



LASA
LEADING AGE SERVICES
AUSTRALIA
The voice of aged care

AGED CARE WORKER REGULATION SCHEME

Submission to the proposed Scheme, 1 July 2020

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

Leading Age Services Australia

Leading Age Services Australia (LASA) is a national association for all providers of age services across residential care, home care and retirement living/seniors housing. Our purpose is to enable high performing, respected and sustainable age services that support older Australians to age well by providing care, support and accommodation with quality, safety and compassion – always.

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. 55% of our Members are not-for-profit, 37% are for-profit providers and 8% 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

LASA fully supports the introduction of an Aged Care Worker Regulation Scheme because such a Scheme would contribute to reducing the risk of unsuitable workers entering and/or remaining in the personal care worker (PCW) labour market. Care recipients would benefit from a higher level of protection than is currently available. Employers would have a welcome additional tool for managing their workforce by having access to a list of screened PCWs or to a PCW register that gives an indication about an individual's suitability for employment.

In August last year 121 aged care CEOs who participated in LASA's Aged Care Futures Workshops gave near universal support for a registration scheme for PCWS that includes minimum qualifications and CPD requirements. During consultation for this proposed aged care worker regulation scheme LASA Members clearly identified their preference for PCWS to be included in a registration process consistent with the National Scheme (Question 9, option 3E). LASA assumes the National Scheme referred to in the consultation paper to be the Australian Health Practitioner Regulation Scheme (AHPRA).

Without losing sight of AHPRA registration as the end-goal, LASA believes that the introduction of an Aged Care Worker Regulation Scheme could be undertaken incrementally to facilitate an effective transition. A first step could be an aged care worker screening scheme of new entrants to the PCW workforce. This scheme should result in a positive list that supports ongoing, dynamic police checks that facilitate the detection of any new criminal records for workers on this list. A negative list would give employers access to an additional check that a worker has not been shown to be unsuitable to work with vulnerable, older people. All existing PCWs with current criminal history check could then be transitioned onto the positive list and once on it they undergo regular dynamic police checks.

A Code of Conduct is required to establish professional standing and accountability for PCWs and to support standardised disciplinary action including formal processes. The disciplinary processes must include checks and balances for PCWs whose conduct comes into question and who may be at risk of losing their living.

An agency needs to decide whether misconduct occurred and if established, what disciplinary course of action should be taken. The disciplinary functions of the NDIS Commission may be considered as an interim measure until a registration scheme for PCWs is established.

LASA observes that Aboriginal Health Workers who successfully undertake an AHPRA approved Certificate IV course are eligible for registration with AHPRA. As an initial step towards AHPRA registration, the same consideration could be given to PCWs who hold a Certificate IV in Ageing Support. While this would add some complexity for employers who have to deal with two regulatory systems for its PCW workforce, it would constitute a first step towards the AHPRA registration many in the sector desire. Importantly, it would provide recognition for PCWs with higher educational attainment, move part of the PCW workforce towards greater professionalisation and offer PCWs a career development opportunity.

Generally, formal annual requirements for Continuous Professional Development (CPD) by PCWs are supported. Whilst the improvement of PCWs' language skills should preferably be undertaken prior to their entry into the aged care workforce, such improvement should also be considered as a CPD activity.

Consultation question 1

What is your preferred approach to aged care worker criminal history assessments?

- **Option A1** – Providers continue to assess criminal history for workers in line with aged care legislation, funding agreements and guidance
- **Option A2** – Centralized assessment of criminal history for workers (based on NDIS model)

Option A2: LASA Members are strongly in favour of a centralised assessment of criminal history for all aged care workers who have access to care recipients. Also see answer to question 17.

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Consultation question 2

Are there other options that should be considered?

Members indicated interest in dynamic police checks because these checks are updated frequently. LASA understands that plans exist for frequent (if not daily) updates of the national NDIS Worker Screening Data Base against police criminal records. The aged care sector would welcome this type of functionality for its PCW workforce.

Consultation question 3

If there were to be a centralized assessment of criminal history, should any other matters be routinely taken into account? If so, which of the following options should be considered?

- Option B1 – Information from disciplinary bodies such as health complaints bodies, the NDIS Commission and national Boards
- Option B2 – Information from relevant government agencies
- Option B3 – Information from courts and tribunals
- Option B4 – Information from employers

B1: Members showed considerable interest in Option B1 which proposes the inclusion of information from disciplinary bodies (health complaints bodies, NDIS Commission, National Boards). LASA suggests that complaints received by the Aged Care Quality and Safety Commission about individual workers, if sustained, may also be taken into account.

B1 – B4: Many Members considered that all four sources of information be included in the screening.

B4: Members considered the inclusion of information by employers in the screening process to be useful but acknowledge the need to ensure safeguards for employees' protection. However, dismissals because of misconduct issues and possibly also disciplinary actions were thought to provide valuable information for prospective employers.

Consultation question 4

Are there any other matters that should/should not be considered as part of any aged care worker screening scheme?

Providers thought highly desirable a screening scheme that includes some capability to identify workers who engaged in behaviours that are unacceptable but do not amount to criminal conduct. A system capability that enables employers to apply to list on a 'negative list' PCWs whose employment was terminated because they engaged in misconduct may create such an option. However, system design needs to ensure that employees have the opportunity to present their side of story and provide other appropriate mechanisms to ensure employees' rights and protections.

Providers who deliver services to both disability and aged care recipients expressed interest in the screening scheme aligning with the NDIS.

Consultation question 5

What is your preferred approach to a code of conduct? (select one or more options)

- Option C1 – Retain existing arrangements requiring providers to ensure the conduct of aged care workers is in line with the Aged Care Quality Standards and Charter of Aged Care Rights (status quo)
- Option C2 – Adopt the NDIS Code of Conduct for aged care workers
- Option C3 – Develop a new code of conduct specific to aged care workers

Option C3: The majority of LASA Members are strongly in favour of a Code of Conduct specifically written for aged care workers. They want this Code to reflect the Aged Care Quality Standards and have the Code use the Standards' terminology.

Note, providers who deliver services across the NDIS and aged care consider the NDIS code to be suitable for aged care, though as mentioned above, this is not the preferred option by the majority.

Consultation question 6

What do you consider are the advantages and disadvantages of introducing a code of conduct for aged care workers?

LASA Members are of the view that the advantages of a Code of Conduct far outweigh any disadvantages.

Advantages

- The Code would reflect the specific requirements of the aged care sector which are different to those in other sectors.
- The Code would align with the Aged Care Quality Standards, forming a consistent framework.
- Clear accountabilities for PCWs are established.
- Disciplinary standards and processes become formalised.
- The Code would describe professional boundaries.

Disadvantages

- Another Code to manage

Consultation question 7

What is your preferred approach to strengthening English proficiency in aged care?

- Option D1 – Require providers to be satisfied that PCWs have the necessary English proficiency to effectively perform their role (extension of the status quo with improved guidance as to the expected thresholds for proficiency)
- Option D2 – Establish a requirement for PCWs to demonstrate their proficiency in English as part of a registration process (consistent with the National Scheme)

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Options D1 and D2: Similar numbers of Members supported either D1 or D2 of the two options given. All respondents expressed strong support for improved English language skills among personal care workers.

Members reflected on the difficulty of meeting their demand for personal care workers while also selecting for good English language skills: spoken, comprehension and written. Concern was expressed that if the language bar is set too high then the pool of available labour may shrink considerably.

Members who strongly supported option D2 expressed concern that language skills would be 'brushed over' when recruitment is tight and rosters need filling. Many Members considered that PCWs should demonstrate the same level of English proficiency as regulated nurses. However others stated that when selecting PCWs they would prioritise empathy over English language skills if they had to choose one ability over the other.

If a specific English language requirement was to be introduced, Members are concerned about what arrangements would be put in place for existing PCWs. A grandfathering arrangement for existing PCWs' language skills was strongly supported.

Consultation question 8

What are the other options for strengthening English proficiency in aged care (particularly for those providing personal and clinical care)?

Generally, Members preferred that workers' language proficiency be addressed upstream from the employer: either through immigration procedures and/or the VET sector when students sign up for training. Pre-vocational English should include teaching about relevant abbreviations used in the care setting. All VET students, migrants and non-migrants, should undergo literacy and numeracy checks as part of their entry requirement so any gaps can be identified and addressed.

Interest was expressed in funding for workplace English classes delivered by an approved provider for teaching English-as-a-second-language as a professional development opportunity. Training in communication skills when dealing with care recipients and their family was also proposed.

Consultation question 9

What is your preferred approach to minimum qualifications?

- **Option E1** – Providers must ensure that PCWs are competent and have the qualifications and knowledge to effectively perform their role (status quo)
- **Option E2** – Require providers to be satisfied that PCWs have certain minimum qualifications or competencies
- **Option E3** – Establish a requirement for PCWs to demonstrate their qualifications as part of a registration process (consistent with the National Scheme)

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Option E3: Members supported this option almost unanimously. This stance is similar to the position taken in August 2019 when 121 aged care CEOs who participated in LASA's Aged Care Futures Workshops gave near universal support for a registration scheme for aged care workers that includes minimum qualifications and CPD requirements. LASA assumes the National Scheme referred to in the consultation paper to be the Australian Health Practitioner Regulation Scheme (AHPRA).

Consultation question 10

What are the other options for strengthening the skills and knowledge of PCWs in delivering aged care?

While a requirement for PCWs to demonstrate qualifications as part of a registration process is strongly supported, many Members are concerned about excellent staff they employ who do not have qualifications. To be able to continue the employment of these staff, Members envisage a type of 'provisional' registration that gives this cohort of workers an extended period of time to acquire the qualification necessary. VET providers should offer significant recognition of prior learning for these workers, particularly for practical skills which these workers have already acquired while working in the care setting.

Members strongly emphasized that in personal carers the right behaviours, values and attributes are most important and that with training these workers can acquire the required knowledge and skills.

To strengthen personal care workers' skills and knowledge Members identified the following options:

- CPD requirements undertaken during the course of the year and evidenced by PCWs.
- Increased learning requirements for the Certificate III in Individual Support (Ageing).
- An industry led approach to the Certificate III training to ensure learners acquire the knowledge and skills required.

Consultation question 11

What is your preferred approach to continuing professional development?

- **Option F1** – Retain existing arrangements whereby providers must ensure that PCWs are recruited, trained, equipped and supported to deliver the outcomes required by the Aged Care Quality Standards (status quo)
- **Option F2** – Require providers to be satisfied that PCWs meet specified minimum CPD requirements
- **Option F3** – Establish a requirement for PCWs to demonstrate they have met specified minimum CPD requirements as part of a registration process (consistent with the National Scheme)

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Option F3: Members strongly supported that a requirement for CPD be established for PCWs to standardise CPD attainment across the industry.

Consultation question 12

What are the other options for strengthening the CPD of PCWs and others delivering aged care?

Meeting CPD requirements should be a responsibility that is shared 50:50 between a PCW and their employer.

Concern was expressed that CPD requirements may place unreasonable demands on workers with a certificate qualification. However, it was thought that workplace training could contribute significantly to meeting CPD requirements, thus taking much of the burden of professional development off the individual PCW.

English proficiency training targeting vocational English skills should be considered a CPD activity.

Consultation question 13

How should the register of cleared workers be presented?

- Option G1** – A list of workers who have been cleared to work in aged care (positive list)
- Option G2** – A list of workers who have been excluded from working in aged care (negative list)
- Option G3** – A list of workers who have been cleared to work in aged care and a list of workers who are excluded from working in aged care

Option G3: Members generally preferred to have a positive and negative list of PCWs. The advantage of having a positive list is that it enables dynamic police checks to be undertaken (see also LASA response to Question 2). Access to a negative list for checking gives providers added assurance that the prospective PCW has not been disqualified from the aged care workforce.

Consultation question 14

What are the advantages and disadvantages of different bodies managing screening of all aged care workers and/or registration of PCWs?

LASA Members strongly support one centralised screening body for PCWs similar to AHPRA. As one LASA Member wrote in their feedback:

‘There should be one body and one phone number. AHPRA has systems in place and it would be easier to include carers with a different pathway in relation to RN. It would be useful to have one national and consistent body who manages the PCW.’

A centralised body would largely eliminate problems such as unsuitable workers slipping through the net. Further, with a single body the likelihood of relationship issues and communication problems are less likely to arise.

Consultation question 15

In principle, should a person cleared to work with people with a disability be automatically cleared to work in aged care?

Generally, LASA Members support that a person cleared to work in the NDIS be automatically cleared to work in aged care. However, the NDIS system should be stringent enough to meet the screening requirements for aged care and any existing problems with the NDIS, as are currently being shown by the Disability Royal Commission, should be addressed first.

Consultation question 16

Are there any other clearances that should support automatic clearance in aged care?

AHPRA registration for health care professionals should provide automatic clearance for aged care.

Consultation question 17

What are the relevant considerations regarding the interplay between AHPRA (and any other professional registrations) and PCW registration for aged care?

LASA notes that Aboriginal Health Workers who successfully undertake an AHPRA approved Certificate IV course are eligible for registration with AHPRA.¹ As an initial step AHPRA registration may be established for PCWs who hold a Certificate IV in Ageing Support (also see Introductory Remarks). While this would add some complexity for employers who have to deal with two regulatory systems for its PCW workforce, it would constitute an interim first step towards the AHPRA registration many in the sector desire. Importantly, it would provide recognition for PCWs with higher educational attainment, move part of the PCW workforce towards professionalisation and offer PCWs a career development opportunity.

While this consultation considers a regulation scheme for PCWs only, consideration should be given to whether other workers who work closely with vulnerable older people, such as lifestyle staff, should be screened via the centralised body.

Aged care services, particularly residential care, employ other staff such as cooks, cleaners and some administrative staff that also have access to older people. The screening requirements for these employees may be reviewed on as part of the broader review of an Aged Care Worker Regulation Scheme.

¹ <https://www.ahpra.gov.au/education/approved-programs-of-study.aspx?ref=aboriginal%20and%20torres%20strait%20islander%20health%20practitioner>