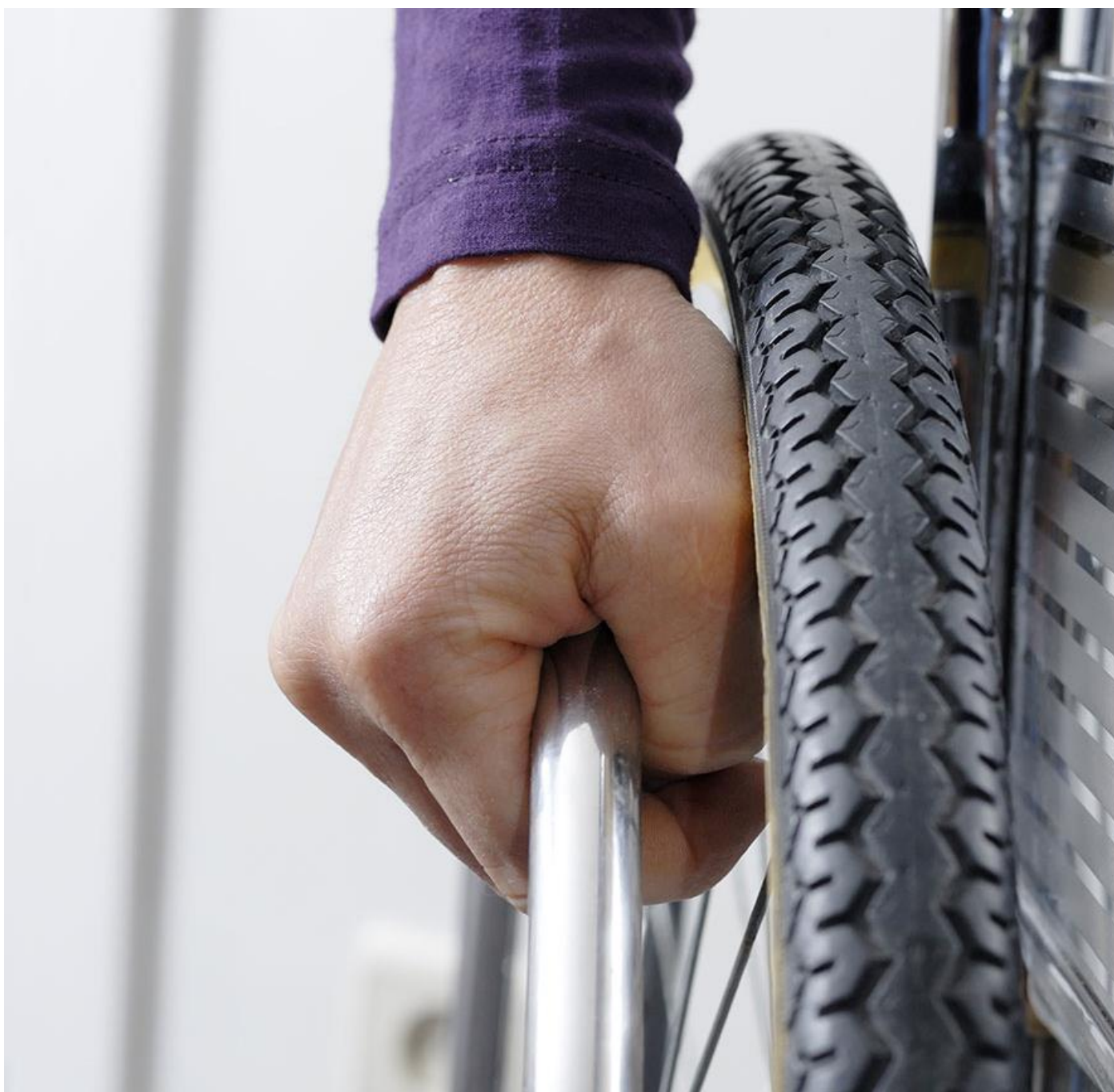


# A new model for regulating aged care

## Submission to Consultation Paper No. 1



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## 1. About Spinal Cord Injuries Australia

Spinal Cord Injuries Australia (SCIA) welcomes the opportunity to provide a submission for “A New Model for Regulating Aged Care” - Consultation Paper No. 1 on behalf of the many people with spinal cord injury and similar physical disability over the age of 65 who use our services.

SCIA has been providing a dedicated advocacy service for people with spinal cord injuries and similar disability since 1967. We currently employ 200 staff across services nationwide including 14 staff dedicated to our Policy and Advocacy work in New South Wales. Some of our staff provide advocacy services from our regional office in Alstonville in Northern NSW.

SCIA provides specialty knowledge in Spinal Cord Injury and similar neurological conditions, and broader knowledge and experience across physical disability. SCIA was founded by people with acquired spinal cord injury and continues to employ many people with spinal cord injury and similar physical disability. Having people with spinal cord injury and similar physical disability on our staff creates a vast knowledge base that helps us to meet the individual needs of the people who use SCIA’s services.

## 2. Advocacy and representation

Advocacy is essential to any system of services and supports that are designed to assist people to a life of full inclusion and participation. Whenever a service or system is created, advocacy support should be made available to the people for whom the service is constructed and particularly to those who are most at risk within it<sup>1</sup>.

Disability Advocacy groups promote and protect the rights and interests of people with disability including people with disability over the age of 65. People with disability aged over 65 who are isolated in aged care facilities often experience systemic discrimination without a family member, friends, or an advocate to look in on them and ensure that they are being cared for appropriately<sup>2</sup>.

But violence, abuse, neglect, and exploitation does not only occur in residential aged care facilities or when services are being delivered in a home. Denial of autonomy and independence (coercive control), restriction of liberty and movement and physical, sexual, financial, and psychological abuse may also be caused by family members, partners or people employed by other organisation or agencies. In congregational residential settings, perpetrators may be other residents<sup>3</sup>.

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<sup>1</sup>Disability Advocacy Network Australia. Submission on the National Disability Advocacy Framework July 2022 pp20-21 Ibid p64

<sup>2</sup> Ibid p64

<sup>3</sup> People with Disability Australia. Submission to the exposure draft of the Crimes Legislation Amendment (Coercive Control) Bill 2022 pp1-3

The Aged Care Act refers to the accountability and responsibility of approved aged-care service providers. Protections relate mainly to accreditation for quality of care and mandatory reporting by approved aged care service providers in congregational residential settings and private homes<sup>4</sup>. We now know that the extent and nature of the abuse that people over 65 are subjected to is far more complex and widespread and that the systems that were in place to protect them were inadequate<sup>5</sup>.

To truly reflect the vulnerability of people over 65, particularly people over 65 with disability, information and advocacy services should be made available in each state and territory to educate on the varied forms of financial and other abuse, and the steps that can be taken to protect themselves against such abuse including the possibility that perpetrators may be family members, partners, and institutions other than aged care or disability service providers<sup>6</sup>.

Furthermore, the new legislation should recognise the right of people with disability to advocacy and legal and other education services to mitigate and resolve any issues or claims against any service providers, financial institutions, government agencies or individuals.

Particularly vulnerable groups should also be acknowledged in the legislation. Advocacy services should be made available to people over 65 who experience increased isolation or prejudice because of their race, culture, incarceration, economic and or social disadvantage, gender and gender identity, and sexual orientation.

A glaring statistic that emphasises the need to address intersectionality as it relates to people over 65 is the higher number of incidents of abuse experienced by women compared to men. There is a greater representation of women over the age of 65 than men which partially accounts for the higher number of incidents, but the risk factors are often different as are the types of abuse. Regulations and safeguards should be representative of the risk factors associated with each cohort<sup>7</sup>.

Legislation can play an important role in addressing cultural and social attitudes towards the aged. In the same way that “attitudes inconsistent with the equality of women are associated with higher levels of family violence<sup>8</sup>”, age discrimination and a lack of respect for elders are factors in the abuse of, and discrimination against, people over 65<sup>9</sup>.

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<sup>4</sup> Australian Government. Aged Care Quality and Safety Commission fact sheet

<sup>5</sup> Australian Government. Australian Institute of Family Studies Research Report No. 35. Elder abuse Understanding issues, frameworks and responses Rae Kaspiew, Rachel Carson and Helen Rhoades pp 6-7

<sup>6</sup> Ibid pp 34-36

<sup>7</sup> Ibid pp34-36

<sup>8</sup> Ibid p3

<sup>9</sup> Ibid p3

Additionally, as the aged care sector adopts a person-centred regulatory, funding and service model, advocacy services will play an important role in developing a process of supporting people with decision making and an appropriate legal framework to support that process<sup>10</sup>.

### 3. Introduction

SCIA supports the proposed reforms and the intent to provide a ‘fit-for-purpose’ regulatory model that ensures the safety of all recipients of aged care services. Family members, providers of formal and informal in-home services, aged care residential facilities, nursing homes and government agencies should all be compliant to the regulations and strive towards excellence in providing aged care.

The third of the United Nations Sustainable Development Goals is to “ensure healthy lives and promoting well-being for all at all ages<sup>11</sup>.” The proposed foundations and approaches that underpin the new regulatory model: Rights based approach; person centred approach; risk-based approach; continuous improvement approach, finally place aged-care funding recipients at the centre of the Aged Care System.

SCIA believes that the revised Australian National Aged Care Classification (AN-ACC) funding model will provide more choice and control to recipients of aged-care funding. The principles of choice and control have been effective in providing National Disability Insurance Scheme (NDIS) participants with increased inclusion in social and cultural activities; more protection of their rights; improved health and wellbeing; and greater economic security<sup>12</sup>.

By prioritising choice and control as one of the foundation funding and service principles, the dependence that aged-care funding recipients may have on one service provider is reduced. We have learnt through both the Royal Commission into Aged Care Quality and Safety (Aged Care Royal Commission) and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) that the absence of choice and control is known to increase the vulnerability of people over the age of 65 and people with disability including people with disability over 65. A person-centred funding model motivates providers to be more flexible, innovative, and efficient to maintain their position in the marketplace<sup>13</sup>.

<sup>10</sup> Delivering decision making support to people with cognitive disability – What has been learned from pilot programs in Australia from 2010 to 2015 Australian Journal of Social Issues Christine Bigby; Jacinta Douglas; Terry Carney; Shih-Ning Then; Ilan Wiesel; Elizabeth Smith 2017 p223

<sup>11</sup> Tynkkynen LK, Pulkki J, Tervonen-Gonçalves L, Schön P, Burström B, Keskimäki I. Health system reforms and the needs of the ageing population-an analysis of recent policy paths and reform trends in Finland and Sweden. Eur J Ageing. 2022 Apr 15;19(2):221-232. doi: 10.1007/s10433-022-00699-x. PMID: 35465210; PMCID: PMC9012246. p1

<sup>12</sup> ACT Council of Social Services. Choice and Control. Strengthening human rights, power and inclusion for people with disability. <https://www.actcoss.org.au/sites/default/files/public/publications/2017-choice-and-control.pdf> pp26-27

<sup>13</sup> ibid pp26-27

SCIA also supports the introduction of star ratings for residential aged care; code of conduct and banning orders; a serious incident reporting scheme inclusive of home and flexible care; and the strengthening of consent arrangements for use of restrictive practices<sup>14</sup>.

The reforms are consistent with a shift in consumer expectations and preferences, partly brought on by the failure of many providers to deliver safe, consistent, and high-quality care in a fiscally unsustainable aged and disability care system<sup>15</sup>.

Consumer-centric service delivery in aged care is consistent with the success – systemic and other issues notwithstanding – of the NDIS’ market-based funding model and consumer expectations across the broader economy<sup>16</sup>.

Responsible service providers have had to become more responsive to consumer preferences so they can attract and retain their customers. These reforms to the aged-care sector should hopefully be inspired by community interactions and co-design principles with insights from consumers and their families<sup>17</sup>.

It is obvious that the government’s goal is to create a more equitable aged-care system with rigorous and effective safeguards underpinned by legislation to protect a growing ageing population. But systemic issues like underfunding – particularly people with disability over 65 with high and complex support needs – runs the risk of unequal outcomes for some service users who may be forced to depend on unregulated, unskilled, or substandard services.

That is precisely the outcome these reforms are attempting to avoid<sup>18</sup>.

#### 4. Parity with the NDIS for people with disability over 65

Consultations for a new Support at Home Program commenced late 2021 with the intention of implementing the new program by July 2023, now July 2024. Whilst the proposed design of the new program including aspects of the funding and pricing, and quality and safeguard reforms reflect aspects of the NDIS, it remains unclear as to whether the new program will provide older people with disability with the same range and levels of supports available to eligible NDIS recipients.

While SCIA supports a stronger regulatory approach to the Aged Care sector, there are still large inequities in comparative funding between people with disability who are NDIS

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<sup>14</sup> Australian Government Aged Care Quality and Safety Commission. Commissioners letter to providers. [https://www.agedcarequality.gov.au/sites/default/files/media/commissioner-letter-to-providers-national-aged-care-reforms\\_1.pdf](https://www.agedcarequality.gov.au/sites/default/files/media/commissioner-letter-to-providers-national-aged-care-reforms_1.pdf)

<sup>15</sup> A matter of care, Australia’s Aged Care Workforce Strategy. Report of the Aged Care Workforce Strategy Taskforce June 2018 p4

<sup>16</sup> Ibid p4

<sup>17</sup> Ibid p4

<sup>18</sup> Carey, G., Malbon, E., Reeders, D. *et al.* Redressing or entrenching social and health inequities through policy implementation? Examining personalised budgets through the Australian National Disability Insurance Scheme. *Int J Equity Health* **16**, 192 (2017). <https://doi.org/10.1186/s12939-017-0682-z>



participants and people aged over 65 with disability. To coincide with the introduction of a new Aged Care Act and the introduction of new legislation, people with disability over 65 – particularly people with disability over 65 with high and complex support needs - should, as a matter of priority, have parity in funding with NDIS participants.

The legislation must also recognise the specific needs of this cohort, which is disability specific, as opposed to those who are frail. Service provision in support of this cohort will also be substantially different and must be fit for purpose in recognition of disability needs.

Recommendations in the final report from the Aged Care Royal Commission called for equity in aged care funding and transparency from the government in their progress towards achieving this goal<sup>19</sup>.

In response to recommendation 72, the Australian Government indicated further consideration would be given to the level of funding under the Support at Home Program for people aged over 65 who would otherwise be eligible for the National Disability Insurance Scheme (NDIS)<sup>20</sup>.

*Recommendation 72: Equity for people with disability receiving aged care By 1 July 2024, every person receiving aged care who is living with disability, regardless of when acquired, should receive through the aged care program daily living supports and outcomes (including assistive technologies, aids and equipment) equivalent to those that would be available under the National Disability Insurance Scheme to a person under the age of 65 years with the same or substantially similar conditions.*

The current level 4 Home Care Package for high needs support is \$53,268.10 a year<sup>21</sup>. It is estimated that the proper care for a person over 65 with quadriplegia costs more than 200,000 a year<sup>22</sup>.

It is hard to envisage how the new Act, revised regulation and a new funding model can be deemed ‘fit for purpose’, as the government proposes, if we do not address the fundamental systemic issues that are forcing many people with disability aged over 65 and their families into financial hardship and substandard support.

The introduction of a new Support at Home Program provides the ideal opportunity for the Australian Government to address the inequity and discrimination faced by older people acquiring a disability after the age of 65.

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<sup>19</sup> Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. Older Persons Advocacy Network. [https://media.accessiblecms.com.au/uploads/opan/2022/08/OPAN-Submission-to-the-Disability-Royal-Commission\\_Older-People-with-Disability-August-2022.pdf](https://media.accessiblecms.com.au/uploads/opan/2022/08/OPAN-Submission-to-the-Disability-Royal-Commission_Older-People-with-Disability-August-2022.pdf) p4

<sup>20</sup> Ibid p4

<sup>21</sup> Myagedcare Home Care Packages <https://www.myagedcare.gov.au/help-at-home/home-care-packages>

<sup>22</sup> End the ‘do nothing’ decade for seniors with disabilities. Joint media statement Australian disability & aged care organisations. COTA for older Australians. <https://www.cota.org.au/news-items/end-the-do-nothing-decade-for-seniors-with-disabilities/>

Failure to fund increasingly complex and multidisciplinary services for people over 65 with disability, will lead to reduced access to care and a diminished care experience and increased costs for consumers and governments<sup>23</sup>.

## 5. Regulation and residential aged care

The United Nations Committee on the Rights of Persons with Disabilities has commented on the violation of rights associated with institutional segregation, including locked dementia wards and aged-care residential facilities.

The United Nations Committee on the Rights of Persons with Disabilities states: ‘the segregation of persons with disabilities in institutions continues to be a pervasive and insidious problem that violates a number of the rights guaranteed under the Convention’<sup>24</sup>.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) protects the human rights of people who are deprived of their liberty. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) strengthens the convention by introducing non-judicial, preventive means that includes regular visits to places of detention<sup>25</sup>.

In 2017, the Australian Government ratified the OPCAT but failed to include residential aged care facilities as a ‘primary place of detention’<sup>26</sup>. It is our view that the Australian Government should include residential aged care facilities including aged care homes and supported disability accommodation and other congregated settings where people with disability reside as ‘secondary places of detention’ as part of its obligation to the Convention and OPCAT<sup>27</sup>.

The Aged Care Royal Commission confirmed that the abuse of older people in residential care was occurring. The abuse included incidents of physical and sexual abuse perpetrated by staff members, fellow residents and through the inappropriate use of unsafe, inhumane, and unauthorised restrictive practices<sup>28</sup>.

In our view these revelations represent systemic and pervasive levels of abuse that must be met with a strong regulatory response. We also believe that these reforms must include policies that increase the stock of accessible accommodation so that the growing numbers of people over 65 with disability have the option of staying in the accommodation of their

<sup>23</sup> A matter of care, Australia’s Aged Care Workforce Strategy. Report of the Aged Care Workforce Strategy Taskforce June 2018 pp1-2.

<sup>24</sup> UN Committee on the Rights of Persons with Disabilities UN Disability Committee, para. 46

<sup>25</sup> United Nations Human Rights. Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-against-torture-and-other-cruel>

<sup>26</sup> Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. Older Persons Advocacy Network. [https://media.accessiblecms.com.au/uploads/opan/2022/08/OPAN-Submission-to-the-Disability-Royal-Commission\\_Older-People-with-Disability-August-2022.pdf](https://media.accessiblecms.com.au/uploads/opan/2022/08/OPAN-Submission-to-the-Disability-Royal-Commission_Older-People-with-Disability-August-2022.pdf) pp5-6

<sup>27</sup> People with Disability Australia. Letter to Subcommittee on Prevention of Torture 8-14 Avenue de la Paix, 1211 Geneve 10, Switzerland

<sup>28</sup> Older Persons Advocacy Network n26 pp5-6



choosing with appropriate ‘support at home’ funding for longer, rather than having to move into accessible congregational settings<sup>29</sup>.

Many people with disability including people with disability over the age of 65 in congregational residential settings have little to no choice about where and with whom they live. They take the accommodation that is available and once there, they do not complain for fear of losing what they have and becoming homeless. The Disability Royal Commission has received many submissions and other evidence of people with disability enduring violence, abuse, neglect, and exploitation in group homes and remaining silent because they have nowhere else to go. More recently, the Royal Commission has received evidence of people with disability being told that due to the risk of contracting and spreading Covid-19, if they leave their home, they will lose their accommodation<sup>30</sup>.

The risk of violence, abuse, neglect, and exploitation is heightened in group homes where the same provider is responsible for accommodation and supports. This practice is reflective of older models of disability support and runs contrary to the principles of choice and control<sup>31</sup>.

By 2050 20% of the population will be over 65 (compared with 15% in 2015)<sup>32</sup>. Without any change in the prevalence of disability in people over 65 which is unlikely, 50% of the over 65 population will have a disability in 2050. That is still a significant increase in the number of people with disability over the age of 65<sup>33</sup>.

If these reforms to aged care regulation are to be consistent with their aim “to protect aged care recipients from harm, support and promote positive health and wellbeing outcomes, and incentivise providers to deliver safe and high-quality care for older Australians<sup>34</sup>,” there should be more affordable and accessible housing options for people with disability over 65 who are residing in congregated living arrangements for lack of a more appropriate and safer option<sup>35</sup>.

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<sup>29</sup> Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. Older Persons Advocacy Network. [https://media.accessiblecms.com.au/uploads/opan/2022/08/OPAN-Submission-to-the-Disability-Royal-Commission\\_Older-People-with-Disability-August-2022.pdf](https://media.accessiblecms.com.au/uploads/opan/2022/08/OPAN-Submission-to-the-Disability-Royal-Commission_Older-People-with-Disability-August-2022.pdf) pp5-6

<sup>30</sup> The Victorian Council of Social Service (VCOSS), “Equitable and inclusive emergency planning and responses – VCOSS submission to Royal Commission into Violence, Abuse, Neglect, and Exploitation of People with Disability,” The Victorian Council of VCOSS, 2020

<sup>31</sup> People with Disability Australia, “Realising our right to live independently in the community,” People with Disability Australia, Strawberry Hills, NSW 2012 - 2019

<sup>32</sup> Australian Government. Australian Institute of Family Studies Research Report No. 35. Elder abuse Understanding issues, frameworks and responses Rae Kaspiew, Rachel Carson and Helen Rhoades pp46-47

<sup>33</sup> Australian Government. Australian Institute of Health and Welfare People with Disability in Australia 05 July 2022

<sup>34</sup> A new model for regulating Aged Care Consultation Paper No.1. [agedcareengagement.health.gov.au](https://agedcareengagement.health.gov.au) September 2022

<sup>35</sup> Older Persons Advocacy Network n29 p4

## 6. Assistive Technology

The independence and quality of life of some people with disability aged over 65 is being compromised because they are unable to access assistive technology (AT), aids, and other supports.

There is clear evidence of the clinical, economic, therapeutic, lifestyle and mobility benefits associated with AT for people with disability aged over 65. There is also evidence that investment in AT and other aids would replace and therefore reduce the overall cost of some other services and supports<sup>36</sup>. Further to this, access to AT is a human right and this should be clearly recognised in the legislation.

The importance of AT and awareness to the consequences of increased long-term costs if AT is not funded dates to the 2009, Disability Investment Group (DIG) report: The Way Forward – A New Disability Policy Framework for Australia. DIG said the provision of aids and equipment was a fiscally responsible investment<sup>37</sup>.

The NDIS has made AT a Commonwealth responsibility and fund between \$1,500 and \$15,000 per item depending on the participant's individual circumstances. That is not the case for people with disability aged over 65. AT eligibility for AT for people with disability is far more stringent. If people are deemed to be ineligible as many seem to be, then they will not receive anything like the standard AT support that NDIS participants receive, if they are to receive anything at all<sup>38</sup>.

Part of the problem is a lack of coordination between states, territories, and the Commonwealth. Schemes for AT and other supports funded by states and territories excluded funding for people on Commonwealth home care and residential care packages – initially for level 3 and 4 and later extended to include level 1 and 2 home care packages. And the National Screening and Assessment Form that might be a means for people over 65 with disability to identify the correct level of Home Care Package for Commonwealth AT funding eligibility, does not appropriately identify disability related needs<sup>39</sup>.

As we look to build an aged care system that is 'fit for purpose' consideration should be given to delivering AT as an early intervention option. Of the more than 1.2 million hits that Australia's National Equipment Database (NED) has each year, 30% are visitors seeking personal product advice and of that group, 86% are over 50. When a snapshot of 570 enquirers was taken, the sample found that AT products were sought to address daily living problems across over twenty domains including mobility and transfers, driving, self-care, self-

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<sup>36</sup> National Aged Care Alliance Position Paper Assistive Technology for Older Australians June 2018 pp3-7

<sup>37</sup> Disability Investment Group (DIG) report: The Way Forward – A New Disability Policy Framework for Australia p18.

<sup>38</sup> National Aged Care Alliance n36 p10

<sup>39</sup> National Aged Care Alliance Position Paper Assistive Technology for Older Australians June 2018 pp8-9

management and monitoring, housework, cooking, communication, seeing and hearing, and lifting and carrying.

Over the coming years and decades people with a more advanced understanding and grasp of technology will be beginning to use aged care services. Technology infrastructure should reflect these changes. And importantly, reforms to AT funding should not only include coordination between state, territories, and the Commonwealth - people over 65 with disability should know if funding from one source will prejudice their entitlement to funding from another source.<sup>40</sup>

## 7. Restrictive Practices

The Aged Care Royal Commission confirmed that people over 65 with disability residing in aged care facilities are detained and treated inhumanely through the inappropriate use of unauthorised restrictive practices. SCIA is aware that amendments to the Aged Care Act from July 2021 placed tighter restrictions on the use of restrictive practices by service providers and introduced behaviour support plans to reduce or eliminate the use of restrictive practices<sup>41</sup>.

While SCIA agrees that tighter restrictions on the use of restrictive practices and the introduction of behaviour support plans are essential, we believe that tighter restrictions and legislative changes are only part of the solution. In our view government needs to prioritise investment and policies that increase the availability and diversity of affordable and accessible accommodation to transition away from large institutional living arrangements that have fostered and harboured practices that are harmful to residents<sup>42</sup>.

In residential aged care facilities physical restraints are used to restrict a person's free movement and psychotropic medications are used to sedate and restrict behavioural or psychological symptoms associated with dementia. Psychotropic medications administered to reduce the delusions and hallucinations associated with dementia may compound a resident's confusion and stress rather than relieve it. And even if a restrictive practice is deemed appropriate for the protection of the resident and staff, it should be complemented by social interaction interventions<sup>43</sup>.

From the number of accounts provided to the Royal Commission and through the media, misuse or overuse of restrictive practices has gone on almost unabated with few civil

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<sup>40</sup> National Aged Care Alliance Position Paper Assistive Technology for Older Australians June 2018 pp8-9

<sup>41</sup> Australian Government. Aged Care Quality and Safety Commission. Minimising the use of restrictive practices.

<sup>42</sup> Older Persons Advocacy Network Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. [https://media.accessiblecms.com.au/uploads/opan/2022/08/OPAN-Submission-to-the-Disability-Royal-Commission\\_Older-People-with-Disability-August-2022.pdf](https://media.accessiblecms.com.au/uploads/opan/2022/08/OPAN-Submission-to-the-Disability-Royal-Commission_Older-People-with-Disability-August-2022.pdf) pp5-6

<sup>43</sup> Royal Commission into Aged Care Quality and Safety. Restrictive Practices in Residential Aged Care in Australia Background Paper 4 May 2019 pp8-9

complaints or challenges, and very few criminal charges against perpetrators despite the ambiguity associated with the appropriateness of their application<sup>44</sup>.

For tighter restriction and increased legislation to be fully effective, fundamental administrative changes need to occur to remove the opportunities and loopholes that facilitate bad practices.

There are too many definitions of physical and chemical restraint and restrictive practices used in standards, acts and legislation that are overseeing the activities of service providers in the aged care and disability sectors. This confusion about definitions and the correct use of restrictive practices is conflating the intent to reduce harm with the impact of restraint on residents of aged care and supported accommodation facilities that may be causing harm<sup>45</sup>. If the Australian Government includes aged care facilities, dementia wards and locked mental health units as ‘secondary places of detention’ as part of its obligation to the Convention and OPCAT this would provide an additional layer of scrutiny, accountability, and protection for residents<sup>46</sup>.

## 8. Conclusion

One of the risk factors most associated with the abuse of people over the age of 65 and particularly people over 65 with disability is social isolation. Perpetrators of abuse, whoever they may be, will exploit people with fewer social and other networks to protect them.

The Royal Commissions into Aged Care and Disability provided extensive evidence to the abuse that people with disability over the age of 65 experience in aged care facilities, dementia wards and other congregational settings. But we also know that complex familial relationships, spousal abuse, and exploitation by people who may be financially or otherwise motivated to cause harm are risk factors that have very few protections given they fall outside the provisions of the Aged Care Act<sup>47</sup>.

And even where service providers were subject to the regulatory framework of the Aged Care Act, inadequate regulations and the existence of systemic problems in the aged care sector were contributors to the vulnerability of victims<sup>48</sup>.

<sup>44</sup> Royal Commission into Aged Care Quality and Safety. Restrictive Practices in Residential Aged Care in Australia Background Paper 4 May 2019 pp1-3

<sup>45</sup> Restrictive Practices in Residential Aged Care n44 pp4-5.

<sup>46</sup> People with Disability Australia. Letter to Subcommittee on Prevention of Torture 8-14 Avenue de la Paix, 1211 Geneve 10, Switzerland

<sup>47</sup> Australian Government. Australian Institute of Family Studies Research Report No. 35. Elder abuse Understanding issues, frameworks and responses Rae Kaspiew, Rachel Carson and Helen Rhoades pp 9-10

<sup>48</sup> Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. Older Persons Advocacy Network. [https://media.accessiblecms.com.au/uploads/opan/2022/08/OPAN-Submission-to-the-Disability-Royal-Commission\\_Older-People-with-Disability-August-2022.pdf](https://media.accessiblecms.com.au/uploads/opan/2022/08/OPAN-Submission-to-the-Disability-Royal-Commission_Older-People-with-Disability-August-2022.pdf) pp5-6

SCIA believes that increased regulation needs to fully reflect the professional, institutional, and personal relationships that people over 65 are either dependent on or are obliged to maintain. In most instances connection with family, friends, carers, and other professionals are positive and fulfilling. But as fulfilling and important as those relationships may be, they too must be considerate of human rights principles and be subject to accountability<sup>49</sup>.

The risk factors to people over 65, especially people over 65 with disability will increase substantially. A substantial number of people who experience spinal cord injuries are now over the age of 65 and three in ten people over 85 are diagnosed with dementia.

Policy responses, funding assessments and a robust regulatory framework must reflect the risk factors for different cohorts of people over 65. Of people over 65 including people with disability over 65, many will be residing in aged care facilities with assisted care, particularly as they get older, while others will be living alone in their own home, hopefully for as long as possible. To ensure that people over 65 are residing where they choose to reside or in a setting that is in their best interests, the legislation must account for suitable service provision.

Legislation should recognise the role of advocacy services in ensuring that the different layers of legislation, policy and quality are sustained across health and aged care services. And provisions need to be applied to the legislation so interventions can take place if there is evidence of abuse by other institutions, agencies, and family. For too long there have been barriers in place that have hidden abuse, exploitation and neglect<sup>50</sup>.

People over 65, particularly people over 65 with disability will also require support in making decisions whenever this is possible and practical<sup>51</sup>. Keeping people over 65 at the centre of the decisions that impact their lives is consistent with the principles of choice and control.

As we enter a new age of service delivery in aged care, the need for multidisciplinary, multi-agency approaches, that extend to education, awareness raising campaigns and national action plans need to be adapted. Regulation alone cannot reverse the systemic issues that have beset the aged care sector for decades. We need parity with the NDIS in funding and access to assistive technology<sup>52</sup>. AT has the potential to address demographic changes; to deliver better outcomes for people in rural areas where services are scarce; and to keep people in their own homes for longer<sup>53</sup>.

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<sup>49</sup> Australian Government. Australian Institute of Family Studies Research Report No. 35. Elder abuse Understanding issues, frameworks and responses Rae Kaspiew, Rachel Carson and Helen Rhoades pp45-46

<sup>50</sup> Rae Kaspiew, Rachel Carson and Helen Rhoades n49 pp47-48

<sup>51</sup> Delivering decision making support to people with cognitive disability – What has been learned from pilot programs in Australia from 2010 to 2015 Australian Journal of Social Issues Christine Bigby; Jacinta Douglas; Terry Carney; Shih-Ning Then; Ilan Wiesel; Elizabeth Smith 2017 p223

<sup>52</sup> Rae Kaspiew, Rachel Carson and Helen Rhoades n49 pp 47-48

<sup>53</sup> National Aged Care Alliance Position Paper Assistive Technology for Older Australians June 2018 pp21-22

