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NEW QUALITY STANDARDS

LEGAL, GOVERNANCE AND RISK MANAGEMENT: MEETING YOUR OBLIGATIONS IN HOME CARE

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1 INTRODUCTION

- 1.1 Mahatma Ghandi famously stated that “*the true measure of any society can be found in how it treats its most vulnerable members.*”
- 1.2 As a society in Australia over the past 5 years, we have seen a significantly greater interest and scrutiny of the performance of organizations of Australia who are charged with, or have assumed, responsibility for caring for the vulnerable in our community. By way of example, one of the most wide-ranging of the Royal Commissions in Australia’s history was the Royal Commission into Institutional Responses to Child Sexual Abuse which commenced in January 2013, and concluded with the delivery of the final report in December 2017. That report considered 42,041 phone calls, 25,964 letters and emails and information provided in 8,013 private sessions. The result was an 18 volume final report document together with 189 recommendations.¹ Few people in Australia will have not been aware of this Royal Commission, and the governments of Australia are still grappling with the appropriate implementation of many the recommendations.
- 1.3 We have seen an overhaul of the extent and manner of delivering services to members of our community who have disabilities throughout the roll out of the National Disability Insurance Scheme.²
- 1.4 Following the events surrounding the Oakden Nursing Home, a Senate Inquiry heard of many instances of abuse and neglect that occurred in that facility as a direct result of the failure to act by those who could have done so. Additionally, an investigation was undertaken by ICAC South Australia, and the Federal Government ordered reviews in respect of quality of services in the aged care sector, and a Review of the National Aged Care Quality Regulatory Processes. The Government has reported that as a result of the increased auditing of aged care services, on average, one per month has been the subject of orders to close, with a number being directed to improve their standards.³
- 1.5 More recently, Prime Minister Mr. Scott Morrison announced in October 2018 that there was to be a Royal Commission into Aged Care Quality and Safety. This included, significantly for the purposes of this paper, a directive to inquire into “the quality of aged care services provided to Australians, the extent to which those services meet the needs of the people accessing them, the extent of substandard care being provided, and ... any actions that should be taken in response.”⁴
- 1.6 Many of us in the sector expect that there will be a similar Royal Commission in respect of care provided to Australians in the disability space.
- 1.7 Amongst the significant failings of our society to care for the most vulnerable members of our community comes an opportunity to refocus on what matters – how to better care for vulnerable individuals with whom we come into contact.

¹ See www.childabuseroyalcommission.com.au accessed 25 April 2018.

² The issue of whether the NDIS has been *effective* in meeting the needs of members of the community that have a disability is beyond the scope of this discussion.

³ <https://www.pm.gov.au/media/royal-commission-aged-care-quality-and-safety>

⁴ See Royal Commission terms of reference <https://agedcare.royalcommission.gov.au/Pages/Terms-of-reference.aspx> accessed 7 March 2019



- 1.8 Against the backdrop of increased scrutiny into the care of aging and vulnerable members of the Australian community, the Government has also developed the new Aged Care Quality Standards (which will come into operation on 1 July 2019). These standards will replace the existing standards for the provision of aged care services, including the Home Care Common Standards, which specifically govern the provision of home care. This paper will consider how the new Aged Care Quality Standards, and their emphasis on consumer rights, impact upon the governance of approved aged care providers as organisations which deliver Home Care services to aged and vulnerable recipients. We will also consider how the changing environment in which aged care services are delivered impacts upon risk management.
- 1.9 There is no doubt that you and your organisation will need to address a myriad of considerations in order to meet the new standards. However, at the outset I ask that you remember **why** you and your organizations are called to meet these standards – quite simply, because we, as a society, have a duty to care for the vulnerable and these standards represent a step towards that aim. I ask you to reflect upon the level of care you would want for your mothers, aunts, uncles, fathers, and ultimately, in the same position, for yourself. The **Why** matters – because it is what gives us the strength, motivation and stamina to be able to implement these standards.
- 1.10 The Principle is simply – Love thy Neighbour – and it is the overarching theme that reminds us why the detail is important.

2 WHERE ARE WE GOING?

- 2.1 In 1948, the Universal Declaration of Human Rights was proclaimed, clearly recognizing the inherent dignity of all humans and declaring that:
- “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”⁵*
- “ No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁶*
- “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”⁷*
- 2.2 Arguably, the Aged Care standards are predicated on the concept of “*consumer dignity and choice*” – the same concept that we see in the NDIS space, and echoing the concepts set out in the Universal Declaration of Human Rights.
- 2.3 In essence, Aged Care Providers who are delivering services under the new standards are expected to recognise and support the dignity and autonomy of the consumer, which includes assisting the consumer to access sufficient information to enable them to make informed

⁵ Article I, Universal Declaration of Human Rights

⁶ Article 5, Universal Declaration of Human Rights

⁷ Article 25.1, Universal Declaration of Human Rights



judgments about their options and health care needs. This affords the consumer the “dignity of risk” – that is, the right to make autonomous decisions and to accept responsibility for the consequences of their choices (while still being supported to live productive and meaningful lives at this stage of their journey).

- 2.4 Aged care providers must comply with the Quality Standards from the date of their commencement (1 July 2019) and must demonstrate their compliance on an ongoing basis. The Department of Health may take action in cases of non-compliance, pursuant to the *Aged Care Act 1997* (Cth) (hereafter, “the Act”) and any other relevant aged care legislation or regulations, or through the funding agreement with the provider. Such measures may include issuing a non-compliance notice which may give the aged care provider up to 14 days to respond and make submissions to the authority.
- 2.5 A list of “Current Non-Compliance Notices” is published online, including the identifying details of the aged care provider, and will be removed to a list of “Archived Notices” once the provider has taken appropriate measures to rectify the non-compliance issue.⁸ Failure to take appropriate remediation steps will attract the imposition of sanctions against the organisation.⁹ Of course, the online publication of Non-Compliance Notices poses a significant reputational risk also.
- 2.6 Since the events of Oakden, there is an increased emphasis on audit and compliance throughout the industry and we have seen that the Department can and will shut down a facility for non-compliance. This paper is predominantly concerned with how the new Aged Care Quality Standards will impact upon the provision of home care. For an organisation that coordinates the provision of home care services, the risk of “closure” may be less dramatic than for a residential care facility. However, the publication of non-compliance notices may expose the organisation to public censure and result in a loss of business, providing a social and financial incentive for aged care providers to comply with new and existing regulatory standards.
- 2.7 In addressing this topic, this paper will seek to:
- 2.7.1 Outline the Aged Care Quality Standards, including the key standards which directly affect the governance, legal and compliance requirements of the aged care provider;
 - 2.7.2 Identify the potential impact of the new standards on approaches to governance structures and systems and risk management. This will include a consideration of how the organisation’s governing body can effectively balance its governance duties and responsibilities with the recognised right of consumers to make independent decisions about the care they receive;
 - 2.7.3 Examine the “dignity of risk” – ie, the sense of autonomy, self-respect and empowerment which is fostered when the consumer is equipped to make independent decisions and accept responsibility for the outcomes of their choices; and
 - 2.7.4 Explore examples of potential changes to governance systems within the home care sector.

⁸ <https://agedcare.health.gov.au/ensuring-quality/residential-aged-care-sanctions/aged-care-sanctions-and-notice-of-non-compliance>

⁹ <https://agedcare.health.gov.au/ensuring-quality/residential-aged-care-sanctions/aged-care-sanctions-and-notice-of-non-compliance>



3 INTRODUCING THE CONCEPTS OF “AGED CARE” AND “HOME CARE”

- 3.1 This paper will provide an outline of the new Aged Care Quality Standards affecting governance, legal and compliance requirements. However, by way of introduction and to alleviate any confusion, it is necessary to consider what we mean by “aged care” and “home care”. A helpful legislative starting point is the *Aged Care Act 1997* (Cth) (hereafter, the “Aged Care Act”).
- 3.2 In Schedule 1 of the *Aged Care Act*, “aged care” is defined as “care of one or more of the following types: (a) residential care; (b) home care; and (c) flexible care”. Section 45-3(1) of that Act defines “home care” as “care consisting of a package of personal care services and other personal assistance provided to a person who is not being provided with residential care”.
- 3.1 Under the Aged Care Act, “approved providers” of aged care (home care) services are required to provide:
- 3.1.1 (a) **Services** (ie, the aged care provider must provide services in a way that complies with the Aged Care Quality Standards and any relevant legal and regulatory requirements);
- 3.1.2 (b) **Support** (ie, the services should be delivered in a way that responds to the needs of the consumer and provides the necessary support structure for them to live a dignified and autonomous life); and
- 3.1.3 (c) **Suitable staff** (ie, services must be provided by suitably qualified “key personnel”).¹⁰
- 3.2 Under Part 4.1 of the Aged Care Act, approved providers are currently responsible for providing “such care and services as are specified in the Quality of Care Principles in respect of aged care of the type in question”.
- 3.3 In relation to home care and services, section 54.4 of the Act provides that the Quality of Care Principles may incorporate Home Care Standards (being standards for “quality of care and quality of life for the provision of home care”).¹¹ Approved providers are currently required to comply with the Home Care Common Standards incorporated in Schedule 4 of the Quality of Care Principles 2014, these being:
- 3.3.1 Part 1 - Effective management;
- 3.3.2 Part 2 – Appropriate access and service delivery; and
- 3.3.3 Part 3 – Service user rights and responsibilities.¹²
- 3.4 Each of these Home Care Common Standards consists of (a) an underlying Principle; and (b) a matter indicator which, when satisfied, leads to an “expected outcome”.¹³

¹⁰ *Aged Care Act 1997* (Cth) section 53.1.

¹¹ *Aged Care Act 1997* (Cth) section 54.4.

¹² *Aged Care Act 1997* (Cth), section 54.4.

¹³ Quality of Care Principles 2014, Schedule 4.



- 3.5 For the purposes of this discussion, we have assumed that readers are generally well acquainted with the three Home Care Common Standards which have been in place for some years. Accordingly, our primary focus is on the new Aged Care Standards which will come into effect from 1 July this year. These are found in Schedule 2 of the Quality of Care Amendment (Single Quality Framework) Principles 2018.
- 3.6 To assist home care providers to understand and comply with the new standards, the Australian Government (through the Australian Aged Care and Quality Agency) has produced a publication titled, “*Guidance and Resources for Providers to support the new Aged Care Quality Standards*” (which may be simply referred to as the “Guidance Material”). This material provides helpful commentary on the background and intentions underpinning each of the new standards, the meaning of key terms, and some non-exhaustive examples of “best practice” for organisations engaged in the provision of aged care, including, without limitation, the delivery of home care services. While not legally binding,¹⁴ it is our view that the Guidance Materials will be highly influential and will provide significant interpretative assistance in any litigation concerning the meaning and effect of the new Standards.

4 OVERVIEW OF THE NEW AGED CARE QUALITY STANDARDS

We have already touched on the existing three Home Care Common Standards. In contrast, the Aged Care Quality Standards consist of eight standards, namely:

4.1 Standard #1: Consumer Dignity and Choice

This standard contemplates that the organisation “*has a culture of inclusion and respect for consumers*” and this concept underpins the remaining standards. The organisation is expected to treat consumers in a dignified and respectful manner, and deliver services that are non-discriminatory, responsive to individual consumer needs and support the consumer’s social, cultural and sexual identity.

The outcome, from the consumer’s perspective, is the creation of a safe and supportive “*service culture*” whereby the consumer feels respected, valued, and sufficiently well informed to make choices about their care needs and ventilate concerns and opinions without fear of reprisal. The concept of “Consumer Dignity and Choice” provides the foundation for all of the other new Aged Care Quality Standards which are predicated on delivering safe, effective and high quality aged care services in a way that satisfies consumer needs.¹⁵

Interestingly, this might mean that an organisation has to seriously look at their policies and approaches as acceding to some requests could potentially result in the organisation being guilty of discrimination. For example, if a consumer indicates that they only want a person of a particular race to provide their care, the decision of an organisation to employ a person of that race rather than another applicant would arguably be discriminatory, and would probably not, under the current Queensland legislation, fall into the “genuine occupational requirements” exemption.

It also requires organizations to consider and implement strategies where situations arise where a consumer might differ in approach from their other decision makers, and how

¹⁴ Australian Government (Australian Aged Care and Quality Agency), “Guidance and Resources for Providers to support the new Aged Care Quality Standards” (“Guidance Materials”), page 2.

¹⁵ Aged Care Quality Standards, Standard 1.



consent might deal with if the consumer wishes to take risks or refuse services – and the resulting potential for liability to the organisation.

Self evidently, in order for consumers to make good decisions for themselves, it is important that they have easy access to accurate information which is communicated in a manner in which they can access.

The final part of Standard 1 is to ensure that organisations ensure that they deal with consumers personal information appropriately, and comply with usual privacy standards.

4.2 **Standard #2: Ongoing Assessment and Planning with Consumers**

The expectation is that organisations will partner and engage with consumers to understand their priorities, needs and concerns and to develop care plans and strategies to address these needs and enable consumers to engage in day-to-day life.¹⁶ Therefore, more is required than initial planning and “set and forget”. This is more than a mere contractual negotiation – that is, an agreement to provide services in exchange for payment.

Much like the planning for a client in the NDIS space, the assessment and planning is to include the current needs of the client, as well as their goals and wishes, and must be regularly reviewed. It is necessary for there to be evidence about planning, including consideration of risk, staffing to meet the consumers needs, completion of risk assessments and the like, and consideration of communication strategies.

Similarly to case planning in NDIS, the assessment and planning ought to be multi-disciplinary, and include other organisations providing care, the consumer, and the family and support people that assist and support the consumer. Planning does not occur in a vacuum; it is a matter of coordinating what the consumer needs are, and how they are going to be met, and by whom. The assessment and case planning also need to be documented in a way that is both accessible and available to the consumer and those involved in the plan. For example, provision of the plan in a computer print out for a consumer who is struggling with vision issues and uses Braille to read and decipher text is unhelpful and unlikely to meet the standards required.

The needs of consumers in aged care change regularly, and there is no substitute for a “check in” and review. Although there are no timeframes for the review process, there is an expectation that reviews will occur when a consumer’s condition changes, if your organisation’s service details change, or if an incident occurs meriting a reassessment of existing processes and procedures. It is just good management to have a regular review scheduled, even if that is just a chat and checking nothing has changed as well.

4.3 **Standard #3: Personal care and clinical care**

“Personal and clinical care” may include any one or more of the following:

- supervising or assisting the consumer with their daily ablutions, including showering, bathing and personal hygiene;
- providing “personal mobility aids and communication assistance” to help consumers to work with and overcome hearing, sight or speech impediments;

¹⁶ Aged Care Quality Standards, Standard 2.



- delivering nursing services (wound dressing and management of physical injuries and impairments)
- providing rehabilitative services (restoring and improving post-injury function, mobility and independence) and
- supporting and managing chronic conditions such as illness and intellectual impairment through the provision of specialized therapeutic services.

This standard is essentially that these services will be delivered in a manner that meets the needs of the consumer and meets best practice. From a legal, community and consumer standpoint, it is expected that such services will be delivered in a manner that is safe, effective and non-harmful. It also draws in the ongoing obligations of reassessing when things change, and ensuring that the preferences and needs of the consumer are respected and maximized wherever possible. Ongoing documentation of these things is required.

The nature of provision of Home Care services is such that generally, the work is performed by employees or contractors under limited supervision, and it is important that consideration be given to safety mechanisms to ensure that if there are problems, these are picked up early.

4.4 **Standard #4: Services and supports for daily living**

The consumer should receive sufficient services and supports to enable them to manage and, wherever practicable, overcome the challenges they face in their day-to-day lives. The organisation may deliver a range of services, including assistance with cleaning, laundry and other domestic chores; food advice and meal provision, preparation and delivery; transportation and other logistical assistance for consumers to socialise and attend outings. (For example, the organisation may arrange a bus service to transport consumers to the local club or other community events.) Ideally, this should enable the consumer to live a full, active and (to the greatest extent possible) independent life.¹⁷

In essence, this standard is akin to the NDIS approach of ensuring that consumers have every opportunity to participate fully in the community to the maximum possible extent, and can maintain their social and personal relationships and interests. It is about treating the consumer as a whole person – with social, emotional, and physical needs and attempting to meet their needs.

This standard is really about *quality* of life. Much has been written, for example, about meals for the elderly in different facilities. And though many elderly people have a vastly reduced meal size, so often facilities have ended up with terrible publicity as a consequence of meal quality, and on occasion, meal size. The critical issue here is not specifics so much as big picture – these services and supports are provided for the purpose of enabling a consumer to participate fully in life and the community as they see fit.

4.5 **Standard #5: Organisation's service environment**

The organisation is expected to provide a “service environment” that is inclusive, comprehensible, and supportive of the consumer's legitimate needs for belonging and

¹⁷ Aged Care Quality Standards, Standard 4; see also Guidance Materials, page 72.



acceptance. The term “service environment” refers to the “physical environment that the organisation provides for residential care, respite care and day therapy centres.”¹⁸

The Guidance Materials expressly state that the “service environment” does **not** include the consumer’s home. However, where home care services are provided in conjunction with other therapeutic services and treatments (eg, at a day therapy centre), the relevant “service environment” should be one of acceptance and inclusion.

4.6 **Standard #6: Feedback and complaints**

In order to deliver safe, effective and high-quality services, the organisation must encourage consumers to provide feedback and to identify actual and potential risks in the delivery of home care services. This standard, if satisfied, should lead to the following Consumer Outcome: *“I feel safe, and am encouraged and supported to give feedback and make complaints. I am engaged in processes to address my feedback and complaints, and appropriate action is taken.”* As with all of the standards, the Consumer Outcome is articulated in the first person, and takes into account the consumer’s feelings and experiences.

Under Standard 3, the “*personal care and clinical care*” provided to the consumer must be “safe”. However, for the purposes of Standard 6, it is not enough for the services to be objectively safe – the consumer must actually “feel” safe. Personal safety is a subjective emotion dependent upon a number of variables, including the consumer’s background and lived experiences in their personal history, psychological condition and anxiety level. For example, a consumer who has a history of abuse, or who suffers from a serious anxiety disorder, is far less likely to feel “safe” in a given set of circumstances than a consumer with an unproblematic personal history who does not suffer from anxiety. A consumer who feels unsafe (even in an environment that is objectively secure) should be “supported and encouraged” to express their views without fear of ridicule or reprisal.¹⁹ Similarly, a concerned third party (such as a friend or family member) should be able to make a complaint on the consumer’s behalf.²⁰

Complaints and feedback are often difficult – some people are concerned that provision of feedback is in some way inappropriate, or will result in reprisal action. This standard is about ensuring that feedback (good and bad) will be taken, and considered and acted upon where appropriate. It is important to note that it requires that both the Consumer and their family, friends, carers and others may make a complaint or provide feedback, and that arrangements should be made to ensure that complaints and feedback can be provided in a manner which is comfortable – including via use of interpreters and the like.

It’s never a good feeling to receive complaints – but great companies learn from those complaints – and it is an opportunity to gather the feedback and learn from it. Equally, it is important that organisations do not just accept the feedback and not act – action is required.

¹⁸ Aged Care Quality Standards, Standard 5

¹⁹ Aged Care Quality Standards, Standard 6.

²⁰ Aged Care Quality Standards, Standard 6.



In terms of handling complaints, we suggest that all organisations in this space should be complying with the Better Practice Guide to Complaint Handling published by the Department of Social Services.²¹

The other important thing with complaints is this – in a Home Care scenario, consumers may be reluctant to report concerns if they are dependant upon the services provided by the person they are complaining about. It is important, in my view, to ensure that the consumer has an ongoing relationship with someone in the organisation other than the staff members who operate in their home. The availability of another point of contact within the organisation helps to manage the risks that may be posed by employees who are essentially operating behind closed doors.

4.7 **Standard #7: Human resources**

Standard 7 is concerned with the quality, calibre and knowledge of the persons who deliver the home care services.²² In order to deliver these services in a respectful and high-quality fashion, the organisation must have a competent, qualified and appropriately equipped workforce which is subject to “regular assessment, monitoring and review” of individual and collective performance.

The workforce member who provides the home care services represents the “human face” of the organisation and is generally the consumer’s first point of contact for expressing concerns and feedback. Workforce members should constantly demonstrate kindness, care and courtesy and deliver services in a way that acknowledges and dignifies the needs, desires and preferences of the individual. You are required to support your workforce by providing the necessary tools and training (including sensitivity training) to enable them to comply with the Aged Care Standards.²³ Given that these employees will be given the privilege of supporting a consumer in their home, it is recommended that you have good recruitment procedures in place to ensure that they are worthy of the significant trust placed in them.

Employees and contractors delivering services for you are your greatest asset – or your biggest risk. It is also increasingly difficult to attract the right people – aged care often is competing with higher paying jobs, and increasingly the increase in the NDIS space has meant that some of the staff in aged care have shifted across. Employers need to creatively consider what they can do to attract, train and retain the right staff in order to ensure that this standard is met.

4.8 **Standard #8: Organisational Governance**

This standard is associated with the following Consumer Outcome: *“I am confident the organisation is well run. I can partner in improving the delivery of care and services.”*

In the Guidance Material, the term “partnership” is defined as a *“working relationship between two or more people”*. In the context of the new Aged Care Quality Standards, *“partnership refers to organisations finding ways to work with consumers and listening to their needs, goals*

²¹

https://agedcare.health.gov.au/sites/default/files/documents/05_2014/better_practise_guide_manual.pdf

²² Aged Care Quality Standards, Standard 7.

²³ Aged Care Quality Standards, Standard 7.



and preferences to plan their care and services.” Therefore, the organisation should collaborate and consult with consumers to formulate governance systems and processes to enable consumers to make informed choices about their care needs. This contributes to a sense of dignity, autonomy and self-respect on the part of the consumer.

Practically, there are a range of organisational policies and procedures that really need to be in place covering a range of matters in order to meet this standard – and many of them will only peripherally involve consumers. But the critical part is that there is engagement with the consumer.

Engagement requires communication – and so there ought to be a strategy in place for ensuring communication moves freely.

5 RELATIONSHIP BETWEEN STANDARD 8 AND THE OTHER AGED CARE QUALITY STANDARDS

- 5.1 The Guidance Material indicates that “*Standard 8 supports all of the other Aged Care Quality Standards*”, by promoting the delivery of safe, effective and high-quality services to the consumer and **implementing governance systems which allow this to occur**.²⁴
- 5.2 The task before home care providers is to ensure that their policies and governance systems, as they facilitate the meeting of each of standards 1 - 7, are comprehensive and implemented in a way that achieves effective compliance with the standards. This should not be a case of “set and forget”- the expectation is that the organisation will put policies and governance systems in place, and then conduct regular reviews to ensure that these are being complied with and that the policies and procedures enable the organisation to achieve the requisite standards. In essence, Standards 1 – 7 are concerned with the content of these policies and procedures (ie, what these practices should be occurring in order to deliver the desired outcomes). In contrast, Standard 8 deals with policy – how to ensure that the “big picture” governance arrangements, policy and procedure documents support the delivery of services in a manner which meets the requirements of Standards 1 – 7.

6 POTENTIAL IMPACT OF THE NEW STANDARDS ON APPROACHES TO GOVERNANCE STRUCTURES, GOVERNANCE SYSTEMS, RISK MANAGEMENT AND PROCESSES

- 6.1 The New Aged Care Standards: An Increased Consumer Focus
- 6.1.1 In comparison with the current Home Care Common Standards, the Aged Care Quality Standards demonstrate an increased focus on consumer feelings, perceptions and experiences of the delivery of home care services. The outcomes for all of the Aged Care Quality Standards are expressed from the consumer’s perspective, using personal pronouns such as “I” and “my”.²⁵ This underscores the fact that each consumer is an individual whose needs, opinions and preferences are worthy of respectful recognition and support and really

²⁴ Guidance Material, page

²⁵ For example, see Standard 5: “I feel I belong, and I am safe and comfortable in the organisation’s service environment”; and Standard 6:



implements the fundamental standards set out in the Universal Declaration of Human Rights.²⁶

- 6.1.2 This approach also follows the push for choice and self determination that we have seen in the National Disability Insurance Scheme, and moves this area into a clearly consumer focused system.
 - 6.1.3 Additionally, we see similar concepts are arising in this space as have been set out in the Child Safe Standards enunciated by the Royal Commission into Institutional Child Sexual Abuse around the ability of consumers (and their families) to have active input into the policies, procedures and services that are provided.
 - 6.1.4 The difficulty for organizations really is that the expected outcomes in the Standards are often highly subjective, and the reality is that no matter how much effort is put into delivering services that are designed to meet the needs of your client, we all know that there are some consumers that simply will not feel that the standard has been met in their particular case.
 - 6.1.5 There is an increasing move within the sector away from care in institutions and towards support and care in homes so that the nature of services for consumers is changing. As a result, we expect that purely high care facilities may well have residents staying for shorter periods, we may see organisations moving to provide different mixes of services and supports, and we anticipate seeing a greater collaboration and potentially mergers in the sector. These must all be managed from a governance perspective as whilst they are opportunities, they are also risks.
 - 6.1.6 Additionally, there must, by necessity, be some balancing of approach. Organisations will have potential exposure to liability that will need to be managed, a consumers capacity to make decisions will fluctuate (capacity is not static), organisations may well be dealing with receiving competing instructions from the consumer and their loved ones, and it may simply be the case that the nature of the choice that the consumer wishes to make is not available from the organisation or in the local area.
 - 6.1.7 The ‘sleeper’ issue for organizations may well be that this consumer focus may well lead to litigation about that applicability of the Australian Consumer Law to this space. For example, the potential for there to be claims by consumers of misleading and deceptive conduct by the organization.
- 6.2 Requirement 8.1 – Consumer Engagement
- 6.2.1 The organisation must demonstrate that its consumers are “**engaged** in the development, delivery, and evaluation of care and services” and receive appropriate levels of organisational support for such engagement.²⁷ The underlying intention is that organisations will adopt a “consumer-centred” approach to the development, delivery and evaluation of aged care services.

²⁶ Aged Care Quality Standards, Standard 1 (Consumer Outcome).

²⁷ Aged Care Quality Standards, Standard 8.



- 6.2.2 Interestingly, this concept extends beyond simply seeking input from a diverse range of consumers. It requires that organisations must demonstrate that consumers have not only had their views sought, but that the consumer is engaged in the process. It requires the organisation to review and respond to such information by addressing any concerns and developing and implementing plans to improve consumers' experiences of home care.
- 6.2.3 Governing boards of home care providers should seek to implement policies (or review their existing policies), to examine how they can actively engage consumers in the development, delivery and evaluation of the care which they receive. One of the fascinating considerations is how to actually engage the consumer – because some consumers are going to be far more interested in engaging than others. It also means there is a need for communicating with consumers and stakeholders more generally.
- 6.3 Requirement 8.2 – A Safe and Inclusive Culture for Quality Care and Services
- 6.3.1 In addition to consumer engagement, the organisation is required to demonstrate that its governing body *“promotes a culture of safe, inclusive and quality care and services and is accountable for their delivery.”* The expectation is that the leadership of and direction adopted by the organisation's governing body will promote an organisational culture that prioritises the delivery of safe, inclusive and high-quality aged care services to consumers. Such organisational objectives should be clearly and meaningfully articulated in both internal communications (between consumers and staff members) and external communications (such as press releases and publications of the organisation).
- 6.3.2 Borrowing from the Child Safe Standards, we recommend that this is an organisational cultural issue, and culture, really, should start from the top. It should be that the organisation makes a public commitment to safe, inclusive and quality care and services, and is able to articulate in documents how that commitment plays out during day to day service provision.
- 6.3.3 There needs to be a clear accountability framework for all managers and leadership, staff, volunteers, consumers and stakeholders about what is expected, their roles and responsibilities in meeting the organisations commitment. Leaders need to model and promote the commitment to safe, inclusive and quality care and services, and it needs to be front and centre in day to day activities. One option is to make it a standing agenda item for boards to consider a snapshot of key risk indicators.²⁸
- 6.3.4 This requirement links with Standard 3 (“Personal care and clinical care”), which contemplates that high-quality personal and clinical care will be delivered to consumers in a way that is safe and effective and lead to optimised “health and wellbeing” outcomes.²⁹
- 6.3.5 Issues may arise in circumstances where care is being provided to a people from diverse backgrounds. Larger providers will likely have a well developed policy

²⁸ For further discussion, we recommend you look at the publication, “Adding value to governance in aged care: a practical guide for any potential or current member of a board of an aged care provider”

²⁹ Aged Care Quality Standards, Standard 3.



with respect to ensuring diversity is respected and all people have their needs met “where they are at” irrespective of their race, culture, gender, sexual preferences.

- 6.3.6 To the extent that organisations do not already have such policies in place, this needs to be addressed. The concept is simple. Meet people where they are at – whatever their personal background, try to meet the needs that they have as an individual. Thankfully, we are not all made the same, we are all individuals, and thus life is not boring. But this really is about respecting the individual, rather than simply catering to specific needs of specific people only.
- 6.3.7 Smaller providers too should be ready to accommodate the sensitivities of people receiving care by exploring a client’s background and engaging with the client and staff to ensure that care is inclusive and promotes client choice and safety.
- 6.3.8 There are useful resources available from the Department of Health (please refer to the Aged Care Diversity Framework & action plans available).³⁰
- 6.3.9 It is also important that your policies address the issue of safety – and one of the critical things that you can do is to ensure that your employment policies and procedures are such that you get the right employees, employees who are safe with consumers.
- 6.3.10 For example, as a provider, you support your clients in making informed choices by demonstrating that:
- a Clients can access information on their care in their own language;
 - b Your organisation has a Use of Interpreter Services Policy which explains to a client that they are entitled to an interpreter, how they can access an interpreter, and how the provider will assist in obtaining free interpreting supports where they are available;
 - c Consultations with clients, carers and families occurs to ensure that forms and information resources are simple and clear;
 - d Try to ensure where possible that your contracts, forms, statements, and policies use “plain English” – the documents might end up being longer, but if only a lawyer can read a document, no one but a lawyer will use it!
 - e Support is offered to clients to connect with local community organisations who can offer support, information and advocacy³¹.
- 6.4 Requirement 8.3 – Effective Organisation Wide Governance Systems
- 6.4.1 Requirement 8.3 contemplates the implementation of “organisation-wide governance systems” relating to:
- a information management;
 - b continuous improvement;

³⁰ <https://agedcare.health.gov.au/older-people-their-families-and-carers/people-from-diverse-backgrounds>

³¹ https://agedcare.health.gov.au/sites/default/files/documents/02_2019/actions-to-support-older-cald-people-a-guide-for-consumers.pdf



- c financial governance;
- d workforce governance (including the establishment of a clear hierarchy of responsibility and accountability for the performance of organisational tasks);
- e regulatory compliance (including adherence to relevant statues, rules and regulations); and
- f consumer complaints and feedback.

6.5 Information management systems

These systems seek to regulate and control the availability and accessibility of information within an organisation. Such information must be collected, maintained, used/ disclosed and ultimately destroyed in accordance with relevant privacy legislation (including the Australian Privacy Principles, which restrict and regulate the circumstances in which “personal information” and “sensitive information” can be collected and disseminated). An effective information management system will (a) ensure that helpful and relevant information is made available to the “appropriate members of the workforce” and (b) provide consumers with sufficient information to enable them to make informed decisions about their care needs, whilst still protecting their privacy.

Allowing consumers to access their health care information is consistent with the concept of “consumer dignity and choice” articulated in Standard 1, and is a requirement of the Australian Privacy Principals. Generally speaking, an informed consumer is an empowered consumer – being more equipped to balance competing factors and make informed judgments about what is in their best interests. This, in turn, should allow the consumer to assume the “dignity of risk” – the privilege of determining their own care plan and assuming responsibility for the consequences of their choice – just as they have probably done since they were a teenager.

It is important to ensure that considerations of what to do in the event of a data breach are also considered – particularly where data is held electronically.

6.6 Continuous improvement systems

“Continuous improvement” refers to an ongoing organisational commitment to monitoring and enhancing the safety, quality and efficacy of home care services, particularly by collecting and reviewing consumer feedback and implementing plans to address identified areas of risk.

The planning aspect of “continuous improvement” is closely aligned with Standard 2 (“Ongoing assessment and planning with consumers”). Standard 2 seeks to achieve the following Consumer Outcome : *“I am a partner in ongoing assessment and planning that helps me get the care and services I need for my health and wellbeing.”* Therefore, the consumer should be actively engaged in planning and designing care strategies which satisfy their individual needs. In order to satisfy this objective, the organisation must be able to show that *“the outcomes of consumer planning are effectively communicated to the consumer and are adopted in a care and service plan that is readily available to the consumer, and where care and services are provided.”*³²

Continuous improvement is more than just engaging with consumers in ongoing assessment and planning. It is learning from your employees who are the organisations eyes, ears, hands and feet. It is learning from critical incidents. The last thing before a complaint or item of

³² Aged Care Quality Standards, Standard 2.



feedback is closed off should be, “What can we learn from this??” Reflective practice, irrespective of the area you work in, is a valuable skill and practice. Get into the habit, as an organisation, of looking at what was done well (and providing that feedback to staff!), what was lacking, and what can be learnt from a situation.

6.7 Financial governance

The organisation’s financial resources have a direct impact on the quality of its services and consequently, its ability to comply with the new Aged Care Quality Standards.³³ For this reason alone, organisations should implement appropriate accounting and record keeping systems to monitor the organisation’s expenditure and ensure accountability. Regular internal audits should be conducted to ensure that the organisation’s books are up-to-date and accurate, and to minimise the possibility of fraud.

Many of the organisations providing care services are operating in a charitable or not-for-profit space. Quite apart from the usual expectations of good financial governance, charities and not-for-profit entities in Australia are charged with managing resources donated by the public. There is a legitimate expectation that such funds will be used wisely to further the charitable aims of the entity – not to be misappropriated or used improperly for the benefit of a favoured few.

6.8 Workforce governance

Workforce governance is concerned with ensuring that the right people are in the right places doing the right things. As per Standard 7 (above), workforce members should be competent and appropriately qualified (and receive the necessary training) to deliver home care services to the consumer in a respectful, courteous and sensitive manner that takes into account individual consumer needs, desires and preferences.³⁴

But above all, recruiting workers needs to be undertaken in a careful manner including appropriate criminal history checks, traffic history checks (for those providing transport to consumers) and reference checking. Those employees and members of your workforce then need to have appropriate inductions and training, and ongoing training and support.

6.9 Regulatory compliance

Providers of aged care services must comply with various legislative provisions and regulations in order to deliver services in a safe, responsible and non-discriminatory way. We anticipate that most aged care providers will have regulatory compliance systems to ensure that the workforce is aware of the applicable laws and standards they are required to meet. However, this really relates to having good policies in place, and training staff in the policies and procedures.

6.10 Consumer complaints and feedback

The organisation must have in place policies and procedures to enable consumers to provide feedback on the services they receive. Consumers must be “supported and encouraged” to provide both negative and positive feedback to enable the organisation to pinpoint areas in which improvement is required.

6.11 Requirement 8.4 - Risk Management

³³ Guidance Material, page 138.

³⁴ Aged Care Quality Standards, Standard 7; see also Guidance Material, page 139.



6.11.1 The organisation is required to demonstrate “effective risk management systems and practices”. These include, without limitation:

- a **Managing high-impact or high-prevalence risks associated with consumer care.** As noted above, Standard 3 of the new Aged Care Standards focuses on the delivery of personal care services (eg, domestic services, foods preparation and transportation) and clinical care (eg, nursing, physiotherapy, and injury management). Inevitably, the delivery of such services involves a degree of physical, emotional and psychological risk.

Depending on the nature of the service and the consumer to whom it is provided, some risks may be more common than others. The organisation is required to identify, assess and manage the risks associated with these services, and to implement policies and procedures to alleviate preventable harm. This may include analysing incidents and “near misses” to ascertain the causes and contributing factors behind these occurrences. The organisation should then implement policies and procedures to address these factors, thereby minimising the risk of reoccurrence. This clearly reflects the organisation’s commitment to “continuous improvement”;³⁵

- b **Identifying and responding to abuse and neglect of consumers.** Elder abuse has become an increasingly topical issue in recent years.³⁶ Organisations must implement appropriate procedures for identifying incidences of abuse and neglect; reporting such incidences (both to the organisation and to the appropriate legal authority). When in doubt – report! and

- c **Supporting consumers to live an optimal and productive existence:** Aged care provides should implement processes and procedures, not only to manage and mitigate risk, but also to promote human flourishing at this stage of life. Realistically, the whole regime is about caring for vulnerable people in our community. Amongst all the policies and procedures, it is helpful to remember that they are there to promote and facilitate consumers of aged care to live a productive and optimal life.

6.11.2 As previously noted, the new Aged Care Quality Standards demonstrate an increased emphasis on consumers’ needs (rather than a series of impersonal rules and regulations with which the aged care provider is required to comply). To promote the objectives of “consumer dignity and choice” (enshrined in Standard 1) consumers should be provided with sufficient information to make informed and autonomous decisions about their care needs. However, the concept of consumer autonomy in decision-making must be balanced against the organisation’s obligation to effectively and responsibly manage risk. This includes the potential risk to the consumer who is making the decision, and to other consumers who may be affected by that decision. The balancing process is explored below in our discussion on the “dignity of risk”.

6.12 Requirement 8.5 - Clinical governance framework

³⁵ Australian Government (through the Australian Aged Care Quality Agency), “Guidance and Resources for Providers to Support the new Aged Care Quality Standards” (published August 2018), page 142.

³⁶ Ibid



- 6.12.1 An organisation that provides clinical care is expected to implement a “clinical governance framework”. The New Quality Standards reference the National Model Clinical Governance Framework published by Australian Commission on Safety and Quality in Health Care in 2017³⁷. A detailed review of this framework is beyond the scope of this paper, however the clinical governance framework should seek to manage all risks related to the personal and clinical care for each consumer, for example:
- a managing hydration and nutrition;
 - b managing risks of choking;
 - c managing medications safely;
 - d managing pain;
 - e preventing and managing pressure injuries;
 - f minimising restrictive practices;
 - g managing delirium; and
 - h managing hearing loss³⁸.
- 6.12.2 The Guidance Material indicates that:
- a consumers should be provided with a forum to express concerns or satisfaction with the care being provided (including whether the workforce properly explains risks to their well-being), and are provided with an opportunity to have input into the steps to reduce the risks;
 - b the workforce is trained and able to identify, assess and manage high impact or high-prevalence risks to consumers when delivering personal or clinical care, and received training on how to get information or advice on best practice to manage high-impact or high-prevalence risks;
 - c the governing body develops, reviews, maintains and effectively implements policies and procedures which seek to manage high-impact or high-prevalence risks to the safety, health or well-being of consumers using best practice guidelines, decision-making tools and protocols;
 - d the provider ensures that risk assessments and care and services plans are documented for each consumer and keeps written evidence that the organisation delivers personal and clinical care pursuant to these assessments and care and services plans (including allied health input); .
 - e the providing should ensure that it documents ‘near-misses’ and incidents and records the actions taken to address identified risks;

³⁷ • Australian Commission on Safety and Quality in Health Care, National Model Clinical Governance Framework, Sydney, ACSQHC, 2017

³⁸ Australian Government (through the Australian Aged Care Quality Agency), “Guidance and Resources for Providers to Support the new Aged Care Quality Standards” (published August 2018), pages 51-52;



- f the provider should regularly communicate with the workforce (and keep evidence of regular communications) to demonstrate that the workforce is updated on new or changed practices to assess and manage high-impact or high-prevalence risks to consumers' safety, health and well-being; and
- g the provider should engage in "continuous improvement", including regular reviewing of policies, procedures and practices based on evidence (and maintaining evidence of reviews)³⁹.

6.13 Monitoring Compliance with the New Standards

6.13.1 In order to satisfy the standard of "Organisational Governance", the provider must comply with five requirements set out in the new Aged Care Standards (set out below). The organisation must demonstrate that it understands the requirement and is delivering care and services in a way that clearly indicates compliance with the requirement.⁴⁰ Additionally, it is expected that the organisation will monitor compliance with the requirement and review the outcomes achieved with a view to continuously improving organisational performance.⁴¹

- a "How does the organisation involve a diverse range of consumers in developing, designing and evaluating their care and services?"⁴²
- b Does the organisation offer a "range of ways" for consumers to provide feedback?⁴³

For example, consumers from diverse cultural and linguistic backgrounds (for whom English is a second language) may struggle to complete a written questionnaire which asks them to detail their experiences. In these circumstances, the consumer should be provided with opportunities to express their views verbally, either in English or in their native tongue, with a trusted relative or friend to act as an interpreter.

The organisation's staff should also adopt culturally appropriate strategies for addressing elders (eg, in many Asian cultures, juniors are expected to use certain "honorifics" when addressing elders, or in indigenous communities, it might be appropriate to use terms such as "Uncle" or "Auntie"). Seeking and responding to feedback in culturally and linguistically appropriate ways may enhance consumer confidence that their views are being taken seriously and will be addressed in the delivery of home care services.

- c What systems have been implemented to request, consider and action consumer feedback to create a service culture of "continuous improvement"?⁴⁴

³⁹ Australian Government (through the Australian Aged Care Quality Agency), "Guidance and Resources for Providers to Support the new Aged Care Quality Standards" (published August 2018), pages 53-54.

⁴⁰ Australian Government (through the Australian Aged Care Quality Agency), "Guidance and Resources for Providers to Support the new Aged Care Quality Standards" (published August 2018), page 131.

⁴¹ Ibid page 131.

⁴² Ibid page

⁴³ Ibid page



The Guidance Materials recommend that the organisation maintains records of the nature and extent of consumer involvement in developing and evaluating home care services. Such records should include “planning and budget documents that have identified effective times and places to engage with consumers”. Some consumers may be more attentive, alert, and able to express their opinions and views at certain times of the day. For example, a consumer who suffers from insomnia or narcolepsy may not be able to provide meaningful feedback in the morning.

- d Does the organisation have a relationship with any consumer advocate and community representative groups? If so, to what extent are these groups involved in the development, delivery and evaluation of the care and services the organisation delivers?

7 DIGNITY OF RISK – EXPLORING DIGNITY OF RISK UNDER THE NEW STANDARDS

7.1 The Guidance Material defines dignity of risk as:

“the concept that all adults have the right to make decisions that affect their lives and to have those decisions respected, even if there is some risk to themselves. Dignity of risk means respecting this right. Care and services need to strike a balance between respect for the individual’s autonomy and the protection of their other rights (such as safety, shelter), unless it is unlawful or unreasonably impinges on the rights of others”⁴⁵.

7.2 The concept of dignity of risk is central to the new Quality Standard’s increased focus on consumer choice and supported decision-making. Indeed, it is the underlying concept of the new Standard 1, the foundation standard that supports the way consumer directed care is implemented through the other new Aged Care Quality Standards.

7.3 As mentioned previously in this paper, Standard 1 provides the following consumer outcome:

“ I am treated with dignity and respect and can maintain my identity. I can make informed choices about my care and services and live the life I choose.”⁴⁶

7.4 It is this shift to a consumer choice focus which underlies the changes to the governance systems and practices which must be embraced by providers in the industry if they are to comply with new Quality Standards.

Requirements for approved providers:

7.5 In respecting consumer rights and supporting consumers to take risks, approved home care providers will be expected to demonstrate specific requirements such as:

- 7.5.1 each consumer is supported to take risks to enable them to live the best life they can;

⁴⁴ Ibid page 131.

⁴⁵ Australian Aged Care Quality Agency, Commonwealth, ‘Guidance and Resources for Providers to support the new Aged Care Quality Standards’ (August 2018)

⁴⁶ *Quality of Care Amendment (Single Quality Framework) Principles 2018* (Cth) s 35



- 7.5.2 information provided to each consumer is current, accurate and timely, and communicated in a way that is clear, easy to understand and enables them to exercise choice.⁴⁷
- 7.6 Such requirements highlight that, under the new standards, home care providers may need to reassess their attitudes towards risk and its management. Rather than implementing ways in which risk could be avoided, the new standards require providers to focus on ways to mitigate the risk and support consumers to do what they want to do safely where possible. Receiving clear information about the potential risks of their decisions becomes critical in successfully managing risk and consumer choice.

Balancing consumer's dignity of risk and providers duty of care

- 7.7 The new standards provide the framework for incorporating dignity of risk in all aspects of home care by supporting a rights-based approach to decision-making. To effectively implement this approach however, providers must balance respecting consumer rights with their own exposure to liability arising from their duty of care to consumers.
- 7.8 Given the importance placed on a consumer's right to choice and control, it is paramount that providers have a framework in place to deal with risk as it arises. In this respect, policy development guidelines have been developed, which provide an evidenced-based framework for providers to develop policy and risk management processes which guide staff in supporting the consumer's dignity of risk by engaging in supported decision making.
- 7.9 These guidelines, developed by the Cognitive Decline Partnership Centre⁴⁸, suggest a potential framework and structure for policies that align with the incoming standards. They include the following key actions:
- 7.9.1 *Develop a high-level policy document which conceptualises the organisation's approach to decision-making, capacity and consent*⁴⁹
- a This would involve a policy that recognises a person's fundamental right to make their own decisions and to accept the risks associated with those decisions. Policies should encourage providers to accept decisions made by consumers with decision-making capacity (regardless of whether or not they agree with them) provided they are not unlawful and do not interfere with the rights and safety of others.
 - b Where a consumer lacks decision-making capacity, the policy should adopt practices that ensure consumer preferences continue to be respected and considered. This may involve staff working proactively with consumers to document experiences such as life histories and develop care plans as documents that might assist in considering consumer preferences in future decision making scenarios.
- 7.9.2 *Clarify the role of supporters, representatives and advocates with respect to the organisation and the individual client or resident, as well as the principles underpinning supported and substitute decision-making*

⁴⁷ Ibid

⁴⁸ Sinclair, C., Field, S., & Blake, M (2018). Supported decision-making in aged care: A policy development guideline for aged care providers in Australia. (2nd Edition) Sydney: Cognitive Decline Partnership Centre.

⁴⁹ Ibid at p23-24



- a It is not uncommon for consumers to require or request the assistance of other parties, particularly family members, in making decisions. Creating a policy that clearly defines the role of each supporting party will allow for the effective collaboration of making decisions that are consistent with dignity of risk under the new standards.
- b Clarifying each party's role requires providers to clearly define the responsibilities of each participant and to provide guidance for how they might function in their role. For example, ensuring supporters and advocates know what information they require to support decision-making and how to access this information and ensuring representatives (those making decisions in place of the consumer) understand that their decision-making takes place only as a last resort.
- c Staff should be provided with clear guidance as to how they may best support a consumer's decision-making capacity. This could come in the form of providing specific resources such as communication aids that support persons with sensory impairment in exercising choice.

7.9.3 *Provide decision-making tool, to clarify processes relating to how staff may respect a person's will and preference in the context of risk*

- a The implementation of decision-making strategies allows providers to mitigate risk and facilitates the safe execution of consumer choices. Where consumer choices are potentially harmful, providers can continue to support dignity of risk by having processes in place that call for the discussion of these risks with the consumer in a way that ensures they are clearly understood. Appropriate documentation should be in place to record these processes and to show that they are involving consumers in developing risk mitigating strategies.
- b When a provider's duty of care outweighs the consumer's right to exercise choice, it may be reasonable to decline a consumer's request. In continuing to meet their obligations under the new standards, providers must ensure that the reasons for refusing a consumer request are clearly explained to the consumer and documented in writing. Having decision making procedures documented and clearly communicated to all involved becomes crucial in reducing a provider's risk of negligence.
- c Disclaimers may be considered a useful tool for mitigating risk in the decision-making process, particularly where consumers want to engage in activity with an element of risk. Whilst the purpose of a disclaimer may be to waive a provider's liability, it is important to note that they may not be enforceable in all cases, particularly since questions of capacity and unequal bargaining power are not uncommon within the aged care industry. Additionally, disclaimers can be interpreted by consumers as a lack of care or interest in the consumer but rather a self interest in avoiding risk to the organisation.

A signed waiver may provide *some* assistance in cases where a consumer does take action against a provider, especially in circumstances where the provider considers that the consumer should exercise their right to take a risk. To better protect their interests, providers should consider using a more tailored approach, such as setting out in documentary form the risks of proceeding, and a specific release/indemnity to those risks. Whilst such a document can be prepared as a relatively simple form for staff, the



likelihood is that it is of greater protection than a plain disclaimer, and it gives an opportunity to engage in dialogue with the consumer about the concerns for their safety and wellbeing, but allowing support for them making their own decision. This is because it goes through the process of analysing potential risks, setting out any recommendations, and then gives a release and indemnity in respect of those matters⁵⁰.

- d Importantly in home care, it must be remembered that consumer choices will inevitably conflict with other obligations upon the organisation at times. Consequently, whilst organisations are required to assess and meet the client's needs as an individual where they can, consumers will not always be able to exercise unfettered choice and this should be communicated to them and all staff and documented.

This is tacitly acknowledged in the guidance material to the new standards, "it's expected that providers manage consumer choices and respect dignity of risk in line with their agreement with the consumer, their rights and responsibilities under the Aged Care Act 1997, and their obligations under competition and consumer law."⁵¹ It may be that certain services simply can not be provided by the organisation, or that services of the sort that the consumer wishes are not available in the local area for example.

7.9.4 Ensure that safeguards are in place to deal promptly with suspected abuse or undue influence⁵²

- a In the context of decision-making, policies pre-empting, detecting and appropriately responding to undue influence over a persons decision making need to be in place and communicated to staff. Staff should have access to guidelines that assist them in assessing any signs of concern and provide reporting pathways where there are concerns and clear policies on documentation and communication of concerns with other members of the care team. Effective safeguards help to ensure the protection of consumer dignity of risk by ensuring that the decisions are being made by the consumer, in accordance with their preferences.

8 EXPLORING POTENTIAL CHANGES TO GOVERNANCES SYSTEMS IN HOME CARE TO MEET REQUIREMENTS

- 8.1 All providers should familiarise themselves with the new Quality Standards and conduct a systematic and thorough review of their governance systems, policies and processes. It is likely that the reform to the Quality Standard will call for many policies to be reviewed and recast in a way which places dignity of risk as the cornerstone of each policy and procedure.

⁵⁰ 'Julie McStay', *Disclaimers in Aged Care: Are they worth the paper they're written on?* (Web page) <<https://www.australianageingagenda.com.au/2015/08/27/34320/>> article on aged care from Australian Ageing Agenda

⁵¹ Australian Aged Care Quality Agency, Commonwealth, 'Guidance and Resources for Providers to support the new Aged Care Quality Standards' (August 2018) at p 7

⁵² Sinclair, C., Field, S., & Blake, M (2018). Supported decision-making in aged care: A policy development guideline for aged care providers in Australia. (2nd Edition) Sydney: Cognitive Decline Partnership Centre at p27



Every organisation is different, and the Mission Statement, Services provided, location, existing strategy and policies and culture will necessitate a consideration of what governance systems and policies and procedures ought to be reviewed and adopted by your organisation.

- 8.2 In our view, the starting point is the Mission Statement, or the “big picture” policy documents pertaining to the overall direction of the organisation. Boards should review the ensure that the Mission Statement reflects the inherent dignity of all individuals and clearly sets out that there is an emphasis on a culture of *safe, inclusive and quality care and services*. If a provider’s approach to inclusivity and ensuring that consumers perception of safety has not been explicit, policies should be updated accordingly.
- 8.3 Policies and procedures which incorporate and document consumer engagement and consultation at every stage will be critical. Consideration should be given to ensuring that there is a communications policy that sets out the communications that consumers and stakeholders can expect to receive (from the Board down) and how consumers and stakeholders can participate fully in communications with management.
- 8.4 Privacy Policies and policies relating to data security need to be reviewed and updated, and consideration needs to be given during that process to information management as a general tool – so how you will obtain information, and ensure that it is shared with the staff and managers who need it. If a consumers preferences are known, this needs to be recorded so that it is not the case that only one employee knows the needs and preferences of a consumer. We anticipate that in driving the need to provide services, as well as the need to be cost efficient, there will likely be increasing reliance upon technology – such as a profile for each consumer where staff can record likes, dislikes, needs, preferences, planning and risk assessments. Maintaining such records can be done more efficiently with the use of technology, perhaps by tablet that is able to access information from a central area. However, this would require good information management controls, and ensuring that staff are adequately trained in privacy and appropriate policies to that end.
- 8.5 Of particular relevance in a home care context, and especially where consumer choice and dignity is central, is the concept of supported decision making and consent. The need for a high-level policy document which conceptualises the organisation’s approach to decision-making, capacity and consent becomes particularly stark where a consumer is living in their own home, receiving home care, and their capacity to make decisions may be gradually deteriorating or intermittent.
- 8.6 Especially in a home care context, where providers or members of their workforce may be requested to assist with any number of tasks to support a consumer (perhaps without notice), providers must, in their policies and training, ensure that an adult with decision-making capacity are supported in their right to make and enact decisions, unless these are unlawful, or unreasonably impinge on the rights of others, and an adult who lacks decision-making capacity still has a right to have their will and preference respected, with consideration and balance of their other rights and the rights of others.
- 8.7 While by no means a new challenge, the task of complying with obligations under Workplace Health & Safety legislation (to provide a safe workplace) while supporting decisions of consumers is set to become more difficult. Is the provider’s workforce trained to communicate effectively with management and the consumer where a request poses a risk to their safety in a way which also complies with the Quality Standards? Similarly, circumstances can often arise where a consumer themselves poses a risk to a workforce member. Careful assessment and thorough documentation is likely required to ensure compliance with the Quality Standards, and other Aged Care Principles generally. Additionally, it will be important for assessments to be undertaken by people that are not providing the “in home” care on a daily basis.



- 8.8 Service Charters or Standards that cover consumers rights to a safe, inclusive and respectful service free of discrimination will be important.
- 8.9 Complaints policies are critical.
- 8.10 Staffing policies should be in place and should ensure that the recruitment of staff (including appropriate pre-screening), training of staff, and retention and support of staff is included. Reporting lines should be clear, and there should be reasonable supervision of cases to ensure that any difficulties are picked up early.
- 8.11 Policies should be detailed enough to specify how the provider intends to apply of the requirements detailed in the Quality Standards, monitor their application and the targeted outcomes, and processes for review of outcomes and adjustment of practices to foster continued improvement.
- 8.12 Key to navigating this terrain will be clear policies and documented procedures, a well trained and monitored workforce who are sensitive to the needs of consumers from diverse backgrounds (and training and employment policies in this regard), excellent record keeping, and strategies for escalation of matters which may require input from management or the governing board itself. The ability of the provider to communicate well and engage with its consumers, particularly where the governing board decides to implement a policy which may ultimately restrict consumers choice, will be vital to compliance and maximising the satisfaction of consumers.

9 CONCLUSION

- 9.1 In many respects, whilst many of the principles approaches and requirements under the new Quality Standards are new to Aged Care, there is little new under the sun. A consideration of the Child Safe Standards recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse and the general principles in respect of the NDIS plan show that many of the concepts and approaches in these spheres have found their way into the Quality Standards we see here. For organisations already familiar with these approaches, a sensible approach is to 'borrow' from those areas in development of policies and procedures.
- 9.2 Ultimately, the "proof is in the pudding" and we anticipate that these Standards, and the guidance materials may well be amended over time. The approach should be to work through the standards and ensure that your governance, policy and procedures are in place over the next 3 months, with a view to reviewing each regularly to ensure continuous improvement, meeting best practice, and that as changes occur, these documents are amended as a result.