



A new model for regulating aged care

Caroline Turnour

Assistant Secretary – Harmonisation and Assurance Branch

Mel Metz

Assistant Secretary – Legislative Reform Branch



A new model for regulating Aged Care

Caroline Turnour
Assistant Secretary,
Harmonisation and Regulatory Strategy Branch

- Release of Consultation Paper No.2 – Details of the proposed new model
- Overview of the proposed approach



What is regulation?

When regulation works well, we don't even notice it.



Why do we need a new regulatory model?

“Ineffective regulation has been one of the contributing factors to the high levels of substandard care in Australia’s aged care system.”

- Royal Commission into Aged Care Quality and Safety, Final Report – Volume 1: Summary and Recommendations, 2021 p 136

“A rigorous assessment of those wanting to provide Australian Government-funded aged care services is the first and best opportunity to ensure that they are able to provide high quality and safe care to older people on a sustainable basis.”

-Royal Commission into Aged Care Quality and Safety, Final Report 2021 p.489

- Supports the new Act
- Responds to other Royal Commission’s recommendations, including:
 - Recommendations 92 and 93 (provider approval and accreditation)
 - Recommendations 13,14, 50, 131, 123, 133 and 135 (provider registration and obligations)
 - Recommendations 97, 101, 102, 103, 134 and 136 (monitoring and enforcement)
 - Recommendations 10, 98 and 99 (complaints and whistle-blower protections)



Raising the quality of aged care

To deliver consistent, high quality care to older people, the model will:

- drive cultural change across the sector
- adopt relationship-based regulation to build
 - stronger working relationships
 - deeper trust and
 - more transparency in the sector



To facilitate high quality care and strengthen and enhance the protections, rights and the delivery of services provided to older people in Australia

Objective



Regulatory safeguards



Regulatory functions and tools



Supporting quality care

Education and engagement
(providers and workers)

Information sharing and data

Information for older people, their families and carers

Audit

Becoming a provider

Registration model

Responsibilities of a provider

Obligations

Provider reporting

Holding providers accountable

Compliance, monitoring and enforcement

Complaints and incidents

Sector oversight

Regulatory intelligence

Proactive regulatory action through preventing, detecting and correcting risk

Universal provider registration and re-registration

- To apply to all providers delivering Commonwealth subsidised aged care services
- Propose to allow non-corporations e.g. sole traders and partnerships to register to deliver in-home aged care services
- Six registration categories, grouping services based on
 - common characteristics
 - the associated service risks
 - the provider obligations to address the risks
- Providers to register into one or more categories, to deliver a subset or all of the services within each category



Proposed provider registration categories

Provider Registration Category	Service Types
Category 1: Home and community services	<ul style="list-style-type: none">• Domestic assistance• Home maintenance and repairs• Meals• Transport
Category 2: Assistive technology and home modifications	<ul style="list-style-type: none">• Digital technologies• Digital monitoring, education and support• Goods, equipment and assistive technologies (non-digital)• Home modifications
Category 3: Social support	<ul style="list-style-type: none">• Social support
Category 4: Clinical and specialised supports	<ul style="list-style-type: none">• Personal care• Care management• Transition care services in the home• Specialised supports• Assistance with care and housing (hoarding and squalor support)• Nursing• Allied health
Category 5: Home or community-based respite	<ul style="list-style-type: none">• Respite (home and community based)
Category 6: Residential care	<ul style="list-style-type: none">• Accommodation Services• Residential respite• Care and services• Transition care services (residential)• Transition care support services (residential)

Meeting the needs of older people and lifting aged care quality and safety in Australia through registration and obligations on providers

Provider registration categories

Registration Category 1
Home and Community Service

Registration Category 2
Assistive technology and home modifications

Registration Category 3
Social Support

Registration Category 4
Clinical and specialised supports

Registration Category 5
Home or Community based respite

Registration Category 6
Residential care

Registration requirements

Provider registration

✓

✓

✓

✓

✓

✓

Standard registration period

3 years

3 years

3 years

3 years

3 years

3 years

Registration / re-registration process

Digital declaration

Quality assessment

Obligations architecture

Conditions that apply to all providers (e.g. the Code of Conduct for Aged Care)

Conditions that apply to all providers — specific requirements and evidential requirements vary

Category-specific conditions

Category-specific conditions

Category-specific conditions

Category-specific conditions

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Category-specific conditions

Quality Standards 1–4

Quality Standards (Clinical Care)

Quality Standards (Clinical Care)

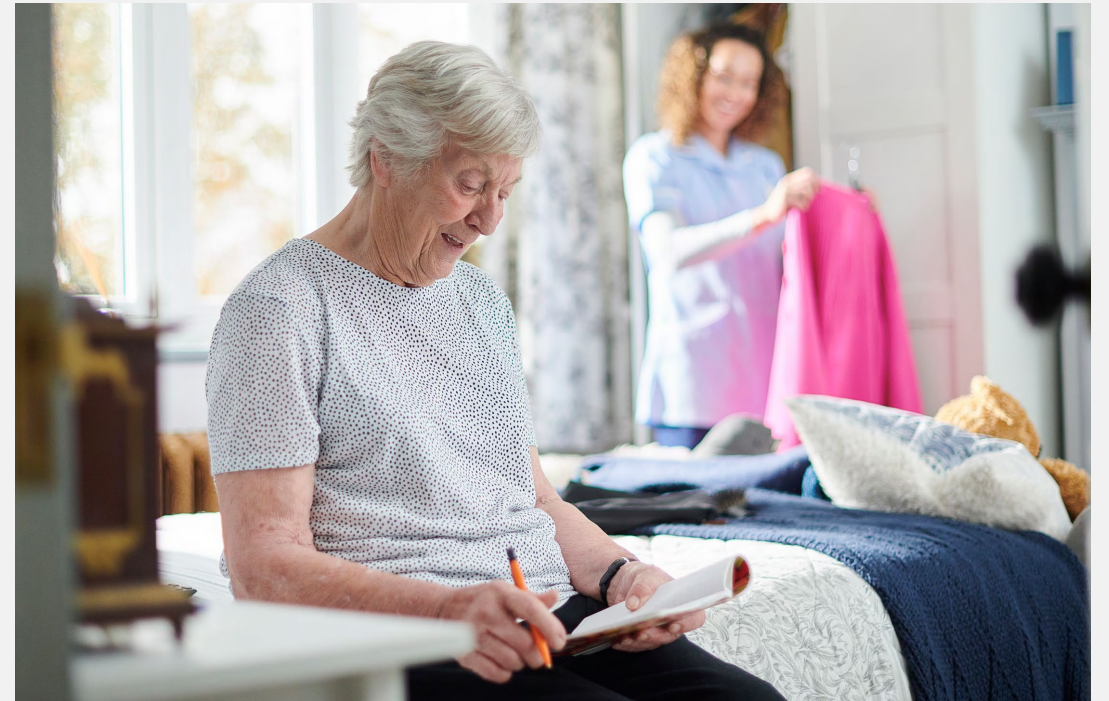
Quality Standards (Clinical Care; Food & Nutrition; The Residential Community)

Conditions applied to address provider-specific risks (e.g. additional reporting requirements imposed to address an identified risk)

Risk-based monitoring to confirm a provider's ongoing suitability to deliver aged care services (including complaints and other regulatory intelligence)

A system that is easier to access and navigate

- Detailed, easy to understand information, including:
 - older people's rights
 - aged care services
 - expected standards of care
 - feedback and complaints handling mechanisms
 - providers and their performance
- A public register of all registered providers



Building provider capability

- Improved education and engagement with providers:
 - to understand older people's rights and their obligations
 - to learn from each other
- Audits against the strengthened Quality Standards to be graded to replace the current pass or fail approach
- Outcomes of audits to support continuous improvement



Enhanced complaints and feedback mechanisms

- Building a culture that values feedback and complaints
- Safe, accessible, and culturally appropriate pathways to provide feedback and raise complaints
- Restorative justice processes
- New powers to protect complainants from reprisals
- Whistle-blower protections



A strong regulator



Regulating in a practical and fair way, with trust - but also vigilance



Stronger investigative and enforcement powers for the Regulator and the Department



A stronger focus on connecting information and intelligence to prevent, detect, correct risk and poor provider performance



All providers to be monitored



Transitioning to the new model

- A single 'go-live' date i.e. to commence when the new Act commences
- The current regulatory framework to cease when the new model commences
- Existing providers of Commonwealth funded aged care programs to be deemed registered into relevant categories
- Transition arrangements to ensure continuity of care for older people and minimise impact on providers



Myth busters



“The new model will deregulate aged care.”



“The new model will create more regulatory burden and administrative tasks.”



How to provide feedback

- Visit the [Aged Care Engagement Hub](#) to provide feedback by 23 June
- Options include:
 - a quick 15-minute survey
 - a detailed survey to answer any or all of the questions included in the paper
 - a written submission emailed to agedcareregmodel@health.gov.au
 - a written submission mailed to the Department
- Register for workshops and 18 May webinar





Australian Government
Department of Health and Aged Care



**A new model for
regulating Aged Care**

Consultation Paper No.2
Details of the proposed new model

agedcareengagement.health.gov.au

April 2023

Update on Legislative Reform

Mel Metz
Assistant Secretary,
Legislative Reform Branch

1. Proposed definition for “high-quality care” under the new Act
2. Proposed arrangements for whistle-blower protections under the new Act



High quality care

- The Royal Commission recommended 'high quality' care be defined in the new Act (Recommendation 13).

Draft definition - Included in the Regulatory model consultation paper

- Delivery of aged care services to a person in a manner that **prioritises**:
 - delivery of services with compassion and respect for the individuality, life experiences, 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

Question - *What does 'high quality care' mean to you?*



Embedding high quality care in the new Act

Concept of high quality care central to the new Act

- term defined in the new Act, reflecting care that puts older people first
- concept expected to be referenced in the Objects of the Act and Statement of Principles

Rights clearly outlined and mapped to practical outcomes for older Australians

- new Statement of Rights included in the Act and rights upheld through pathways in the Act

New registration models to ensure professional service delivery

- new national provider registration scheme and worker screening/registration arrangements

Robust obligations on registered providers & aged care workers to ensure expected standards are upheld and surpassed

- new Code of Conduct to apply to all registered providers and workers
- revised provider obligations, including robust Quality, as well as Financial and Prudential, Standards
- new obligation to demonstrate commitment to ongoing business improvement and the capability to deliver high quality care

Pro-active regulation with a focus on ongoing sector improvement and effective enforcement options available

- new regulatory model facilitates a pro-active and risk-proportionate approach to regulation
- new robust enforcement powers, which allow strong action to be taken where substandard care is delivered

Older Australians have visibility of quality outcomes and can seek redress where harm is caused

- new complaints commissioner and revised complaints processes
- new restorative justice outcomes being explored
- compensation pathways being explored for where serious non-compliance causes harm/damage
- star ratings published to allow older people and their families to make informed decisions



Whistle-blower protections: What did the Royal Commission say?

“Comprehensive whistleblower protection provisions should be implemented in aged care legislation to protect people who make complaints or report suspected breaches of legislative requirements to the Quality Regulator, the Inspector-General of Aged Care or key personnel of an approved provider.” Vol. 3B, pg 520, RC Final Report

Proposed changes—requirements for providing a qualifying disclosure

Disclosure made by

- an officer or employee of a provider,
- member of a committee of management,
- person who has a contract for the supply of goods or services to or on behalf of a provider,
- is in a partnership with someone who has a contract for the supply of goods or services,
- is a volunteer, care recipient, carer, representative or nominee of the person receiving care,
- is a family member or significant other (or another person who is significant to the recipient) of the person receiving care, or
- an advocate (including an independent advocate) of the person receiving care.

Disclosure made to

- staff of the Aged Care Quality and Safety Commission,
- staff of the Department of Health and Aged Care,
- a staff member of the aged care provider,
- a volunteer providing aged care,
- another person authorised by the aged care provider to receive disclosures qualifying for protection,
- a police officer, or
- if the disclosure is reported to another person in accordance with the rules – that person.

Other Requirements

- Discloser informs the person to whom the disclosure is made of their name before making the disclosure; and
- The discloser has reasonable grounds to suspect that the information indicates that an aged care provider, aged care worker, volunteer or contractor has, or may have, contravened a provision of aged care legislation; and
- The discloser makes the disclosure in good faith.



Protections Available



Anti-Victimisation: civil offence to engage in conduct that causes detriment (or threatens to cause detriment) to a discloser because of their (or another person's) disclosure.



Obligation of aged care providers

- Obligation for aged care providers:
 - to ensure informants are not victimised and to protect their identity.
- The form of this obligation and how it would be upheld by providers will form part of the ongoing updates to policy guidelines.
- Failure to maintain confidentiality would be a breach of this provision, which may then result in enforcement action by the Regulator.

Current Aged Care Act provisions:

Subsection 54-8(1): ensuring staff members are not victimised

Subsections 54-8(2) and (3): approved provider to take reasonable measures to ensure that the informants' identity is protected



Confidentiality of Whistle-Blowers' Identity

A whistle-blowers' identity may be disclosed to:

- the Commission, the Department, or any other body with a legislated function concerning the investigation of information provided by the discloser to the extent necessary for them to perform their function,
- one of the providers' key personnel,
- a legal practitioner for the purposes of obtaining legal advice,
- where the disclosure is necessary to lessen or prevent a serious threat to the safety, health or well-being of an aged care consumer,
- with express or implied consent of the discloser, or
- to a person or body prescribed in the Rules.





Legislative Reform Branch
agedcarelegislativereform@health.gov.au

Questions?

You can submit a question through the Q&A function on the lower right-hand corner of your screen.

Simply type in your question and hit enter.





Thank you

For more information, please contact the Department of Health and Aged Care:

- Email: agedcareregmodel@health.gov.au
- Aged Care Engagement Hub: www.agedcareengagement.health.gov.au