

18 October 2022

Katie Holm  
Department of Health and Aged Care

By email: [Katie.HOLM@Health.gov.au](mailto:Katie.HOLM@Health.gov.au)

Dear Katie,

**Comment on the Exposure Draft of the Aged Care Quality and Safety Commission Amendment (Code of Conduct and Banning Orders) Rules 2022**

COTA Australia supports a consistent national Care and Support Sector Code of Conduct that has a clearly defined scope, and consistent processes that establish the behaviours, practice and culture of aged care services including management, governing persons, and workers. This 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 industry sectors are part of a competent workforce which has demonstrated commitment, fitness, and suitability to deliver consumer-centred and rights-based care and support.

It is vitally important that the Code is inclusive of all categories of permanent, casual, agency employed and self-employed workers who have a direct care and support relationship with consumers and are not covered by another comparable regulation scheme. Currently, only workers from approved providers can deliver aged care services.

In a new rights-based and person-centred aged care system, consumers should be able to choose individual workers to undertake non-clinical services. Workers with intermittent and/or minimum face-to-face contact with consumers should not have to meet the Standards for an approved provider but should be subject to the Code of Conduct.

In the current aged care system, the control that approved providers have over the work of subcontractors reduces the capacity of consumers to determine who can deliver services to them. Older Australians who self-manage their home care services should have greater autonomy over who provides those services, particularly non-clinical services. Greater autonomy for older people in deciding who can provide their care should be a clear principle in the future Aged Care Act. The failure of Consumer Directed Care arising from the Living Longer Living Better reforms was attributable to it having no legislative or otherwise enforceable basis.

The Code must specify clearly who is covered and define the range of tasks and responsibilities within a worker's scope of practice. 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.

It is unclear whether worker registration via AHPRA in aged care (e.g., nurses and physiotherapists) would negate the need to have additional requirements through the proposed Code of Conduct or if Code of Conduct should only apply to workers not covered by an alternative recognised AHPRA process. This needs further discussion.

COTA Australia recommends that AHPRA 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.

The Code of Conduct should apply to Commonwealth Home Support Programme (CSHP) providers and workers and to non-government aged care services under the new Act. The transitional implementation process could include updating the CSHP manual to require CSHP providers to comply with the Code now.

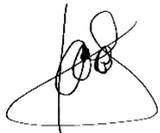
At present there is no detailed process where consumers can complain about breaches of the Code of Conduct. This is provided under the NDIS Code of Conduct. The same should apply for aged care.

Individual civil penalties may apply to workers for non-compliance with the Code. Consideration should be given to ensuring such penalties are proportionate for an individual on the salary of an aged care worker.

Provider compliance and enforcement action needs to be published on the Aged Care Quality and Safety Commission (ACQSC) website. This is critical to building and supporting openness and transparency, and to 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.

The language and presentation of the Code should emphasise 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.

Yours sincerely



Ian Yates AM  
**Chief Executive**

## **COTA AUSTRALIA**

COTA Australia is the national consumer peak body representing older people. The Federation of COTAs nationally has over 45,000 individual members and supporters and also works with a network of seniors' organisations, which jointly engage the diversity of over 500,000 older Australians. Speaking for the nearly nine million Australians over 50 years old COTA Australia prioritises the economic, social, and political participation of older Australians, and challenging ageism. The diversity of older Australians gives COTA Australia a broad policy agenda - currently we are prioritising policies about retirement incomes, aged care, housing, elder abuse, older workers, digital inclusion, health, and social isolation.

COTA advocates within government, business, and society, maintaining effective relationships, and is respected as a legitimate, influential voice. COTA Australia promotes integrity, diversity, equality, and prioritises collaborative engagement. COTAs have been identifying the needs of, issues affecting, and welfare of older Australians since the first COTA was formed in 1951.