

**Submission: Independent Capability
Review of the Aged Care Quality and Safety
Commission**

December 2022

Written by: Cindy West, Policy & Sector Support Advisor (Volunteering Australia)



Overview

Volunteers are an essential but distinct component of Australia's aged care workforce.

In this submission, Volunteering Australia responds to the Department of Health and Aged Care's call for feedback to inform the Independent Capability Review of the Aged Care Quality and Safety Commission (the Commission). The review of the Commission is being undertaken in response to recommendations 10 and 104 of the Royal Commission into Aged Care Quality and Safety.

It will be critical for the lead reviewer to consider the capability of the Commission to regulate volunteer engagement in a fit-for-purpose way that will not further diminish volunteer involvement in the sector.

Introduction

Background and context

Volunteers are a vital part of the aged care workforce, as recognised in the Aged Care Workforce Strategy¹. The Royal Commission into Aged Care Quality and Safety recommendation 44² set out how the Australian Government should promote volunteers and volunteering in aged care to support older people to live meaningful and dignified lives.

Participation of volunteers in organisations has been declining for well over a decade, with aged care volunteering particularly badly hit since the onset of COVID19³. The Australian Government has funded Volunteering Australia to lead the development of a new National Strategy for Volunteering⁴ in response to this decline and other challenges being faced.

The new National Strategy for Volunteering is currently in development. In the discovery phase of the project, which involved over 400 consultation meetings and forums earlier in 2022, one of the key insights that emerged was the burden of current regulation. In the Discovery Insights⁵ report, the volunteering ecosystem called for 'fit-for-purpose' regulation and highlighted several concerns with existing regulatory regimes in placing burdens on organisations and in discouraging volunteers.

Reform in aged care, including the role of the Commission, needs to be understood in this wider volunteering context and support the continued, and increased, engagement of volunteers in aged care.

About the consultation and review

The Department of Health and Aged Care (the department) is leading the development of a wide range of reforms including a new Aged Care Act, regulatory model, mandatory code of conduct and a new in-home Aged Care Program. This follows several reviews into aged care, including the Royal

¹ <https://www.health.gov.au/resources/publications/a-matter-of-care-australias-aged-care-workforce-strategy>

² The full list of the Royal Commission's recommendations available here
<https://agedcare.royalcommission.gov.au>

³ <https://www.volunteeringaustralia.org/wp-content/uploads/AGED-CARE-CENSUS-2020-factsheet-Final.pdf>

⁴ <https://volunteeringstrategy.org.au/>

⁵ <https://volunteeringstrategy.org.au/wp-content/uploads/2022/08/National-Strategy-for-Volunteering-Discovery-Insights-Report.pdf>

Commission into Aged Care Quality and Safety, which all found that the aged care system needs significant improvement.

Mr David Tune AO PSM, former Secretary of the Australian Department of Finance, is conducting the review into the Independent Capability Review of the Aged Care Quality and Safety Commission (the Commission) and will produce a preliminary and a final report over the course of the six-month review. The findings will be used to support the Commission's capacity to ensure safe and high-quality care for older Australians now and into the future.

The full spectrum of regulatory functions will be considered, across both in-home care and residential aged care, now and into the future. The review will take into consideration the Australian Government's priorities and reform activities recently delivered, planned or underway.

About the submission

This submission was drafted by Volunteering Australia in collaboration with the State and Territory peak volunteering bodies.

This submission complements previous ones concerning aged care and the wider care and support sector, most recently:

- Submission on the Aged Care data strategy⁶
- Submission on the Care and Support Sector Code of Conduct⁷
- Submission on Aligning Regulation across Aged Care, Disability Support, and Veterans' Care⁸
- Submission to the Royal Commission into Aged Care Quality and Safety⁹
- Submission on a New Regulatory Model for Aged Care¹⁰
- Submission on the new in-home Aged Care Program¹¹

In line with the Terms of Reference (TOR), stakeholder feedback is being sought on all aspects of the role of the Commission. We have provided consolidated feedback in response to the issues that most impact volunteers and volunteering, specifically the Commission's approach to the use of regulatory powers, mechanisms in place to address providers' non-compliance (or potential non-compliance) and the Commission's risk management approach.

⁶ <https://www.volunteeringaustralia.org/download/153/2022/30934/volunteering-australia-submission-on-the-aged-care-data-strategy.pdf>

⁷ <https://www.volunteeringaustralia.org/download/154/2021/26963/december-2021-submission-on-the-care-and-support-sector-code-of-conduct.pdf>

⁸ <https://www.volunteeringaustralia.org/download/154/2021/26964/december-2021-submission-on-aligning-regulation-across-the-care-and-support-sector.pdf>

⁹ <https://www.volunteeringaustralia.org/download/142/2020/22701/july-2020-submission-to-the-royal-commission-into-aged-care-quality-and-safety.pdf>

¹⁰ <https://www.volunteeringaustralia.org/download/153/2022/30935/october-2022-submission-on-a-new-model-for-regulating-aged-care.pdf>

¹¹ <https://www.volunteeringaustralia.org/download/153/2022/31550/november-2022-submission-on-a-new-program-for-in-home-aged-care-discussion-paper.pdf>

Volunteers in aged care

Volunteers contribute in significant and diverse ways across aged care. The 2016 National Aged Care Workforce Census and Survey estimated that volunteers were engaged extensively across both residential and in-home aged care, with 83 per cent of residential facilities and 51 per cent of in-home aged care providers engaging the services of volunteers.

The roles volunteers undertake differ across residential and in-home aged care. For example, volunteers are more likely to undertake 'shopping/appointment assistance' and 'meal-preparation assistance' in in-home aged care than in residential facilities. Community aged care providers are more likely to engage volunteers in 'transport assistance' than residential aged care providers¹².

The more recent 2020 Aged Care Census¹³ revealed that volunteers were disproportionately affected by the COVID-19 pandemic compared to the paid workforce, with volunteer activity decreasing significantly and not yet returning to pre-pandemic levels. This has been evident across both residential and in-home care.

The wide-ranging reforms being developed from now through until 2025 need to rebuild, drive and embed volunteer participation in aged care. The extent of reforms and the failure to delineate volunteers from paid workers risks unintended consequences to the volunteer workforce.

To mitigate this, the Australian Government needs to take a more strategic approach to volunteers in the aged care sector, through the development of a national aged care volunteering framework, and to consider the role of volunteers in meeting reform objectives.

Feedback to support the Review

Volunteers are different from paid workers in their role types, obligations, and work expectations. Our main concern is for volunteers to be considered as an essential, but distinct, component of the aged care workforce.

This is particularly important given the Commission's broad powers and how it applies and enforces its regulatory powers, including those mandated in the new code of conduct (which includes provisions such as sanctions and banning). Onerous mandatory training and the risk of regulatory penalties and sanctions, which could also flow from some of the proposed reforms to aged care, are further disincentives for volunteer engagement, satisfaction and retention.

As outlined in the consultation methodology, the review will identify improvements to support the aged care regulator to undertake strong regulatory activities, embed best practice, increase accountability and to enhance its quality and prudential activities. These regulations, best practice and increased accountability requirements will apply to the volunteer workforce through the proposed new regulatory model and the code of conduct.

¹² 2016 Aged Care Census

¹³ <https://www.volunteeringaustralia.org/wp-content/uploads/AGED-CARE-CENSUS-2020-factsheet-Final.pdf>

Regulatory powers and mechanisms

We argue that, while the Commission must have broad capability to enforce regulations for providers and their employees (for example through the code of conduct), for volunteers this should be tailored, with careful consideration of the unique nature of volunteering roles, the clear difference between paid and volunteer workers and their related risk profiles.

This extends to consideration of what is 'reasonable' to expect of volunteers in order to meet the more onerous tests covered in the new code of conduct and whether mechanisms such as sanctions, financial penalties, banning orders and mandatory obligations (for example, awareness of privacy laws and workplace safety provisions) are legally appropriate.

It will therefore be critical for the lead reviewer to consider the capability of the Commission to regulate volunteer engagement in a fit-for-purpose way that promotes awareness and education and does not further diminish volunteer involvement in the sector. The Commission's oversight of the quality and safety of the new aged care system should explicitly reflect volunteers and ensure that the regulatory settings for volunteer engagement are reduced for low-risk interactions (for example, infrequent companionship visits).

This flows to the adaptability of the Commission to meet emerging challenges within the aged care sector (e.g., the ongoing response to the COVID-19 pandemic) and the need to be more agile and prepared for significant ongoing and future challenges in order to avoid scenarios where the entire volunteer workforce is excluded from the sector in times of need.

The following examples provide some guidance on regulatory activities that would support volunteer engagement in the sector:

- Appropriate, streamlined and portable screening
- Protection of volunteer privacy
- Policy settings supporting the reimbursement of any volunteer compliance costs
- An emphasis on awareness and education over penalties and sanctions
- Support for volunteers through any investigative processes.

We have previously noted The Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022 inserted section 74AE (2) (b) (ii) into the Aged Care Quality and Safety Commission Act 2018 to include the provision for the Code of Conduct to apply to "specified kinds of aged care workers of approved providers"¹⁴.

The ability to differentiate between paid workers and volunteers must be a feature of the new Aged Care Act and this should be reflected in the Commission's regulatory approach.

¹⁴ <https://www.legislation.gov.au/Details/C2022A00034>

A risk-based approach

We support a risk-based approach to regulating volunteers. The Commission should also take a risk-based approach. The risk-based assessment of roles outlined in the draft regulatory model¹⁵, for example, should form a tool to reduce burden on volunteer entry and retention rather than add to it.

Whether volunteers are to be included under all regulatory requirements, or have tailored provisions or sanctions, should be decided following detailed analysis of the distinct characteristics of volunteer engagement, balancing the benefits of volunteer involvement with the relatively low risk of most interactions (due to their voluntary nature, supervision, and infrequency).

A more strategic approach

The extent of reforms and the failure to delineate volunteers from paid workers risks unintended consequences to the volunteer workforce. To mitigate this, the Australian Government needs to take a more strategic approach to volunteers in the aged care sector, through the development of a national aged care volunteering framework, and to consider the role of volunteers in meeting reform objectives.

Recommendations

- Reform in aged care, including the role of the Commission, needs to be understood in the wider volunteering context and support the continued, and increased, engagement of volunteers in aged care.
- The Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022 inserted section 74AE (2) (b) (ii) into the Aged Care Quality and Safety Commission Act 2018 to include the provision for the Code of Conduct to apply to “specified kinds of aged care workers of approved providers.
- The ability to differentiate between paid workers and volunteers must be a feature of the new Aged Care Act and this should flow to the Commission’s regulatory approach.
- It will be critical for the lead reviewer to consider the capability of the Commission to regulate volunteer engagement in a fit-for-purpose way that will not further diminish volunteer involvement in the sector.
- The Commission should prioritise awareness and education to support compliance, over punitive regulatory actions to support volunteer involvement, particularly through the proposed new risk-based regulatory model.
- There is a need to explore the adaptability of the Commission to meet emerging challenges within the aged care sector (e.g., the ongoing response to the COVID-19 pandemic) and the need to be more agile and prepared for significant ongoing and future challenges.

¹⁵ <https://www.health.gov.au/topics/aged-care/aged-care-reforms-and-reviews/designing-a-new-approach-to-regulating-aged-care>

- The extent of reforms and the failure to delineate volunteers from paid workers risks unintended consequences to the volunteer workforce with related negative impacts for older Australians. To mitigate this, the Australian Government needs to take a more strategic approach to volunteers in the aged care sector, including through the Commission, by developing a national aged care volunteering framework, and to consider the role of volunteers in meeting reform objectives.
- The wide-ranging reforms being developed from now through until 2025 are an opportunity to rebuild, drive and embed volunteer participation in aged care.
- The review should take into account specific and tailored consultation with relevant volunteering stakeholders to ensure the opportunity for positive change is fully realised and unintended consequences are avoided.

Authorisation

This submission has been authorised by the Chief Executive Officer of Volunteering Australia.



Mr Mark Pearce
Chief Executive Officer

Endorsements

This position statement has been endorsed by the seven State and Territory volunteering peak bodies.



About Volunteering Australia

Volunteering Australia is the national peak body for volunteering, working to advance volunteering in the Australian community. The seven State and Territory volunteering peak bodies work to advance and promote volunteering in their respective jurisdictions and are Foundation Members of Volunteering Australia.

Volunteering Australia's vision is to promote a strong, connected, and resilient Australian community through volunteering. Our mission is to lead, strengthen, and celebrate volunteering in Australia.

Volunteering Australia Contacts

Mark Pearce

Chief Executive Officer

ceo@volunteeringaustralia.org

0428 186 736

Sue Regan

Deputy CEO & Policy Director

policy@volunteeringaustralia.org

0480 258 723

State and Territory Volunteering Peak Bodies

VolunteeringACT

www.volunteeringact.org.au

02 6251 4060

info@volunteeringact.org.au

Volunteering Tasmania

www.volunteeringtas.org.au

03 6231 5550

admin@volunteeringtas.org.au

The Centre for Volunteering (NSW)

www.volunteering.com.au

02 9261 3600

info@volunteering.com.au

Volunteering Victoria

www.volunteeringvictoria.org.au

03 8327 8500

info@volunteeringvictoria.org.au

Volunteering Queensland

www.volunteeringqld.org.au

07 3002 7600

reception@volunteeringqld.org.au

Volunteering WA

www.volunteeringwa.org.au

08 9482 4333

info@volunteeringwa.org.au

Volunteering SA&NT

www.volunteeringsa-nt.org.au

08 8221 7177

reception@volunteeringsa-nt.org.au