



New Aged Care Act: Frequently Asked Questions

You can submit a question about elements included in this consultation paper to agedcarelegislativereform@health.gov.au.

Where an answer has not already been provided, responses will be added to this Frequently Asked Questions page.

When is the draft Bill for the new Aged Care Act expected to be released for public consultation?

An Exposure Draft of the Bill for the new Act is expected to be released for public consultation later in 2023.

The Department will provide a range explanatory materials and consultation activities, encouraging older people, their families and carers, workers, the sector, along with other aged care stakeholders to have a say about the draft Bill.

When will the new Aged Care Act take effect?

Pending passage of legislation, the new Aged Care Act is planned to commence from 1 July 2024, with the home care component to be built in from 2025.

How will timing for the commencement of the new Aged Care Act and commencement of the Support at Home Program align?

Subject to Parliamentary passage, the new Act is planned to commence from 1 July 2024. The new Act will contain the statement of rights and the new regulatory model, and establish common eligibility requirements and a single point of entry to the aged care system. The new Act will present a holistic picture of Commonwealth funded aged care services and will be structured to support the new home care program commencing in 2025.

What are the objects of the new Aged Care Act and what will it cover?

We anticipate that the Objects of the Act will be drawn largely from those specified by the Royal Commission in Recommendation 1 of the Final Report, with some adjustments – noting that the new Act also needs to cover the scope of activities currently outlined in the Commission Act. We will also be adjusting based on consultation and in line with the development of our Statement of Rights and Statement of Principles.

What are the key differences between the new Aged Care Act and the existing Act Care Act 1997?

The current Aged Care Act is structured around providers and how to fund them - not about the people accessing services and what they need.

The new Act will focus on older people, rather than aged care providers. It will clearly set out the obligations of aged care providers and legislate requirements that protect the rights of older people in Australia to safe, quality care.

The new Act will:

- place older Australians at the heart of the aged care system
- outline the rights of older Australians who are accessing aged care services
- provide a single system entry point with clear eligibility requirements
- incorporate a fair, culturally safe single assessment framework
- establish new system oversight and accountability arrangements, and
- introduce a new risk-based regulatory model designed to increase provider accountability and encourage delivery of high quality and safe aged care services and strengthen enforcement powers of the regulator.

How will the amendments to the Aged Care Act 1997, made through the Aged Care and Other Legislative Amendments, Royal Commission Response Act and the Implementing Care Reform Act be reflected in the new Aged Care Act?

The new Act will build on the priority aged care reforms already delivered via the Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022 and the Aged Care Amendment (Implementing Care Reform) Act 2022. These amendments will be replicated in the new Act, with minor refinements where appropriate to ensure they are fit for purpose under the new legislative framework.

Will there be further opportunities for consultation and to have a say on the proposed statement of rights and how this will be embedded in the new Aged Care Act?

We have been consulting with the National Aged Care Advisory Council, the Council of Elders, the National Aboriginal and Torres Strait Islander Aging and Aged Care Council, and sector and consumer reference groups on components of the new Act, including the proposed rights-based approach.

We have already taken on feedback from these groups regarding the scope of rights to be included in the Act to ensure the Statement of Rights reflects what is important to older Australians in terms of the delivery of aged care services.

Your opinions, views and sentiments are a critical component of driving change, and we encourage you to engage in this consultation process as much as possible. We have a schedule of events over the coming weeks that you can be involved in, we also encourage you to complete the accompanying survey or to provide a written submission in response to the consultation paper.

We are planning a second stage public consultation so that you can have your say on the Exposure Draft of the Bill for the new Aged Care Act which will be release by the end of the year.

Will the proposed statement of rights focus on human rights or consumer rights?

The proposed Statement of Rights will be a mix of consumer and human rights, designed to empower older people in the aged care system. It will provide a reference point from which older people, as well as their family members and representatives, can advocate in complex and sensitive circumstances. The Statement of Rights will draw on the recommended wording of the Royal Commission, as well as incorporating aspects of the current Charter of Aged Care Rights and feedback we receive through consultations.

Will provider rights be reflected in the new Aged Care Act?

The new Act takes a person-centred approach, with a focus on the rights of older people who are accessing aged care services. This is a change from the current Aged Care Act, which focuses on providers and funding. Taking a rights-based approach will ensure older people are at the centre of the aged care system.

How will the rights-based approach be upheld? How will investigations of breaches be undertaken, and will there be penalties and/or opportunities to seek redress if rights are breached?

Older Australians will have pathways under the new Act to seek that their rights are upheld. It is intended that specified rights will be tracked through to operational provisions, such as the Aged Care Code of Conduct or the Quality Standards, to enforcement pathways.

For example, where a complaint is made, both early intervention and restorative justice outcomes can be sought by the Aged Care Quality and Safety Commission, as well as more formal investigation and enforcement pathways.

The regulator will also have new powers to ensure they can take strong action where providers of aged care fail to meet their obligations.

Civil and criminal penalties will also apply where this occurs repeatedly, or where a provider's actions cause serious harm, or they try to conceal the harm they have caused.

How will supported decision making be embedded in the new Aged Care Act?

It is proposed that the new Act will introduce a new legislated supported decision-making framework. This framework is based on recommendations from the Australian Law Reform Commission report and recognises the importance of older Australians maintaining the choice and control over their own life to maintain their dignity. Those who are appointed as nominees under the proposed new model will be required to abide by a number of duties and decision-making principles consistent with a supported decision-making model.

How will the new Act define the roles and limitations of nominees and representatives?

It is proposed that the new Act will provide for the appointment of two types of nominees, i.e. supporters and representatives. Representatives will be able to make decisions on behalf of the person receiving aged care, as long they abide by a number of duties and decision-making principles consistent with a supported decision-making model. Supporters will not be able to make decisions, however, will be able to receive information in relation to the person receiving aged care and will be recognised as an essential support to that person in making decisions about their life.

How will the roles of family members, carers and advocates be reflected in the new Act?

It is proposed that the new nominee framework will allow for anyone to be appointed as a supporter or representative of a person receiving aged care. The roles of appointed nominees will be set out in the legislation. This framework does not preclude any other formal or informal supports that family members, carers and advocates may provide to people receiving aged care.

Will additional supports become available to providers to assist investigation and resolution of complaints?

It is proposed that obligations under the new Aged Care Act will provide clear guidance to providers to assist in the investigation and resolution of complaints. Where a provider is unable to resolve a complaint internally (or the complainant is not satisfied with the result) the new Complaints Commissioner will provide an escalation pathway and support both complainants and providers to get the best outcome for all parties.

Will penalties apply to complainants or whistleblowers where false claims are made against a service provider, carer or volunteer?

At this stage, it is not intended that any penalties will apply to complainants or whistleblowers where false claims are made against providers, carers or volunteers, however a number of safeguards will be put in place to encourage only genuine complaints. For example, whistleblower protections will only apply to disclosures made in 'good faith'. Where someone does not act in good faith, they will not be protected from consequences that might flow from making a disclosure.

How will the definition of high quality care align with and uphold the rights of older people?

The new legislative framework will encourage registered providers to 'do more' than just the minimum, with the concept of 'high quality care' to be defined in the legislation as recommended by the Royal Commission.

We want aged care providers to aim higher and not just focus on meeting minimum standards.

Subject to further consultation and analysis, it is proposed that "high quality care", drawing on the suggestions of the Royal Commission, be defined as, the delivery of aged care services to a person in a manner that prioritises:

- delivery of services with compassion and respect for the individuality, self-determination and dignity of a person accessing care, and their quality of life,
- providing services that are trauma aware and healing informed and responsive to the person's expressed personal needs, aspirations, and their preferences regarding how services are delivered to them,
- facilitating regular clinical and non-clinical reviews to ensure that the services delivered continue to reflect their individual needs,
- supporting the person to enhance their physical and cognitive capacities and mental health where possible, and
- supporting the person to participate in cultural, recreational and social activities, and remain connected and able to contribute to their community.

How will the definition of high quality care allow for a risk proportionate approach to aged care?

Defining high quality care, as the Royal Commission indicated, is intended to provide a focus for the compliance and enforcement work of the Regulator. This ensures the concept of high quality care is central to the regulatory model, and that enforcement measures address risks of harm to older people, with instances of minor non-conformance able to be addressed via other regulatory tools, including education and engagement.

Providers in specified registration categories will also be expected to demonstrate a capability and commitment to deliver high quality care. This will help to grow a culture in the sector that places the needs of older people at the heart of service delivery.

What are a provider's obligations with the new reform?

The new regulatory model will be a key feature of the new Act.

As part of the design of the new regulatory model, the obligations on providers are being reviewed and will be streamlined.

All registered providers, including those currently approved, will be expected to deliver Commonwealth subsidised aged care services in a manner consistent with their obligations under the new Act and its subordinate legislation.

Further information is available in [Consultation Paper 2- details of the proposed new model](#). The chapter on 'Responsibilities of a provider' (page 39) outlines the proposed approach to provider obligations under the new model – with conditions on a provider's registration the main vehicle via which obligations will be imposed on providers.

A provider's obligations will depend on the category/ies in which the provider registers – with a universal registration model designed to facilitate a more risk-proportionate approach to regulation.

How will the new Act provide for information sharing?

The new Act will introduce a revised information management framework that will ensure appropriate protection of personal and sensitive information, while providing more transparency for older people, their families and carers about aged care providers and their services.

The information management framework also aims to remove legislative barriers to collection and linkage of data for the purpose of aged care related research and policy development.

The proposed information management framework for the new Act will:

- provide more transparency, including about the effectiveness of the regulatory system and its performance in safeguarding the quality and safety of aged care services
- establish secrecy provisions which provide that it is an offence for persons to use and disclose 'protected information', unless that information is used or disclosed for an authorised purpose
- provide an obligation for providers relating to protection of personal information of persons to whom they provide aged care services
- specify obligations of providers to maintain and retain certain records
- include information sharing provisions between Commonwealth bodies across the aged care, disability and veterans' sectors, including for regulators in related sectors for the purpose of worker regulation, and with primary health systems.

Let's change aged care together

We invite Australians to continue to have their say about the aged care reforms.



Visit agedcareengagement.health.gov.au



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