Submission to the Productivity Commission's Interim Report

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Australian Government
Aged Care Quality and Safety Commission

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Contents

Introduction and focus of this submission

The Productivity Commission released the Interim Report *Delivering quality care more efficiently* on 13 August 2025. The Interim Report presents draft recommendations focused on three key policy reform areas:

1. Reform of quality and safety regulation to support a more cohesive care economy.
2. Embed collaborative commissioning to increase the integration of care services.
3. A national framework to support government investment in prevention.

In line with the Aged Care Quality and Safety Commission's (Commission's) remit, this submission focuses on proposed reforms to quality and safety regulation to support a more cohesive care economy (i.e. draft Recommendation 1 of the Interim Report).

Draft Recommendation 1 includes three components:

1.1 **Alignment of care worker regulation**, including a national screening clearance across sectors and a unified approach to worker registration.
1.2 **Alignment of approaches to provider accreditation, registration and audits**, including common suitability assessment, mutual recognition of audits, a single digital provider portal, a single set of quality standards and a cross-sectoral registration system.
1.3 **Alignment of the broader regulatory landscape**, including a consistent approach to regulation of artificial intelligence, standardised reporting framework, alignment in regulation of restrictive practice and establishment of a single regulator.

Overall, the Commission gives in principle support for the intent of draft Recommendation 1 but suggests the report would benefit from a detailed consideration of the practicalities of implementing the recommendation.

While there are key areas where alignment is both beneficial and appropriate, there are also areas in which reasonable adjustments to any aligned model may be necessary to account for varying contexts, risks and care users across care sectors.

It is important that these differences are explored in finalising the recommendations to ensure regulation continues to align with best practice principles, including an ability to respond to and prevent harm, and being proportionate and risk-led.

To support these considerations, this submission describes:

- general considerations for pursuing regulatory alignment across care sectors

- specific opportunities for improved alignment across care sector regulation, including identifying where reasonable adjustments may be required.

General considerations for alignment

There is clear value in pursuing increased alignment in quality and safety regulation, including to:

- reduce regulatory burden and compliance costs for providers and workers operating across care sectors
- increase productivity and effective use of resources
- improve worker mobility
- support improved quality and choice for care users.

Progression toward regulatory alignment is also consistent with the ongoing harmonisation in the design and objectives of the regulatory aged care and disability schemes, particularly in the context of care delivered in home and community settings. For example, both schemes will soon have a rights-based legislative framework built to empower care users, leveraging an outcomes-focussed Codes of Conduct and quality/practice standards, and registration schemes which aim to be proportionate by recognising the inherent differences in risk between service types.

The aged care and disability sectors face similar challenges to ensure the quality and safety of care delivery in a residential/congregate care setting, including:

- the provision of behaviour support services
- managing and responding to incidents
- balancing increased dependency and vulnerability in care users with the need to support and promote independence and autonomy.

However, there are also differences between care and support sectors that make it inappropriate to pursue total alignment. For example, the new Aged Care Act provides for an 'end-of-life' pathway specifically designed to support older people to remain in their own homes as they near the end of their lives. The regulation of care and services in these circumstances will look different to care provided to support a lifelong disability, with the former prioritising alleviating discomfort and the latter maximising independence and community participation. Differences between disability and aged care are discussed further below.

In designing each element of a more aligned regulatory system, it will be important that the resulting framework is appropriately tailored, proportionate and fit-for-purpose to the sector, life-

stage and specific needs and goals of care users. Consequently, the Commission recommends the Productivity Commission consider the following when finalising their recommendations:

- draw on the insights of regulators and stakeholders to build on lessons to date and to understand alignment or differences in care users' expectations and desired outcomes from care delivery
- understand which regulatory framework (or which elements of multiple frameworks) the care sector should be aligning with, ensuring design is tethered to clear objectives and outcomes and supported by an evidence-based approach which supports the well-being of care users
- identify and preserve the strengths of current regulatory approaches within each sector to ensure their continued effectiveness
- be mindful of where regulatory alignment is not desirable or appropriate – particularly considering differing policy objectives, program and funding settings or regulatory risks – and enable adjustments or tailored approaches where necessary
- ensure regulation reflects best-practice principles and supports contemporary regulatory practice, so responses can be agile and designed to directly address the specific drivers of risk, non-compliance or harm across each sector and influence the behaviour shift needed.

There may be value in developing a set of principles to inform and guide agencies as to where adjustments to an aligned model would be supported.

Opportunities for alignment (and adjustments)

There are many areas of commonality across the care and support sector, as well as shared risks, where alignment of regulation would be efficient and effective for government, providers and workers, and support better outcomes for care users. For example, care and support sector regulators have common objectives (including to safeguard care users and drive continuous improvement), share a strong focus on human rights, individual autonomy, quality and safety and have mechanisms in place to treat common sector risks (including in relation to organisational governance and financial viability, worker conduct, and supporting vulnerable care users).

However, there are also some key nuances in the objectives of regulating aged care, veteran's care, disability and childcare, which require adjustments. For example, the differences in the clinical process of ageing, compared with the more varied processes, mechanisms and outcomes of a life-long disability. The settings in which care is delivered, too, are broadly common (typically taking place in either the individual's home, a community-based setting, or in a residential or congregate care home) but require adjustments to the regulatory approach depending on the underlying needs, goals and preferences of their respective cohorts.

In line with the general considerations set out above, below are some examples where improved alignment across the care sector regulation is beneficial and appropriate, while also recognising the areas where adjustments may be required.

1.1 Worker regulation (i.e. screening, registration and monitoring)

The Commission supports the Productivity Commission's recommendation that worker regulation is aligned as far as possible across the care and support sector. Significant progress has already been made to align worker requirements, such as screening and registration, across the disability support and aged care sectors as we progressively work towards the implementation of a single worker screening and registration system. This has been a focus of the current aged care reforms and builds on the work of the Cross-Agency Taskforce on Regulatory Alignment (as part of the 2021-22 Budget) in moving towards unified worker requirements across the care sectors.

Progress towards aged care and National Disability Insurance Scheme (NDIS) worker screening alignment begins with the commencement of the new *Aged Care Act 2024* – initially with recognition of a NDIS worker screening check in aged care and moving to the introduction of a more robust screening check for the aged care sector that aligns to the NDIS worker screening check. The Department of Health, Disability and Ageing (the Department), in collaboration with the Commission, is continuing to work with states and territories to introduce a new aged care worker screening check to align with the NDIS, enable mutual recognition and recognise Australian Health Practitioner Regulatory Agency registration for the purpose of aged care working screening.

The Department (in consultation with the Commission, the NDIS Commission and Department of Education) is working to design a national worker registration scheme for personal care workers. The Commission's view is that having effective mechanisms to monitor workers once they are working in the sector is just as important as robust screening processes to effectively safeguarding care users. A registration scheme for personal care workers is a critical support to effectively monitor worker conduct and would become even more effective if adopted across the entire care and support sector. Such a system would support regulators to monitor and influence worker conduct, as well as to effectively detect and respond to unacceptable behaviour.

Providers have traditionally been valuable partners in monitoring and managing worker conduct. As the market continues to move toward delivering care and services in the home and community, often through workers who are engaged directly by the care user or are sole traders, provider governance, audit and reporting obligations become less effective safeguards. In these circumstances, more effective systemic controls (such as worker registration) are required for regulators to identify and respond to concerns directly.

1.2 Provider suitability, registration and audits

Provider suitability

The Commission supports the introduction of a common suitability assessment for all market entrants in the care and support sector and are working in collaboration with other regulators to pursue alignment to the extent possible in the absence of legislative change.

Mutual recognition of audits

The Commission supports the mutual recognition of audits in-principle noting there a many common risks across care sector providers. However, there are several practical obstacles to implementation that would need to be addressed prior to adopting general mutual recognition. For example, the legal entities that are registered for the purposes of delivering aged care are currently almost always separate to the entities that are approved for the purposes of delivering disability services, despite sometimes sharing common governing bodies or parent companies. For mutual recognition of audits to be implemented, the same regulated entity would need to be delivering funded aged care and disability services. While there are no obvious legal barriers to an entity taking this approach, in practice parent companies often conduct separate enterprises to avoid concurrent exposure to two different systems of access, funding and regulatory arrangements. Noting that audit requirements are only one part of a larger, more complex framework, even if audits were to be recognised the separation of aged care and disability service delivery arrangements may continue.

Further, the consumer cohorts for disability and aged care providers are almost always mutually exclusive. Currently, an individual ceases being eligible for NDIS funding once they turn 65 (i.e. when they become eligible to receive government funded aged care services). This means that, apart from minority cohorts such as younger people in residential aged care, there is almost no overlap in the individuals receiving funded disability care and those receiving funded aged care services. As such, audits of disability service providers by the NDIS Commission are tailored specifically to evaluate service provision to participants who have been assessed as requiring funded disability services, not older people assessed as requiring funded aged care services.

The purpose of audit in an aged care context is to assess aged care providers against the aged care quality standards to inform the decision on their continued registration to provide care to older people. The primacy of this purpose must be maintained when considering potential pathways to increase productivity. The obligations on NDIS providers and the care needs of NDIS participants differ to those in aged care to the extent that, in the absence of aligned standards and a common audit methodology, any generalisation of audit findings across the two cohorts has the potential to create risks to the fulfilment of each scheme's purpose.

Many of the risks and issues described above may be mitigated by the substantial alignment of standards, which is why the Commission considers this alignment to be a pre-requisite to the general adoption of mutual recognition arrangements. For example, an aligned set of standards would remove one of the key barriers to organisations combining their aged care and disability service delivery under a single entity, as the regulatory framework they would be operating under would be better aligned. Further, substantial alignment of standards would support a common audit methodology, allowing for findings in relation to the care provided to NDIS participants to be more readily recognised as applying to different cohorts (e.g. aged care). This is discussed further below.

Single set of quality/practice standards

The Commission supports the adoption of a substantially aligned set of quality standards, with adjustments implemented through additional sector or care user specific modules. The strengthened Aged Care Quality Standards were designed to align with the NDIS Practice Standards, the National Safety and Quality Health Service (NSQHS) Standards, and the Integrated Health and Aged Care Module (an additional set of Standards bridging the gap between the NSQHS Standards and Aged Care Quality Standards for providers of integrated health and aged care services). This alignment provides an example of a modular approach that aligns with the Productivity Commission's recommendation, where common or core standards apply to all providers, and other modularised or individual standards are applied based on the service types being delivered (or the sectors in which they are being delivered).

While the core matters addressed across all standards align, the Aged Care Quality Standards include additional and more detailed requirements to address specific risks associated with caring for older people, in line with the recommendations of the Royal Commission into Aged Care Quality and Safety. These additional requirements primarily relate to the service environment, clinical care, food and nutrition, and the residential community, with the latter two only applying in residential settings.

It is important there continues to be space for these differences specific to the service or care context, to allow regulators to focus on the needs and goals of the care users within their regulatory remit, in addition to managing the most severe risks to the delivery of quality and safe care in a targeted way. The current review of the NDIS Practice Standards provides an important opportunity to progress alignment, with appropriate adjustments, earlier than the 6-year timeframe proposed by the Productivity Commission. We would support this alignment being undertaken prior to the mutual recognition of audits (i.e. within 3 years), noting that the

Commission considers substantially aligned standards to be a pre-requisite for general adoption of mutual recognition between regulators.

Cross-sectoral registration

Under the new *Aged Care Act 2024* provider registration will replace the current provider approval and residential service accreditation processes. This aligns more closely with the NDIS Commission's approach to provider registration and brings the Commission a step closer towards alignment in registration requirements. However, consistent with the discussion above in relation to adopting a substantially aligned set of standards, regulators must be afforded the flexibility to make adjustments to these processes to ensure potential market entrants are capable, committed and have the capacity to deliver their intended services to care users with differing needs, life-stages and goals.

The structure of the registration requirements in section 109 of the *Aged Care Act 2024* provides an example of how this may look in practice. The registration requirements distinguish between 'general' registration requirements (which are already largely aligned to the requirements of other care and support sector regulators) and 'provider registration category specific requirements', which require the Commission to consider whether the applicant meets certain requirements considering the services they actually intend to deliver (and to whom they intend to deliver them).

In some instances, sector-specific requirements will also be closely aligned. The Support at Home program commencing from 1 November 2025, underpinned by a rights-based Act and regulatory framework that emphasises autonomy and person-centred care, shares significant similarities with the regulatory settings overseen by the NDIS Commission in relation to their home and community-based care. However, there are other contexts (such as care delivered in a residential or congregate care settings) where differences are necessary due to the capabilities required to deliver quality and safe care in those specific contexts.

In sum, the Commission supports progressing toward a cross-sector registration model, with adjustments accounting for sector-specific requirements in relation to the capability and capacity of market entrants.

Single digital provider portal

The Commission supports this recommendation in principle, acknowledging the potential to reduce duplication and fragmentation, improve ease of navigation, enhance data sharing and analytics across regulators and enhance sector transparency and trust. However, the Commission notes the likely significant upfront and ongoing costs associated with establishing a single system (including IT infrastructure, system integration, data migration and change management). While there are

long-term efficiencies to a unified portal, they must be weighed against the implementation challenges, financial costs and disruption to existing operations and regulatory arrangements – particularly considering the challenges in aligning the registration requirements and regulatory frameworks as outlined above. More detailed policy design and business requirements would likely be needed to determine what is required to support any digital changes.

1.3 Alignment of the broader regulatory landscape

Approach to regulation of artificial intelligence

The Commission supports alignment on the regulation of artificial intelligence (AI), although notes risks to the effectiveness of current regulatory frameworks arising from some specific applications of AI. The use of automation, machine learning and expert systems may all deliver real and tangible productivity benefits throughout the care and support sector, including:

- improvements in data analysis leading to more effective risks detection and screening tools
- AI-enhanced independence aids (such as communication and mobility supports)
- more efficient systems to reduce compliance and reporting costs.

However, some applications such as generative AI threaten to undermine regulatory safeguards that seek to test market participants' experience and expertise, by providing low or no-cost tools that allow individuals who lack required skills, qualifications or expertise to appear more competent and capable than they are. This is already a concern that the Commission grapples with to a limited extent, where consultants are paid by applicants or providers to fill in applications, forms and assessments on their behalf. Going forward, the significantly lower cost-barriers to use generative AI, paired with the difficulty of reliable detection, will likely exacerbate these challenges.

The Commission supports the principles recommended by previous Productivity Commission publications in relation to regulation of digital technology being outcomes-focussed, risk-based and technology-neutral.

Standardising the quality and safety reporting framework and data

The Commission broadly supports the Productivity Commission's recommendation to standardise quality and safety reporting frameworks and data (e.g. the Quality Indicator Program) but notes the significant investment this may require in assessment methodologies, digital and data management lifecycles, as well as the need to for measures to closely consider the different care user needs and goals.

The Commission notes there may be more immediate opportunities to standardise or align other types of provider reporting including incident reporting, workforce reporting and exploring options for alignment in financial and prudential reporting.

Regulatory intelligence collected through reporting and notifications are critical to the Commission's ability to develop risk-profiles and generate predictive risk indicators to identify providers or workers requiring a higher level of supervision. Different reports, data and notifications collected by the Commission serve different regulatory purposes. For example, daily sources of intelligence give us real-time visibility of risks and issues as they happen while quarterly and annual sources help us understand themes and trends from providers, and sector-wide or systemic risks. The Commission has made significant investments in data collection, management and analysis including in relation to Quality Indicator Program data, incident management and quarterly financial and prudential reports.

Aged care, disability and early childhood education all have versions of a mandatory reporting scheme, and veteran's care providers are often required through contractual arrangements to comply with mandatory reporting requirements relevant to the services they are delivering. Aged care and disability are broadly aligned on incident reporting requirements but still differ to an extent that requires many mutual providers to maintain separate reporting systems and processes depending on whether the care user is funded through the NDIS or through an aged care program. Mandatory reporting obligations for early childhood providers differ by State and Territory.

Acknowledging the complexities in aligning State and Territory requirements to Commonwealth ones, near-term productivity gains may be realised by aligning incident reporting requirements across aged care and disability.

Further, aged care providers have significant reporting obligations in relation to their financial and prudential management, providing the Commission with a critical view of provider sustainability and viability and associated quality and safety risks for care users. Large childcare providers must also report financial information, including information about revenue, profits and leasing arrangements. Financial and prudential reporting requirements for NDIS providers are more limited. Acknowledging differences in funding programs and risk factors (such as residential aged care providers holding significant pools of refundable deposits), aligning financial and prudential reporting requirements may nevertheless be both an effective risk mitigation and reduce compliance costs for providers who deliver care across multiple sectors.

Establishment of a single regulator

The Commission is in principle supportive of the Productivity Commission's recommendation to explore options for a single care and support sector regulator. This structure would support and be consistent with the trend across the whole care and support sector towards rights-based regulation, the prioritisation of reablement approaches and primacy of person-centred and individualised care models. There are also potential benefits for the regulators' performance, including sharing and continuing to build expertise and organisational capability in contemporary regulatory practices which prioritise both the prevention of harms as well as timely regulatory responses where issues occur. However, adjustments would need to be made to ensure targeted regulatory oversight and responses (taking into account care users' perspectives, engagement and participation in the scheme most relevant to them) can continue to be applied.

There are multiple Australian examples of a single regulator retaining multiple Commissioners with discrete areas of responsibility and functions, with the Australian Human Rights Commission providing perhaps the most relevant case study on how such a structure may look in practice.

Regardless of the proposed model(s), it will be critical in any move toward a single regulator to ensure that the governance structure supports dedicated engagement and targeted, tailored approaches to meeting the diverse care needs of different care users. The risks of disruption and reduced regulatory performance would also need close attention and management as part of any Machinery of Government changes.

Aligning the regulation of behaviour support plans and the use of restrictive practices

The Commission agrees with the Productivity Commission's characterisation of this area of regulation as "highly complex, with implications that go beyond aged care and NDIS". While the Commission supports minimising inconsistency between Commonwealth and State/Territory approaches to substitute-decision making and guardianship, empowering care users to exercise their rights (including through making complaints), and aligning reporting requirements for workers and providers, there remain fundamental differences in approach that are likely to resist alignment without significantly more exploration (e.g. the use of a consent vs. authorisation model).

We acknowledge and agree with the Productivity Commission's suggestion that more work needs to be done to understand what changes are possible and appropriate before moving forward with this recommendation.

Summary

We support the intent of the Interim Report and the renewed effort to align regulation across care sectors to reduce fragmentation and minimise unnecessary burden and costs for care users, providers, workers and government. As outlined in this submission, while alignment offers clear benefits in certain areas, it will be equally important and necessary to enable reasonable adjustments to be made where differing sector contexts, risk profiles and care user needs and goals require a more tailored approach. This will help to ensure that regulation continues to be fit-for-purpose, proportionate and appropriate across diverse social care sectors.

We suggest further detail in the final version of the Productivity Commissioner's report would be valuable in assisting regulators and policy agencies in understanding where, how and when Government should pursue regulatory alignment across the care sectors.

We trust the information provided in this submission is of assistance in informing this review. The Commission would be pleased to provide any further information required – if you would like to discuss our response, please contact Mel Metz, Deputy Commissioner, Sector Capability and Regulatory Strategy.

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