

ACSA Submission



SUBMISSION TO THE ROYAL COMMISSION
INTO AGED CARE QUALITY AND SAFETY

SYSTEM GOVERNANCE

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acsa.asn.au | memberadvice@acsa.asn.au | 1300 877 855

ABOUT ACSA

Aged & Community Services Australia (ACSA) is the leading national peak body supporting not for profit church, charitable and for-purpose providers of retirement living, community, in-home and residential care for more than 450,000 older Australians.

ACSA represents, leads and supports its members to achieve excellence in providing quality affordable housing and community and residential care services for older Australians.

The aged care industry makes a significant contribution to the Australian economy, representing more than 1 per cent of Gross Domestic Product (GDP) with Australian Government expenditure on aged care in 2018-19 of \$19.9 billion and consumer expenditure on aged care around \$5.1 billion in 2018-19 (excluding refundable accommodation deposits). In 2016, there were over 366,000 paid workers in aged care with a further 68,000 volunteers^[1].

Mission-based and other not-for-profit organisations are responsible for providing services to the most disadvantaged and are a critical part of the social fabric of local communities – not only for the essential care and support they provide – but also as a valuable generator of jobs and growth.

ACSA members are important to the community and the people they serve, and are passionate about the quality and value of the services they provide, irrespective of their size, service mix or location.

ACSA CONTACTS

Patricia Sparrow, Chief Executive Officer
Aged & Community Services Australia
Suite 3, Level 6, 24 Collins Street
Melbourne VIC 3000
(03) 9108 0750

www.acsa.asn.au

^[1] Aged Care Financing Authority, [Eighth report on the Funding and Financing of the Aged Care Industry](#), May 2020, pages 7 and 8 (Word version)

SYSTEM GOVERNANCE – STRUCTURE, ROLES AND RESPONSIBILITIES

Effective governance of the aged care system is crucial to ensuring equitable supply of safe and quality aged care services across the country. Robust and transparent governance is also important for consumer and community confidence in the aged care system.

The aged care system is – and will likely continue to be – administered, subsidised, and regulated by the Commonwealth. As such, it is appropriate for ultimate responsibility for system design and governance to rest with the Parliament of Australia, as the democratically elected representatives of taxpayers who fund the system.

Broadly, the Parliament is responsible for the passage of the legislation and other legislative instruments that give effect to the design and operation of the aged care system.

In practice, the Parliament delegates much of the oversight and day-to-day administration of the aged care system to the relevant ministers, the Commonwealth Department of Health and the Aged Care Quality and Safety Commission. It also delegates much of the in-depth policy development work that is done prior to the introduction of legislation designed to implement reform to the system. The legislation that is passed by the Parliament is often developed by the Department of Health. One such example is the work commissioned by the Department of Health to develop an alternative funding mechanism to the Aged Care Funding Instrument, currently being conducted by the University of Wollongong.¹

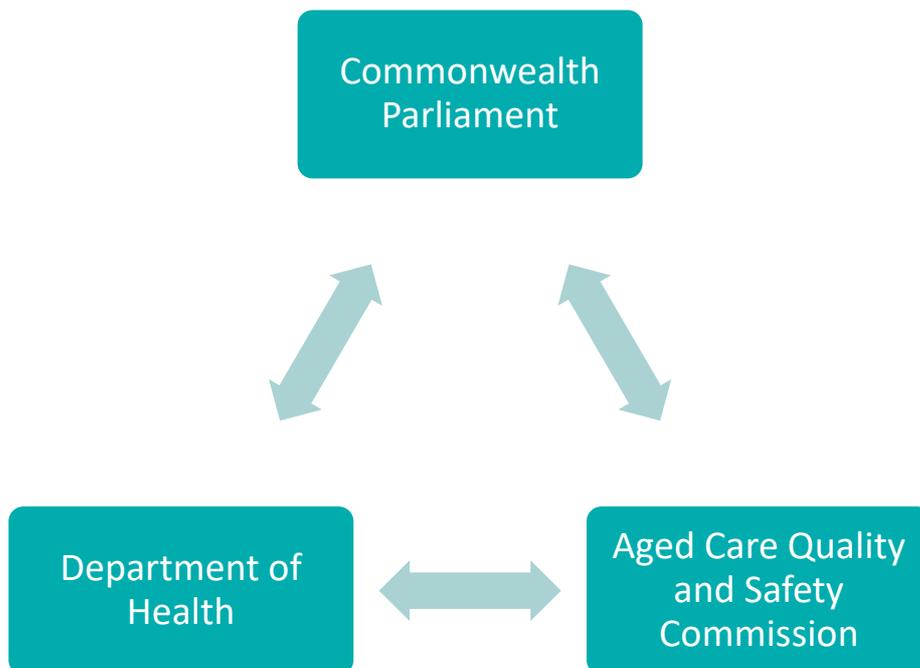
In this way, a distinction can be drawn between the *system governor*, a role ultimately for the Parliament, who are accountable to taxpayers, and the *system steward*, responsible for the day-to-day oversight and operation of the system as delegated to them by the *system governor*.

With *system governance* broadly vested in the federal Parliament, it's appropriate for *system stewardship* to be split between two core functions:

- 1) The Department of Health, responsible for implementation of the system design as directed by the Parliament and accountable to the Parliament for system outcomes; and
- 2) A regulatory agency, responsible for ensuring regulatory standards are upheld across program areas.

¹ See <https://www.health.gov.au/resources/publications/resource-utilisation-and-classification-study-rucs-reports>

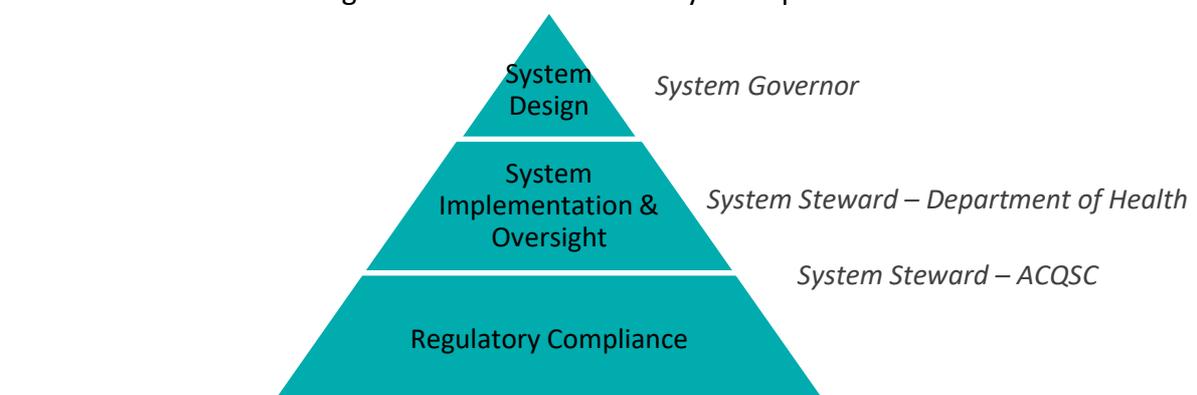
Currently these functions are fulfilled by the Commonwealth Department of Health and the Aged Care Quality and Safety Commission (ACQSC), respectively. ACSA broadly welcomed the transfer of regulatory functions from the Department of Health to the ACQSC, which came into effect on 1 January 2020, as a positive step forward in “bringing together of compliance related functions into one body to support integrated end-to-end oversight of compliance.”²



- Ultimately, the Commonwealth Parliament has responsibility for system design of the aged care system, including for:
 - The scope and objectives of subsidised aged care services;
 - The minimum acceptable levels of access to those subsidised services, particularly in regional, rural and remote locations;
 - The minimum acceptable levels of quality and safety of those subsidised services;
 - Determining appropriate financial subsidies payable by the Commonwealth to achieve equitable access to the specified service levels;
 - Determining appropriate and equitable consumer contributions for users of the system, including any means-testing arrangements and how they may interact with Commonwealth subsidies payable for individuals;
 - Conceiving and establishing any other financial models that may be appropriate to ensure adequate provision of funding for the system;

² Aged and Community Service Australia, *Submission to the Department of Health regarding the Transfer of Regulatory Functions to the Aged Care Quality and Safety Commission*, September 2019, p.4: https://acsa.asn.au/ACSA/media/General/Documents/ACSA-Submission_Transfer-of-Regulatory-Functions-to-ACQSC_V3_9-September-2019.pdf.

- Identifying and ensuring any obstacles to equity of access to service (both aged care and aligned services such as health care) are remedied through additional program areas, including commissioning or tendering for block-funded services in regional, rural and remote locations where ‘thin markets’ may prevent service proliferation;
 - Provision of the level of financial subsidy required to achieve equitable access to specified service levels using appropriate payment mechanisms, including prudential and funding compliance auditing³; and
 - Ensuring there is a clear, independent review process through a body such as the Administrative Appeals Tribunal on regulatory decisions made by the regulatory agency, including a simple and efficient appeals process for service providers.
- In practice, the Parliament delegates implementation of system design to the Department of Health, who retain responsibility for:
 - Implementing initial system design and the ongoing reform process;
 - Monitoring system operation and recommending the implementation of reforms based on user experience to improve the system; and
 - Providing expertise, research and advice to the System Governor on areas for system improvement.
- The Aged Care Quality and Safety Commission also plays a role in day-to-day system operational oversight, including:
 - Service provider entry into and exit out of the system through accreditation, reaccreditation and a scale of escalating responses to non-compliance including the imposition of sanctions and the revocation of approved provider status;
 - All service provider compliance activity as required by the Aged Care Act, including assessing and auditing providers against the quality standards;
 - The Aged Care Complaints Scheme; and
 - The operation of any Serious Incident Response Scheme or Aged Care Worker Registration Scheme that may be implemented.



³ See ACSA’s submission on the regulatory functions transfer to the ACQSC for a discussion on the merits of retaining this function with the Department of Health rather than the ACQSC:
https://acsa.asn.au/ACSA/media/General/Documents/ACSA-Submission_Transfer-of-Regulatory-Functions-to-ACQSC_V3_9-September-2019.pdf

TWO WAY COMMUNICATION BETWEEN DEPARTMENT OF HEALTH AND REGULATORY AGENCY

Clear, regular lines of reporting and communication need to be established to ensure that any issues uncovered by the regulatory agency that point to a need for systemic reform are passed to the system steward (the Department) and then to the system governor (the Parliament) for attention. In this way, the regulatory agency and the Department of Health, through their combined oversight of the system, provide the 'evidence base' for ongoing policy reform to be implemented by the system governor.

This would include, for example, where regulation is failing to produce the intended outcomes and system redesign is required to remedy the failings. This may need to occur by legislative change or the use of a regulatory instrument by the relevant Minister. Any system design reform made by the system governor would then become the responsibility of the steward and regulator to oversee and enforce.

The legislative foundations for this governance structure already exist within the Aged Care Act, particularly following recent reforms to the Aged Care Quality and Safety Commission. However, it is possible that these arrangements could be further strengthened and improved through the passage of legislation that clearly define and separate the roles and responsibilities of the Department of Health and the ACQSC, particularly as ongoing reforms to the system occur and new regulatory functions such as an aged care worker registration scheme are introduced.

Ongoing and frequent reporting and communication requirements would help to ensure there is no 'buck-passing' of responsibility for key service outcomes within the aged care system.

SYSTEM GOVERNANCE SUPPORTING QUALITY, SAFETY AND EQUITY

Carefully considered system design, coupled with clear and accountable system governance, together lay the foundations for the delivery of quality and safe care for all users. The current architecture is fundamentally sound and the necessary elements are in place. The interactions between the elements and the overall performance (the capability and capacity) needs to be reviewed to ensure that the system is operating successfully.

System design and governance are particularly crucial for ensuring users who may face additional barriers to access are able to receive the services that they need and are appropriate for them, including those who live in regional, rural and remote areas, and people identified as special needs groups under the Aged Care Act 1997.

Clear accountability arrangements established through system governance could help to remedy some of the inequities of access and lack of availability of culturally appropriate services within the current aged care system.

These inequities persist due to a variety of factors, some of which are a failure of system design, including:

- Funding provision that fails to adequately recognise the additional costs faced by service providers in delivering quality care to older people outside metropolitan areas;
- Funding provision that fails to adequately recognise the additional costs faced by service providers in delivering culturally appropriate and safe care to people of diverse backgrounds; and
- Program design that fails to take into account the impact of 'thin markets' in rural and remote areas on service availability when market-like supply mechanisms are ineffectively employed.

However, failures of system governance also contribute to these inequities, including:

- Lack of clear minimum mandatory service access standards⁴ in regional, rural and remote areas and clear accountability for their implementation; and
- Unclear accountability for equity and quality of services resulting from the interface of the aged care system with other subsidised systems such as the health system, the disability sector and various housing initiatives at a federal and state level.

⁴ ACSA notes the concept of 'service access standards' explored throughout the Royal Commission hearing examining service delivery in regional, rural and remote areas, held in Mudgee in November 2019: <https://agedcare.royalcommission.gov.au/hearings-and-workshops/mudgee-hearing>

Improving system governance could help to achieve equity of access to minimum service standards for all Australians, taking into account some variability in service provision reflecting the nature of dispersed populations outside metropolitan areas. It could also help to ensure culturally safe and appropriate services are more readily available for older Australians who need them.

Not all of the services needed by older Australians sit within the aged care system. For older people to have all of the support they need governance must also work across these services – this is particularly the case in residential care where there are significant access issues and service gaps between health and aged care. This is complex given some are State funded and regulated and others sit with the Commonwealth but it has to be addressed within the governance and stewardship arrangements so that older people do not miss out on critical services.

Characteristics of improved system governance to achieve these aims within the aged care system would include clear establishment, oversight and system accountability:

- To a set of minimum mandatory service access standards in regional, rural and remote areas and other geographic locations where thin markets may prevent service proliferation;
- For the delivery of culturally safe and appropriate care to all older Australians who have need of it; and
- For service outcomes even when they interface with other systems, such as health and housing, to prevent people or cohorts ‘falling through the cracks’ between systems.

MARKET STEWARDSHIP

Market management, or market stewardship, is the concept of “‘steering’ or shaping markets to ensure they deliver good outcomes for consumers.”⁵ Market stewardship is relevant to Government program areas that adopt a market-based, competition approach to the delivery of subsidised or funded services. Or, put another way, market stewardship is relevant in markets in which the Government is the primary purchaser or commissioner of services.

The 2015 Harper Competition Policy Review recommended a market stewardship approach in the area of Human Services (including aged care) delivery. The Competition Policy Review Panel writes that:

“Governments cannot distance themselves from the quality of services delivered to Australians. An ongoing market stewardship function means that governments will retain responsibility for overseeing the impact of policies on users.”⁶

The Paper goes on to point out that even in a market-based, competitive system such as the aged care sector with multiple private service providers delivering consumer-driven services, the majority funder does not escape accountability for service outcomes:

“...[the] ‘presumption of choice’ could have significant benefits in many human services sectors. However, the Panel acknowledges that choice is not the only important objective ... Equity of access, universal service provision and minimum quality are also important to all Australians.”⁷

Within the aged care context, market stewardship should have four main objectives:

- i. Ensuring quality of subsidised services;
- ii. Ensuring equity of access to a baseline level of subsidised services;
- iii. Encouraging diversity and innovation in service delivery; and
- iv. Ensuring consumers have access to the type and depth of information required to make informed decisions about their service options.

⁵ Consumer Policy Research Centre, *The Experience of Older Consumers: Towards Markets that Work for People*, July 2020, p.6: https://cprc.org.au/wp-content/uploads/Markets-for-People-Report_2July2020_compressed-1.pdf

⁶ Harper et al, *Competition Policy Review: Final Report*, March 2015, p.36: https://treasury.gov.au/sites/default/files/2019-03/Competition-policy-review-report_online.pdf

⁷ Ibid, p.35.

i. Quality assurance

It is crucial that the Parliament and the Government – through its delegate, the Department of Health – retains ultimate responsibility and accountability for the quality of services it subsidises.

Even in a market-based system, appropriate governance structures are required to ensure adequate regulatory design and oversight, which in turn ensure compliance with system regulations that set minimum quality standards by which service providers must abide.

Where minimum quality standards are not met by service providers, it should be the role of the regulator to remedy the situation through the remedial functions invested in it by the system governor. This needs to include revoking approved provider status for service providers who repeatedly fail to meet minimum quality standards and who place care recipients at risk.

Attention also needs to be given to the potential impact of large numbers of new service providers entering the system as a result of the shift in aged care toward a more competitive, market-based system. While greater diversity, innovation and service proliferation should be welcomed, untested service providers failing to meet quality standards, bringing down overall industry quality and reducing consumer confidence should be guarded against.

For example, consideration should be given to whether the regulatory agency should be required by the Department of Health to more closely observe the performance of new market entrants and remove their approval to deliver subsidised services where they are demonstrably and repeatedly failing to meet quality standards.

The overall impact of potentially flooding the market also needs to be considered. A market that is not viable for providers will result in ‘patchy’ outcomes for consumers.

ii. Equity of access (commissioning/tendering services)

Ensuring equity of access to a baseline level of subsidised services is a critical element of market stewardship.

Market-based systems have largely succeeded in providing consumer choice in metropolitan areas, but have not been able to achieve similar outcomes for service proliferation in regional, rural and remote locations across Australia.

As a result, consideration needs to be given to the role of market stewardship when it comes to ensuring equity of access for older Australians to aged care services, regardless of where they live.

As an example, this could take the form of a set minimum service access standards set at a system governor level. This could take the form of a baseline set of services that are

guaranteed for regional, rural and remote communities. The Department would then be responsible for developing targeted program areas to ensure those baseline services are delivered. This will likely need to be done through a tendering or commissioning process, in which services can be co-designed with local communities and existing service providers to deliver responsive, flexible and appropriate services in these locations. Such services are likely to require:

- Funding that recognises the increased costs of providing services in regional and remote locales;
- Incentives to provide services in regional and remote locations; and
- Alternate funding approaches including flexible or block funding, either in addition to, or in place of, the individualised funding mechanisms that exist in areas where minimum service access standards are already being met.

iii. Encouraging diversity and innovation

Another role of market stewardship is to encourage diversity and service innovation among service providers. This is particularly important when it comes to achieving the policy design objective of responsive and appropriate care for people of diverse backgrounds.

The competitive marketplace may see the establishment of some service options for people of diverse backgrounds. However, where these options do not meet the ideal depth or breadth as conceived by policy-makers, there may be a case for commissioning or tendering arrangements to be implemented as per the gaps outlined above.

Similar arrangements are likely to be required in ensuring equity of access to appropriate services for vulnerable special needs cohorts, such as older people at risk of homelessness.

iv. Informed consumers

Market stewardship also involves ensuring consumers are informed and empowered to make choices about the types of services they want or need, as well as the right service provider for them.

The Consumer Policy Research Centre argues that “[a]n inaccessible, dysfunctional or underdeveloped marketplace limits the ability of people both to engage in markets and make informed and effective choices needed to make markets work. Market stewards must ensure consumers have awareness of the marketplace; genuine access to the

marketplace; comprehensible information and minimal search costs; an ability to easily compare service providers; and easy switching processes.”⁸

In the aged care system, which has increasingly moved toward a consumer-directed approach, the provision of clear, transparent, up-to-date and accessible information about service availability, quality and pricing is crucial.

The Government’s *My Aged Care* website and call centre aims to fulfil this information provision role, however has been criticised for failing to provide fulsome and easily navigable information for aged care consumers.⁹

The lack of ease with which aged care consumers can navigate the system is only in part due to flaws within the *My Aged Care* portal. Improved system design that brings services together in a cohesive, wrap-around approach centred around consumer preference and need, rather than arbitrary program area silos, would help to improve the navigability of the system for consumers.

Many of the difficulties encountered by consumers in identifying and accessing the right services for them stems from the existence of program distinctions –such as those between the Commonwealth Home Support Program and the Home Care Packages Program – that force consumers into program and service areas rather than allowing consumer preferences to define service delivery. Improved program design – including simplified assessment processes that allow consumers to seamlessly access the services they need as their needs progress – would help to ease the navigability challenges that persist in the aged care system today. ACSA notes and supports the Government’s stated intention to bring the CHSP and the Home Care Packages Program together as a positive step forward in improving program design to deliver a more seamless consumer experience for older Australians as they progress through the aged care system.

Even with improved program design, there may still be instances where consumers require additional support and assistance to access the services they need. Consumers needing additional support are likely to include people from diverse backgrounds. This additional support could take the form of a funded program area within the system of system navigators, care finders or care ‘wranglers’, and ACSA notes the Royal Commission’s model for a comprehensive service finder in *Consultation Paper 1 – Aged Care Program Redesign*.

⁸ Consumer Policy Research Centre, *The Experience of Older Consumers: Towards Markets that Work for People*, July 2020, p.7: https://cprc.org.au/wp-content/uploads/Markets-for-People-Report_2July2020_compressed-1.pdf

⁹ See, for example, <https://www.thesenior.com.au/story/5415345/groups-savage-new-home-care-system/>
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THE ROLE OF SERVICE PROVIDERS

Service providers have a role to play in the governance of the system in which they operate.

This role goes beyond ensuring they are operating within the 'rules of the game' as defined by the system governor and complying with the processes of the regulatory agency.

Service providers, particularly through their peak bodies, can provide vital feedback on the operation of the system that can inform the ongoing policy design and improvement cycle implemented by the system governor.

This includes identifying and notifying the system governor, system steward or the regulatory agency when:

- Unintended consequences of system design are occurring;
- Incentives created by system design are contrary to the objectives and principles that underpin of the system more broadly;
- There may be policy changes that could help improve service quality;
- There may be policy changes that could help improve the cost-effectiveness of services; and
- Where system or program design reform could help enhance the ability of service providers to meet the needs and preferences of consumers.

CONCLUSION

Effective, robust and transparent governance arrangements are crucial to the development and operation of the kind of aged care system that Australia needs, now and into the future.

A key part of effective governance arrangements is accountability for those responsible for the design, oversight and operations of the system to both the users and the funders of the system. Care needs to be taken to ensure clear responsibility for system outcomes is not buried under too many layers of bureaucracy.

ACSA believes that the foundations for good governance of an aged care system that delivers quality and cost-effective aged care services are largely in place.

However, there are always improvements that can be made, and this is particularly the case when it comes to boosting the role played by the system governor and the system steward in market stewardship activities.

Improved system design and a greater emphasis on the role of market stewardship will help to deliver the kind of aged care system all Australians want to see.