



LASA
LEADING AGE SERVICES
AUSTRALIA
The voice of aged care

CONSULTATION CHARTER OF AGED CARE RIGHTS

10 October 2018

*A strong voice and a helping hand
for all providers of age services*

Leading Age Services Australia

Leading Age Services Australia (LASA) is the national peak body representing and supporting providers of age services across residential care, home care and retirement living.

Our purpose is to enable a high performing, respected and sustainable age services industry delivering affordable, accessible, quality care and services for older Australians.

We represent our Members by advocating their views on issues of importance and we support our Members by providing information, services, training and events that enhance performance and sustainability.

LASA's membership base is made up of organisations providing care, support and services to older Australians. Our Members include private, not-for-profit, faith-based and government operated organisations providing age services across residential aged care, home care and retirement living. 57% of our Members are not-for-profit, 33% are for-profit providers and 10% of our Members are government providers.

Our diverse membership base provides LASA with the ability to speak with credibility and authority on issues of importance to older Australians and the age services industry.

Introductory comments

Key points

- LASA received considerable Member feedback on the DRAFT Charter of Aged Care Rights (the Charter).
- Members largely welcomed the Government's efforts to simplify the Charter.
- However, some home care providers argued that maintaining a separate charter for home care would be more useful for helping consumers and providers to understand their rights and responsibilities in the home care environment.
- Regarding the substance of the charter, there was significant concern from Members about the removal of responsibilities, particularly those relating to:
 - the safety of staff and other residents,
 - dignity of risk, and
 - the need for services to be paid for.
- Members have indicated that the removal of these responsibilities is likely to hinder their ability to deliver quality care and safe work environment.
- If the Government prefers not to add a separate section on responsibilities, LASA recommends amending the text of the proposed rights to ensure that these issues are not overlooked (specific amendments are suggested below).
- While the proposed preamble provides some useful context for helping consumers and providers interpret the Charter, LASA believes that the issue of responsibilities needs to be addressed in the Charter itself. LASA has also recommended some changes to the wording of the preamble to help it convey key messages more clearly.

Further introductory comments

Simplified charter welcome

Some Members welcomed the document's brevity in particular:

(the Charter)'.....should be easier to administer to clients as will be one reference document with core principles and it is easy to read and understand.'

Maintain separate charters for home care and residential care

Much of the feedback LASA received came from Members who are providers of home care services. Some home care providers considered that home care should retain its own Charter:

'The current Care Recipients Rights and Responsibilities – Home Care is an informative resource for both the consumer and the service provider. It supports the establishment of realistic service expectations and clearly explains each parties' rights and responsibilities in a home care environment.'

'A single Charter may reduce regulatory compliance for those providers delivering multiple service types however we question how a single Charter will:

a) assist consumers to understand their rights and responsibilities when receiving commonwealth subsidised aged care in a home care environment; and

b) support the rights of the provider delivering the services at home'.

Rights and responsibilities

The most frequently expressed concern by LASA Members is that the Charter no longer explicitly refers to care recipients' responsibilities. LASA Members are strongly of the opinion that care recipients' rights must be complemented by responsibilities:

'It is of concern that the Draft Charter of Aged Care Rights together with the consultation paper does not mention consumers' responsibilities'.

'The current Charter of Rights (Home Care) is a very useful tool when talking with prospective clients (consumers) as it contains both the rights and responsibilities. Having consumer Responsibilities as part of the Charter is a very important part of the clients (consumers) understanding of the processes of home care under the HCP program.'

'On responsibilities, we think there should be more on their obligation to pay fees and also to participate in wellness/restorative approaches.'

'Design of the Single Charter should consider the best way to ensure that consumers are fully aware of their responsibilities along with their rights as both complement the other'.

LASA Members are particularly concerned that the Charter should enable care recipients to gain a clear understanding of care workers' rights and that aged care providers are obliged by law to provide a safe workplace.

'Include a statement about consumer responsibilities to respect the rights of care workers to their human, legal and workplace rights including the right to work in a safe environment and to treat care workers without exploitations, abuse, discrimination or harassment.'

'Would perhaps be good if it explicitly mentioned carers in this context: "It also helps people receiving care understand how they will engage with others involved in their aged care service – so that they can enjoy the same rights".'

The removal of consumer responsibilities from the DRAFT Charter requires further consideration and consultation. Rights give rise to responsibilities. Legislation and information resources for the public that articulate both rights and responsibilities ensure clarity for consumers and providers regarding service expectations.

Include further reference to consumer choice

Some Members considered that the Charter should present the available range of choices for consumers:

'Include reference to a right to consumer choice in relation to care services; a right to change their care services, and a right to ensure that a consumers' goals and preferences are adhered to.'

Comments to pre-amble

General comments

The pre-amble contains some highly technical information that may be better suited to be placed into one of the planned factsheets.

LASA suggest that following sentence be moved to an appropriate factsheet:

The rights described in this Charter sit alongside other laws that inform the delivery and quality of aged care, for example the broader Aged Care Act 1997, the consumer outcomes in the new Aged Care Quality Standards, and rights under the Australian Consumer Law and anti-discrimination law.

The DRAFT Charter would benefit from clearly outlining the scope of care settings it applies to and who the rights holders are.

For example, LASA Members felt that the Charter should clearly state the type of aged care services to which these recipients' rights apply e.g. Residential Care, Commonwealth Home Support Program and Home Care Packages.

Further, the Charter refers to care recipients only but often for providers the 'unit of care' includes also family and legal representatives who are provided with explanations, reassurance and information. The Charter should clearly identify who the holder(s) of the Aged Care Rights is/are.

Members have told LASA that they prefer that the attribute 'high' be removed from 'high quality care' as the term 'high' is subjective and open to a wide range of interpretations.

Some sentences in the pre-amble are difficult to interpret and would benefit from being reviewed with view to have the sentence convey their content more clearly. LASA considers that following sentence in the pre-amble should be reworded to identify the people the word 'others' refers to:

'It (the Charter) helps people receiving care understand how they will engage with others involved in their aged care service – so that they can enjoy the same rights'

LASA suggests re-wording this sentence to read:

*It helps people receiving care understand how they will engage with **care recipients and employees of their provider** – so that **these** can enjoy **their rights too**.*

Also clarified should be the sentence:

'Sometimes aged care providers may have to balance competing rights'.

LASA believes that the issue of competing rights requires further explanation to help care recipients understand the complexities in balancing rights involved for all parties. For example, care recipients share staff resources or common areas, providers divert staff resources to address any changing care needs of recipients and staff must observe Workplace Health and Safety legislation.

LASA suggests re-wording the sentence to read:

*Sometimes aged care providers may have to balance rights that compete **with the rights of other care recipients and/or care staff.***

The planned factsheets may be an additional avenue to further explain to care recipients and their families the complexities involved in balancing rights.

LASA considers that the fact sheets to be developed to supplement consumers' understanding should be designed to support a clear understanding what care recipients can expect from their providers.

Some statements in the pre-ambule make it difficult for providers to anticipate how they may be applied by the regulatory body:

*'We are somewhat concerned about how the Agency will interpret this statements:
"Sometimes aged care providers may have to balance competing rights. Providers will work to resolve these situations sensitively through consultation and with the spirit of the Charter in mind".'*

Explanatory statements or well-grounded case studies may be required to give providers a better insight into the government's expectations.

Specific comments to the DRAFT Charter of Consumer Rights

Members suggested amending some of the statements of rights to (1) clearly outline the scope of these rights and (2) include care recipients' most important responsibilities.

I have the right to:

- a) receive safe and high quality care and services

Members observed the importance of reminding consumers that their service must be delivered within the confines of the financial allocation of their home care package and that this affects the care provided.

'.....service comes at a cost which many recipients of age care packages are unwilling to pay and generally involves more hours or times which increase the costs and reduce hours.'

LASA proposes re-wording right a) to read:

- a) receive safe and quality care **within the resources available**

- b) be treated with dignity and respect and to have my individuality valued

Aged care providers have an obligation to provide their workforce with a workplace that is safe and free from harassment and abuse. Care recipients are very important in contributing to safeguarding

care workers' workplace rights. Providers of residential aged care have to ensure the safety of all residents.

LASA proposes re-wording right b) to include:

be treated with dignity and respect and to have my individuality valued and I acknowledge that I must respect other care recipients and care workers' human, legal and workplace rights

c) have my identity, culture and diversity valued and supported

No LASA comment

d) maintain my independence

LASA Members believe that it is important to include care recipients' right to the 'dignity of risk'. That is, to make informed quality of life choices that may include risks to wellbeing. LASA suggests re-wording right d) to read:

maintain my independence and make informed choices, which may include some personal risk, in order to live the best life I can

e) live without abuse and neglect

No LASA comment

f) be informed about my care in a way that meets my needs, have access to information about my rights, care, accommodation and anything else that relates to me personally, and get the information I need in a timely way

LASA Members believe that the term 'timely' is too open to interpretation to be useful for inclusion in a right:

'In (f) – timely is a subjective word and open to interpretation. What's timely for me may not be for you. I think this needs to have a timeframe attached and read, "within an agreed timeframe".'

LASA proposes amending right f to read:

be informed about my care in a way that meets my needs, have access to information about my rights, care, accommodation and anything else that relates to me personally, and get the information I need within a mutually agreed timeframe

g) maintain control over, and continue to make decisions about, my care and personal and social life

LASA believes that right g) should include the involvement of care recipients' legal representative if such representation is required.

Further, a care recipient's choices should also not put other people at risk.

LASA proposes amending right g) to read:

maintain control over, and continue to make decisions about, my care and personal and social life **but not put other people at risk**

h) be listened to and understood

LASA believes that a right to be understood is impossible to enforce. For this reason, LASA suggests that right h) be re-worded to read:

be listened to and **supported to be** understood

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i) choose to have another person speak on my behalf

No LASA comment

j) complain, and to have my complaints dealt with fairly and promptly

No LASA comment

k) exercise my rights without it adversely affecting the way I am treated

No LASA comment

l) personal privacy and to have my personal information kept confidential

No LASA comment