential places to providers, known as the Aged Care Approvals Round (ACAR) process, and implementation of the long awaited reform which places age care funding in the hands of consumers.

Historically, the ACAR mechanism served a useful purpose for a considerable period of time, to correct problems with the mostly unregulated system that preceded it. However, for many years it has had the effect of encouraging uniformity and embedding and protecting mediocrity by stultifying consumer choice and restraining the capacity for consumer preferences to competitively reward excellence over mediocrity.

The prioritising of consumer needs and preferences in health and human service policy delivery, -, is only a recent development in Australia. Since the late 2000s, the Productivity Commission has undertaken several human service reviews seeking to develop consumer policy frameworks and strengthen consumer law to extend choice and contestability whilst providing strong regulatory safeguards and protections for consumers. Broadly speaking, the 2011 Caring for Older Australians report is an example of this policy emphasis.

Central to this is the well-recognised role of active, informed consumers providing signals to competitors on preferred types of products and services leading to lower costs, improved quality and greater innovation. As the Productivity Commission recognised in 2011, consumers are, and should be considered as, active participants and stakeholders, and not passive recipients

Historically this has not been the case. Aged care has operated in ways that are antithetical to having active and informed customers. It has been an opaque system, complex to understand, difficult to navigate, and with most of the power in the hands of providers. That has changed a little in recent years but not sufficiently. In this submission we address the requirements to correct this. Service

regulation, strong consumer protections and safeguards, particularly for disadvantaged groups and those unwilling or unable to exercise choice, are vital.

It is important to note that **competition is a means to achieving systemic improvements in consumer wellbeing, rather than an end in itself.** Competition between providers does not guarantee improved consumer outcomes for all without other public policy measures being in place. However, the absence of competitive pressure in an aged care system that does not deliver high quality for most does mean that quality will not improve as much as it could if consumer preferences were allowed to have full impact.

In a transformed aged care system, competition will act to improve service quality and also enable efficiencies that will help reduce costs. The consumer will hold the purchasing power, be able to make choices about services, be informed and in control of their own care and an essential stakeholder in the design and review of services.

Governance will act to ensure strict quality measures and safeguards. It will also establish and uphold the rules for prices, funding and contracting of services and enable transparency of service information and equity of service access.

The government currently has before it the Impact Study on the removal of the ACAR prepared by Professor Mike Woods and Mr Grant Corderoy of Stewart Brown. This was commissioned following the in principle decision in the 2018 Federal Budget to replace ACAR with a new arrangement putting more choice and control in the hands of consumers.

COTA understands that the report sets out a number of steps that should be taken prior to the abolition of the ACAR within the two year time-frame recommended by David Tune in his report on the Legislated Review. These include a significantly improved assessment process, a much-strengthened process of, and criteria for, assessing and monitoring Approved Provider status, greater information and support for consumers, greater flexibility in regard to additional services, and ensuring rural and remote consumers have equitable access to services. Initiating the abolition of the ACAR should not need to wait until after the Final Report of the Commission.

Governance enabling consumer choice, consumer protection and consumer engagement

Aged care governance will ensure consumer outcomes are achieved through a range of mechanisms and requirements including:

- full transparency of provider information about services, fees, performance and complaints
- intervention to address 'thin' or inadequate markets where there are poor consumer choices in a geographic region or other contexts
- overseeing the implementation of System Navigators and case managers/Care Finders
- ensuring the access of consumers from diverse backgrounds or special needs groups
- protecting consumers through strong compliance measures that remove poorly performing providers and drive out mediocre practice
- providing incentives for providers to perform at a consistently high level

- review service standards and implement a strengthened outcome measurement framework
- establishing an accreditation regime with more developed criteria for Approved Provider status based on knowledge of aged care and aged care regulation and a three-year performance review audit.

Governance of aged care services in Australia will be driven by key principles which include:

- Providing leadership to drive the delivery of excellent consumer outcomes
- Embedding consumer engagement and co-design as key elements of the system
- Ensuring total transparency regarding fees, performance, complaints, service information
- Ensuring national consistency in service outcomes, service type, access and quality
- Protecting consumers through effective compliance processes
- Responding to diversity: responding to 'thin' markets and ensuring service provision and consumer choice for special needs groups
- Ensuring continuous quality improvement through accreditation processes and service reviews
- Building and supporting the capability of the system to meet consumer preferences
- Provision of market and system data and information: identifying trends and service gaps

THE QUESTION OF A NEW 'SYSTEM GOVERNOR'

The Commission has raised the issue of the structure of the 'System Governor'. This implies that a new structure should be recommended for aged care. We assume this would mean an aged care equivalent of the National Disability Insurance Agency (NDIA).

Current system governance comprises the Minister and Department of Health (DOH), the Aged Care Quality and Safety Commission (ACQSC), and to a minor but potentially greater extent, the Aged Care Financing Authority (ACFA).

The Department of Health has the lead role in policy development and advice in collaboration with sector stakeholders. It also manages various programs designed to assist the sector, such as the current Business Improvement Fund and other financial assistance to the sector, and the current Trial of Aged Care System Navigators. The Ageing and Aged Care stream of the department has experienced significant turnover of senior staff in recent years for a variety of reasons, which has been detrimental to its effectiveness, but has more lately stabilised and led to more effective operations.

Over recent years, system governance architecture has also been reformed to enable the greater separation of regulatory responsibility from policy responsibility and the consolidation of regulatory responsibilities in the Aged Care Quality and Safety Commission (ACQSC) following the Carnell/Paterson Review. It has been established as the primary regulatory body, operationally

independent from government and regulating adherence to the Aged Care Charter of Rights, ensuring the safety of consumers and adherence of providers to the new Quality Standards, ensuring adherence to prudential requirements, and handling external complaints.

COTA Australia is on the record as supporting a strengthening and expansion of the powers of the ACQSC to give it a wider mandate and more flexibility to enable more regular compliance of aged care services and effective and timely sanctioning of providers that consistently engage in poor practice. We are aware that the government asked the Aged Care Quality and Safety Advisory Council to provide advice on those additional powers and we understand that it has done so and we presume that the Royal Commission has access to that report and will consider it.

In brief, COTA Australia believes the ACQSC needs powers that, with normal legal checks and balances, allow it to do things such as:

- Ban a person from working in aged care for a variety of reasons
- Ban a person from operating as an aged care provider
- Issue financial penalties to organisations and individuals for breaches of the Act, the Charter, the Standards, etc
- Take strong action against an individual facility without necessarily seeking to enforce full financial sanctions
- Take strong action against an individual facility without necessarily seeking to suspend or revoke approved provider status for the whole organisation
- Require aged care providers to enter into enforceable undertakings
- Directly appoint administrators or clinical advisors to manage aged care facilities or providers on defined grounds
- Require aged care providers to desist from certain practices

These are obviously powers that would equip the ACQSC to operate much more like a regulator such as ASIC, which we consider appropriate.

The ACQSC should also have jurisdiction over quality control and complaints in relation to My Aged Care and the Aged Care Assessment services. Consumer expect to only have to go to one place to make complaints and it is a technical anomaly that the ACQSC does not have this power.

The Aged Care Financing Authority (ACFA) provides independent advice to government on the financing of aged care. It was created as part of the Living Longer Living Better reforms, originally as a Ministerial Advisory body, but after COTA representations, was included in the Act. ACFA has developed its series of Annual Reports into a major source of longitudinal data on Australia's aged care system and has provided detailed and authoritative reports on many issues facing the sector over the last eight years.

While COTA, and much of the sector, hold ACFA in high regard, in COTA's view the role and contribution of ACFA could be further strengthened. ACFA's Secretariat and research and consultation capacities are provided entirely by the department. COTA does not suggest that- ACFA's resource requests and directions have not been fully met by the department. Rather we suggest that the independent monitoring, reporting and advice functions of ACFA could be strengthened by ACFA

having its own budget and Secretariat. The Department could then relate and respond to ACFA in its own right rather than trying to play both roles. This would also signal more clearly to the industry that ACFA is independent.

Further to that, there have been a number of proposals, dating back to the Productivity Commission Report in 2011, that there should be some form of Independent Pricing Authority (IPA) for aged care, which we touch on more in our submission on Financing Aged Care This could be co-located with an independently constituted and resourced ACFA.

In 2011, the Productivity Commission recommended the establishment of a substantial, independent aged care regulatory body with multiple Commissioners with a broader range of responsibilities than the current arrangements. However, that was not supported by the then Gillard government, nor has it been pursued by subsequent governments. Nevertheless, there have been decisions taken by the Abbott, Turnbull and Morrison governments that have incrementally strengthened the overall governance structure.

In the current context, discussion of a new 'system governor' most likely means an aged care equivalent of the National Disability Insurance Agency (NDIA) that manages the NDIS. COTA Australia has some serious hesitations about supporting such a proposal. We question whether such a move would add further value. Too often structural change is recommended, when structure is not the fundamental issue.

Creating a new 'System Governor' structure would inevitably be resource intensive, energy consuming and disruptive. Major structural change always is; even a change of Department from Health to Social Services in 2013 set back the reform process by months and was then reversed not that long after at a similar cost.

The Royal Commission Report has the potential to catalyse the greatest reform of aged care in Australia that we have ever seen. To successfully achieve that its recommendations need to be adopted as a core part of the May 2021 Federal Budget and then be implemented within the shortest possible timeframe, consistent with good public policy process. If that does not happen, history tells us that a highly conservative and change averse aged care provider sector and the fundamental ageism in our community and body politic will combine, as they have in the past, to put fundamental change on the back burner.

The changes we need are in the regulatory environment, incentives for cultural change and structural change, and a high level political commitment to major resourcing injections. Trying to achieve these while introducing a new governance structure is extremely risky. It could threaten the whole Royal Commission enterprise. It could create system disruption and distract and divert focus from the implementation of key reforms. The history of the NDIA bears this out and that was in a "greenfield" context. In the morass of aged care, the risks are far greater.

If the Royal Commission believes a new "System Governor" would be beneficial then we suggest that it recommends that this be considered three years after the Final Report. In the meantime, we suggest, the highest priority be placed on other finance and funding, regulatory and cultural changes. We think much more discussion and consideration are required to determine whether there should be any fundamental changes to the current architecture of system governance beyond those we have recommended for the ACQSC and ACFA/IPA.

KEY PRINCIPLES FOR AGED CARE GOVERNANCE

A consumer outcomes focus

A fundamental principle is that the performance of the aged care system as a whole and every individual provider be measured by the achievement of outcome measures that are totally consumer based. System and provider governance should be assessed against the outcomes being achieved not by input or process measures.

The current Aged Care Quality Standards, in force since 1 July 2019, provide a strong foundation for the achievement of outstanding outcomes for older people receiving care from aged care services in Australia. Developed through a comprehensive process of stakeholder and expert engagement, followed by extensive sector consultation, the new Standards are focused on consumer outcomes.

In the lead up to the new Standards coming into force, many providers expressed the view that, while structured differently they were essentially the same set of requirements as the Standards they replaced. However, providers are increasingly recognising that this is not the case. This was highlighted by a presentation from Presbyterian Aged Care, at the COTA/ACSA/Criterion conference held in December 2019, which set out the process which they have developed to commence an organisational journey of fundamental cultural and operational change. Key take-outs for providers from that presentation included (summarised):

- *Listen to the Aged Care Quality and Safety Commission, these insights came from our engagement with them*
- *Everything you knew in Aged Care is now turned on its head*
- *You have to start by undoing, before you can do*
- *Start by really listening to and hearing your customers*
- *You need a human rights framework embedded in all you do*
- *Let go of the command and control approach - refer to the new Standards*
- *'Human to Human' care with customers at the centre is your new approach*
- *Co-designed service delivery is critical to moving forward*

This is a powerful message. It has been articulated by several other providers at other COTA conferences and in our interactions with our provider informant network. However, in our experience it is only recognised by a minority of providers at this stage, and certainly being practised by a small minority.

The outcomes that consumers expect from both individual providers and the system as a whole are:

1. They are treated with respect and dignity, can maintain their identity, can make informed choices about their care and services, and can live the life they choose
2. They are partners in ongoing service and care assessment and planning to get the services they need for their health and well-being
3. They receive safe, individually tailored and appropriate and high quality personal and clinical care that is right for them

4. They receive services and support for daily living that maximise health and wellbeing and enable consumers to do what they want to do
5. They feel that they belong and are safe and comfortable in their living and service environments
6. They are confident, supported and encouraged to give feedback and make complaints and are involved in processes that respond to their feedback and complaints and appropriate action is taken
7. They receive care from people who are knowledgeable, capable and caring
8. They are confident that their care and support organisations are well run and committed to continuously improving care and services and do so in partnership with their consumers.

A key question for system and organisational governance is how providers know whether they are achieving these outcomes? It is obviously important that system governance, and the governance bodies of aged care service providers, strive for continuous improvement that results in demonstrated performance achievements. But how do you know if you are improving if you don't have measures of whether, and to what degree, you are achieving consumer outcomes?

This is not easy. In an ideal context it is fair to say that consumers themselves are the best judge of whether the outcomes they want are being achieved. We know from other contexts and markets that this can be influenced by deceptive and misleading behaviours by providers which can take time to play out. Accurate and current information is also a key requirement. In aged care it is a fact that a proportion of consumers do not have full capacity and agency and judgements by their significant others and legal representatives may not reflect their lived experience. Nevertheless, none of this is an excuse for the regulatory system to dilute and diminish the capacity of many consumers to express their judgment on provider achievement of good consumer outcomes by being able to select high performing providers instead of poorer performing ones. However, this is what the regulatory system currently does through the straightjacket of the ACAR allocation system and it therefore needs to be removed.

Obviously, consumer outcomes performance is in part addressed though proxy measures of inputs that research or experience indicates are associated with them. This is reflected in both some of the organisational requirements of the Standards and the ACQSC's Guidance on them. It is important that in evaluating and assessing consumer outcomes and service performance in aged care that a multifaceted approach is taken that does not just focus on supply side metrics but considers a range of other qualitative and quantitative data on lived consumer experience.

Governance at all levels needs systems and processes – including use of state-of-the-art IT systems – to provide regular, real time, multi-faceted data to enable them to monitor, assess and respond to information. This would inform the achievement of consumer outcomes and enable the regular review, updating and improving of outcome measurement and reporting to be used to improve performance.

It is not clear to COTA that, as a major player in system governance, the ACQSC itself has been fully transformed from its inherited processes, behaviours and culture to appreciate and implement its role regarding the new Standards. We recognise that significant efforts have been made to achieve this, but much remains to be done and inevitably this is a journey in which understanding, and

knowledge will increase over time. That is only to be expected but supporting this change will require a substantial injection of additional resources so that the Commission can both "fly the plane" and rebuild it at the same time.

Consumer Engagement and Co-design culture

A second fundamental principle is the embedding of Consumer Engagement and Service Co-Design in the culture and processes of governance.

The work of the Commission and Commonwealth policy reform since Living Longer Living Better has, to greater or lesser degree, highlighted the importance of placing the consumer at the heart of aged care service planning, design, delivery, and review. We believe this necessitates the embedding of genuine, systemic consumer engagement and co-design in both provider practice and the policy and regulatory framework, even though the mechanisms are different at the organisational and system levels.

The governance and leadership of the system and of organisations needs to ensure that engagement and co-design are more than rhetoric and that consumer engagement mechanisms are -entrenched and expanded. This will require an educational approach that promotes consumer engagement and the development of systemic consumer engagement protocols, rules and requirements and incentives for providers to implement effective consumer engagement processes and strategies.

It will also require that government take very seriously the selection, tasting and initial tasting and consumption of some of our most famous reds. Evidence from a range of health and human service fields demonstrates that engagement with consumers not only leads to improvements in the health and wellbeing of older people who take greater control of their care but is fundamental to enabling high quality and financially viable service organisations and systems.

COTA Australia was instrumental in having the consumer engagement provisions written into the Aged Care Quality and Safety Commission Bill that was subsequently passed by Parliament. These were ground-breaking provisions that went some way to giving effect to the Carnell / Paterson Review Report's support for a Consumer Commissioner. However, these provisions are not sufficient. They mandate the Commission educating the sector and promoting engagement, but they do not explicitly require the sector to embed consumer engagement against measurable indicators.

It can be argued that consumer engagement is both explicit and implied in a number of the Standards, and we agree with that. However, COTA argues that consumer engagement is so critical, and the sector's culture is by and large so antithetical to it, that the ACQSC needs a more explicit and comprehensive mandate to **require it** as a condition of meeting the Standards and being an Approved Provider.

For some years in the early to mid-2000's COTA worked with a consortium of organisations in NSW, led interestingly by the NRMA, to develop a consumer quality rating tool for retirement villages and aged care providers. Unfortunately, despite significant progress, there was a change of NRMA leadership - which led to this initiative being abandoned precipitously mid-stream, despite substantial success. However, the key point here is that the tool being trialled was in fact a globally tested and accredited measure of consumer engagement, which research had shown was the tool most closely aligned with optimum quality outcomes for consumers. In other words, good engagement was a proxy for quality outcomes for consumers.

Implementing consumer engagement as an essential part of the Australian aged care system is still in its infancy. Effective leadership willing to embrace change in practice and attitudes as critical. This would include regular promotion of the purpose and importance of consumer engagement, addressing barriers and resistance to consumer engagement, ensuring that consumer engagement is part of policy and procedure at a systemic and organisational level. Such actions will drive cultural change that incorporates greater flexibility and innovation of practice informed by consumer engagement.

Consumer engagement should include the co-design of services with consumers. Co-design involves consumers being in on the ground floor, rather than being "consulted" on predeveloped proposals, reflecting on their experiences of services to identify improvement and redesign priorities and devising change strategies. In this process, consumers are regarded as 'experts of their experiences' and are an equal stakeholder in exploring and articulating needs and behaviours and developing solutions.

Governance leading to the transformation of the aged care system will require the promotion, endorsement and support of organisational and individual 'champions' of co-design and the development of key co-design flagship projects to result in co-design becoming an embedded and ongoing part of the industry.

In this regard we mention also the need for at the system governance level for systemically stronger opportunities for consumer input to issue identification and policy development. Over many years the membership and agendas of advisory bodies like the current Aged Care Sector Committee and its various predecessors have generally been dominated by providers and provider issues. Provider and professional representation exceeds that of consumer representatives on most advisory bodies in this sector, and there is no specific consumer advisory body or mechanism.

The National Aged Care Alliance (NACA) is a voluntary alliance of four constituencies - consumer, provider and professional peak bodies and aged care unions. Its membership is dominated by professional and provider peaks. However the NACA operating procedures require that each of the constituencies be equally represented in all formal processes and representation. COTA Australia convenes the NACA Consumer Organisations Forum, which since it was established has enabled consumer organisations to collectively exert greater influence within NACA. However for the consumer voice, NACA is an indirect and mediated route for the expression of direct consumer experience and views. There is a need for a formal forum, convened and serviced by the peak body, but providing a platform for representatives of the wide diversity of consumer communities and interests to speak directly with government.

Transparency and Accountability

A third fundamental principle is ensuring Transparency and Accountability to enable genuine consumer choice.

The hearings of the Commission, and previous inquiries, have shown that in the current system, consumers are often not able to make informed choices about services and care due to confusing, outdated, limited or no information about services available, fees, service quality and performance.

The transparency of service information is a critical element for the effectiveness of a transformed aged care system focused on consumer choice and control.

Systemic and organisational governance and leadership will need to ensure that information about aged care services is transparent, easy to understand, and is directly and simply comparable between service providers. To ensure this occurs, up to date and comprehensive service information about fees, services provided and performance and complaints should be publicly available, fully disclosed and continuously updated.

System and organisational governance should continually monitor and act to require that all services adhere to this transparency principle to enable consumer choice and support improvements to the quality of services. System governance must require that this be done at a minimum acceptable level, as government has done in, for example, the mobile phone and private health insurance markets.

Governance at all levels should ensure the establishment of regular engagement with consumers through feedback and complaints mechanisms and other initiatives to test the effectiveness of information provision, particularly given that many older people have lower digital literacy and access. Case managers and system navigators may also provide useful feedback on information provision.

One element of this is to improve Information Technology (IT) infrastructure (perhaps initially co-funded by Government) to enable timely, accurate transparent and comparable aged care service information that addresses consumer needs.

Whilst providing choice for consumers who engage with the system, system leadership is also required to make sure there are protections and default options for consumers who are encouraged to make active choices but fail to do so.

National Consistency

A fourth fundamental principle is National Consistency in achieving consumer outcomes and delivering consumer choice.

It is important that regardless of where they live in Australia, older people can choose and access aged care services that are subject to the same national service standards and procedures and are working to achieve the same national performance benchmarks.

A significantly decentralised approach to aged care service runs the risk of inequitable outcomes for consumers within and between jurisdictions and regions with differing and inconsistent service cultures, approaches and intent that make assessment of system performance, quality and service gaps difficult. Australia experienced this during the decades that the Home and Community Care (HACC) program was majority funded by the Federal Government but administered by the States and Territories. Consumers had to endure significantly different outcomes in every jurisdiction, and very limited choice. HACC services were often diverted to the interests of the health system in each jurisdiction. That is not something to which consumers are prepared to return.

COTA Australia supports responding to local needs and issues through established local relationships but within a framework where service types, standards and understanding of service provision are all nationally consistent.

An ongoing challenge is clarifying roles and responsibilities for services for older people managed by state and territory governments, particularly in the health system, and to ensure effective communication with aged care services to determine the best outcomes for older people.

Effective and Responsive Regulation

A fifth fundamental principle is Effective And Responsive Regulation to protect consumers.

Governance and executive leadership at all levels should ensure that consumers are protected from poor and negligent practice and that consumers can complain and provide evidence of poor and negligent practice without fear and obtain redress for themselves and action to ensure such practices are stopped and prevented from reoccurring.

The RoyalCommission has shown that many services in the current system do not adequately protect consumers, that unhealthy workplace cultures and behaviours exist and have resulted in negligent and abusive responses to older people. Regulation has not been effective enough to prevent many instances of such behaviours, remedy them and remove many providers who are serial offenders of bad practice, whether from intent or neglect, organisational mismanagement and lack of competence.

As we have argued earlier in this submission, COTA believes the Aged Care Quality Safety Commission needs a more diverse and nuanced set of powers and penalties at its disposal to deliver timely and proportionate penalties for substandard care and support. We will not further repeat the details here. We also believe the government needs to further strengthen the work of the Aged Care Quality Safety Commission by giving it the resources for a more rigorous schedule of unannounced visits to residential aged care facilities and home care services, and to develop a framework for smarter regulation based on genuine consumer engagement and control requirements, not just education on engagement.

Having a regulatory environment to support consumer rights and quality is not just restricted to the investigative and compliance regime. We also need the regulatory framework to support and reward high quality providers by enabling them to grow and develop in response to consumer preference, and also to facilitate the exit from the industry of those providers who perform below median standards. This would include the end of the ACAR process, the strengthening of the Approved Provider eligibility criteria and regular monitoring and review, and much stronger arrangements to ensure consumers have better access to information and support.

Recent moves towards greater transparency and public disclosure of accreditation, quality performance and complaints information for all services and the development of the Aged Care Quality Safety Commission as the single regulator have enhanced the protection of consumers. However, there is much more to be done in providing consumers with the information and power they need to negotiate their care and support on a more equal basis.

The issue of complaints procedure demonstrates the significant interaction between system governance and organisational governance. COTA has argued exhaustively for years for providers to adopt a proactive, engaging, welcoming and internally and externally transparent approach to complaints handling, also ensuring that they meet national complaints handling standards. This includes meeting with Boards of many providers and discussing how it is in their best interests and of the industry as a whole, over the medium term, to adopt such an approach. Providers usually

agree, but action does not follow. We only know of one prospective exception, which is soon to be launched by an industry leader but has been delayed by COVID-19.

The failure of aged care providers to implement a proactive, engaging, welcoming and internally and externally transparent approach to complaints handling means at least two things:

- first, that many consumers (and families) will not be confident to complain to the provider directly, and immediately an issue arises. The fear of retribution or other negative consequence is real and widespread. So, the issue will fester and either they will never complain, or they will go to the ACQSC to make either a formal complaint, or an anonymous one. The providers resent this and complain about the ACQSC's approach and lament that these very basic complaints weren't made direct to them;
- secondly, by its refusal to implement widespread adherence to a proactive, engaging, welcoming and internally and externally transparent approach to complaints handling, the industry invites consumers and advocates to appeal to government to legislate (through subordinate legislation) requirements and standards for doing so, as we did for financial disclosure in Home Care Packages after much of the industry refused to do it voluntarily. After government then takes action, the industry will complain about extra red tape and its onerous staffing implications.

In COTA's view, apart from a few exceptions, this dilemma typifies the issue of provider blindness about consumer rights and reluctance to contemplate fundamental change in how aged care operates in Australia.

Responding to Diversity

A sixth fundamental principle is ensuring access and quality services for all consumers by Responding to Diversity.

Even in a new aged care system where funding is in the hands of consumers, system governance will need to ensure equitable service access and optimum service provision for diverse groups and people with special needs.

Older people are not a homogenous population cohort. They have been shaped by very diverse backgrounds and lifetimes of widely varied experience. Diversity is reflected in gender, culture, socio-economic background, religion, spirituality, sexuality, geographic spread, varied historical traumas, and family and personal experiences.

Diverse groups have been identified in aged care policy and service provision for some time and include people living in rural and remote areas; people from Culturally and Linguistically Diverse (CALD) backgrounds; Aboriginal and Torres Strait islander peoples; people who are financially or socially disadvantaged ;Lesbian, Gay, Bi-Sexual, Transgender, Intersex, Queer (LGBTIQ) people; veterans; people who are homeless or at risk of becoming homeless; care-leavers; and parents separated from their children by forced adoption or removal.

Systemic governance needs to make decisions that enable equitable service access and inclusion of diverse and special needs groups, both in so-called "mainstream" services, and by working with consumer communities on the development of specialist services where these are practicable.

COTA Australia supports the current action plans based on the Aged Care Diversity Framework and views the Framework as an essential and ongoing component of aged care policy and the assessment of consumer outcomes.

Despite the fact that consumer held funding creates opportunities for some special needs groups to pool resources to develop specialist service approaches for their communities – something the Commonwealth should encourage and assist to develop - it is likely that alternative approaches and funding will be required in so-called "thin markets". This could include rural and remote areas, or where there are small concentrations of special needs that don't by themselves constitute a viable market force.

People who are geographically or disadvantaged in their access to services are less likely to be able to exercise true choice and control without additional measures in place. This includes potential funding approaches that vary to address thin or niche markets in nuanced ways that support initiatives by those communities, rather than imposing centralised solutions. Care will be required to determine whether a market is genuinely "thin", and decisions will need to be based on evidence, not theoretically based assumptions.

System governance and leadership will need to ensure that the design of the aged care system delivers services to all people assessed as in need of support and care. This may mean:

- Government guaranteed levels of funding, which could include increased prices on a competitively tested basis, in areas where, or to members of special needs groups to which, services might not otherwise be provided.
- Dedicated funding for services targeted to special needs groups, where competitive approaches do not achieve quality service delivery consistent with consumer preferences.
- Ensuring that prices and supplements are adequate to meet the (evidence based) increased cost of specialist service delivery for consumers with special needs.
- Addressing historic funding anomalies that have created inequitable service distribution patterns across the country.

While strongly supporting affirmative action to meet the needs of diverse cohorts among the older population, COTA also wants to see greater efforts to move aged care as a whole to a situation where people with special needs are able to receive appropriate, culturally safe care and support in any aged care service. That will require substantial change among many providers who claim to do that but frankly have little or no idea. It will also require the ACQSC to adopt much higher levels of performance against the relevant Standards.

Building Workforce Capability

A seventh fundamental principle is Building and Supporting the highest quality Workforce Capability.

System and organisational governance should continually review the capacity and capability of services to meet the care preferences and needs of older Australians and respond to identified weaknesses and areas for improvement. A more genuinely competitive system with services providing full and transparent information should lead to a clearer picture of system and

organisational gaps. System governance and organisational leadership should make decisions that seek to address these gaps.

Critical to this will be the development of the aged care workforce. A multidisciplinary, professionally trained workforce that has the right attitude and enjoys working with older people is an essential element of a transformed integrated service system that meets the needs of older Australians. Workforce culture is as important as required skills, if not more so. Skills can be trained for and learnt, the wrong culture is much harder to address and requires stronger and more persistent action to fix.

In the short term, system governance would ensure that the 14 Strategic Actions of the Aged Care Workforce Strategy ("A Matter of Care" report provided to government in mid-2018), including appropriate levels and mix of staff, career pathways, training investment, skills recognition and higher remuneration be implemented. System leadership also needs to ensure that consumers are involved in co-design of the implementation of the 14 Strategic Actions. This has not happened to date and means that the implementation of the Strategy is likely to be at risk of the provider-centric culture that has been the norm for far too long.

The role of the government in workforce development has been a matter of dispute. Government has said that workforce development is the primary responsibility of providers, as the employers. However, on their own, providers are not going to establish a framework for workforce development that requires the highest levels of quality compliance. The aged care provider sector in Australia has never done this (e.g. through membership requirements of peak bodies), so COTA believes government needs to do so, while doing that in co-design with consumers, unions and providers. That framework should also set the standards by which funding is determined.

At the organisational level, COTA believes that consumers should be involved in the recruitment, training and planning of the workforce, which does occur in a small number of providers, with success. System governance should also oversee the registration of workers in the industry. COTA strongly supports the development of an industry registration scheme for all workers in aged care. Such a mechanism would enable quality measures to be considered at the individual worker level as appropriate, in addition to the organisation wide level.

CONCLUSION

COTA Australia has long identified governance – both system governance and organisational governance – as a central but underappreciated issue in aged care. We talk about it to the provider sector and to government. We spoke about it in our Chief Executive's initial appearance before the Royal Commission but have been raising it with the sector and government for years. We have also introduced it as a successful theme in our Aged Care Reform Conference series over the last couple of years.

Hopefully the issues identified, and the proposals advanced, in this submission will lead to a breakthrough in good governance at both levels. The levels are interrelated as we have tried to show. There are may reasons why aged care suffers from poor governance. Underpinned by societal ageism that is still endemic, there is a lack of political priority and will, and community attitudes of denial and avoidance that result in aged care as still being seen as "good works" not subject to the level of governance scrutiny and accountability that other industries are required to meet.

The way forward, we have argued, must be principle based, grounded in the human rights of older people, which are regularly compromised by our current aged care system. We have set out the key elements of governance, the need for an overriding focus on achieving the best consumer outcomes and being accountable on that basis and set out and described the key principles for good aged care governance. We have also discussed the issue of whether there should be changes to system governance structures and cautioned against looking to a structural answer to issues that are cultural and political and need urgent political action.

COTA Australia is happy to further explore the analysis and the proposals in this submission with the Royal Commission, and indeed with the Federal Government.

End