

22 December 2021

Regulatory Alignment Taskforce
Department of Health

Submission on care and support sector code of conduct

COTA Australia supports a nationally consistent and enforceable care and support sector Code of Conduct (Code) for providers and direct care and support workers not covered by a similar professional code. The importance of such a Code has already been endorsed as an essential component of the Federal Government's aged care reform Governance pillar.

COTA Australia's engagements with older Australians highlight that they are united in wanting rights based, caring relationships to be at the core of aged care service delivery. We believe the implementation of a consistent code will play a significant role in embedding a consumer-centred, rights-based service culture not only within aged care, but also across the other two sectors. Importantly, within the named sectors, it will contribute to:

1. augmenting the momentum and commitment to ensuring consumers have enhanced *choice and control* and/or *self-determination* over the services and supports they receive
2. providing greater protection from experiences of mistreatment, neglect and all forms of abuse, including sexual misconduct

The Code's coverage

To be effective in forging the desired cultural change, the Code must specify clearly who is covered and define the range of tasks and responsibilities within a worker's scope of practice. We must have clarity and transparency around these matters. Implementation of the Code will ensure every Australian accessing care and support sector services has a clear understanding of what they can expect from providers and individual and/or teams of workers. Consumers need to be confident they are receiving the same level of quality, person-centred, rights-based care and support agnostic of place and provider.

Although the sectors differ in particular ways, it is essential all workers understand, appreciate and are committed to the sectors' and the community's expectations of how they communicate to, interact with and provide care and support to consumers. The Code and its guidance materials must be decisive on these matters.

We believe the Code needs to be inclusive of providers, plus all categories of permanent, casual and agency employed workers who have **a direct care and support relationship** with consumers and **not covered by another comparable regulation scheme**.

Currently, only approved providers are able to deliver aged care services. We are of the view that in facilitating choice and control, consumers should be able to choose individuals to deliver non-

clinical services e.g., gardening. Whilst we argue that workers with intermittent and/or minimum face-to-face contact with consumers should not have to meet the Standards for an approved provider, they should be subject to the Code.¹

The Code's elements and language need improvement

COTA Australia supports in principle the Code's current high-level expectations for safe and ethical services and support (**elements**). Albeit, as discussed at the Consumer Forum (3 December) the elements in their current form are unlikely to relate well to the everyday experiences of the worker or consumer. Currently, the elements are long winded and comprise complicated concepts. These do not easily and readily translate into the required workplace behaviours and attitudes. Currently, the elements lend themselves more to philosophical debate than define what is essential. Therefore, COTA Australia supports a stronger focus on calling out of the behaviours and attitudes required by people covered by the Code.

We suggest, in addition to changing the language and presentation of the elements a stronger emphasis on what it means to provide and receive services and support within a consumer focused, rights-based culture. There needs to be a clearer acknowledgement of the diversity that exists within and across the consumer populations that comprise the care and support sector.

In relation to sexual misconduct, we agree it needs to be separated out from other forms of abuse (identified in f).

At the Consumer Forum, it was also noted aged care consumers and their families tend to favour the terms older person or consumer, choice and control and/or independence and care and services rather than the terms used in the other sectors. However, we believe this should not be a significant issue if rather than seek inter-sector consensus on the use of these words, the Code includes an appropriately reworded explanation as presented on page 12 of the Consultation paper, November 2021.

COTA Australia broadly supports the example provided of how guidance would be used to support the Code. However, it is important the language used in the guidance materials mirrors that used in the [revised] Code. Written guidance resources need to contain scenarios depicting a range of workplace experiences appraised through a rights-based lens and contextualised to highlight specific care and support settings. The scenarios could form the basis of workplace training sessions for both consumers and providers/workers. It is important that if all stakeholders are to benefit from the Code, they must experience it as a live and practical document that enables a shared understanding of the diversity and richness of genuine, rights based caring relationships.

¹ See our submission to the Senate Standing Committee on Community Affairs for additional information <https://www.cota.org.au/wp-content/uploads/2021/11/Aged-Care-Legislation-RC-No.2-Submission-FINAL.pdf>

The Code's enforcement

The Code needs to be enforceable and accompanied by a clear-cut process for escalating and addressing breaches. Ideally, COTA Australia would like to see the Australian Health Practitioner Regulation Agency take centralised responsibility for the enforcement of the Code within the aged care context. This would ensure most of the aged care workforce share the same professional regulatory body. However, at this stage the non-clinical aged care workforce cannot be expected to self-fund its own regulatory and accreditation practices. Therefore, unless the Federal Government is prepared to step up to the plate and fund this, COTA Australia sees the Aged Care Quality and Safety Commission (ACQSC) as being best placed to undertake this responsibility.

We support the process for identifying and responding to potential breaches as outlined in the Consultation paper November 2021. However, rather than 'consideration be given to', it is our view that aged care and veteran sector **provider** compliance and enforcement action needs to be published on the ACQSC website. This is critical to building and supporting openness, transparency and empowering consumers and families to make informed decisions. In terms of validated **worker** breaches, we consider it appropriate the ACQSC promptly share these with other federal and state/territory regulatory and complaints handling bodies. At this stage, we do not wish to have worker breaches made public.

The Code, at a minimum, needs to be supported by a national register of each worker's:

- criminal history screening outcome as per the NDIS model; striking a pragmatic balance between appropriateness and what can be obtained cost effectively
- a satisfactory English proficiency assessment result (required only on entry to the sector). Although national in scope, providers could administer the language proficiency tool
- attainment of the sector-agreed minimum qualification (inclusive of a process to capture RPL). In aged care, the minimum qualification needs to complement the Aged Care Industry Reference Committee's Certificate 111 in Individual Support review
- commitment to continuous professional development ensuring currency in care and support practice, legislation, policy and technology

COTA Australia acknowledges that the centralised approach would add to the implementation cost and ongoing administrative cost. However, any financial impost would be far outweighed by the enhanced overall effectiveness and the added certainty the Code. The agreed supplementary arrangements would contribute to ensuring consumers' lives, wellbeing and rights are understood and better safeguarded, including their right to die with dignity.

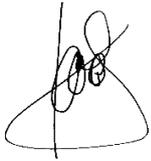
We look forward to the next iteration of this important project. However, we remain mindful that its introduction needs to dovetail with other changes being introduced as part of aged care sector reform.

In summary, we argue the Care and Support Sector needs a consistent Code. We think this needs to operate as a national function and be implemented and monitored consistently. Although, initially

expensive to establish, a national Code — with a clearly defined scope and consistent processes — will permit worker portability, reduce many current practices, plus enhance workers' sense of professionalism. More significantly, it will provide a greater degree of assurance to consumers, their families and the wider community that the people working in and/or across the three sectors are members of a competent workforce who have demonstrated their commitment, fitness and suitability to deliver consumer-centred, rights-based care and support.

Thank you for the opportunity to provide comment on the revised Code. Should you have further enquiries, please contact Sophia Petrov on 0418179123 or email: spetrov@cota.org.au

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Ian Yates', written over a faint, light-colored signature line.

Ian Yates AM
Chief Executive