

# Foundations of the new Aged Care Act

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# Housekeeping



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# Mel Metz

Assistant Secretary, Legislative Reform Branch

- Overview of the new Act
- Statement of rights
- o Statement of principles
- High Quality care
- o Eligibility



#### The new Aged Care Act: What's new? What's different?

New
Act

Structure

Focus on older people and their diverse needs

Statement of rights and principles, and supported decision-making

Enhanced system transparency and governance

One principal Act and one set of rules, relying on the external affairs power where available

#### Structure

Focus on providers and subsidies

Based on constitutional corporations power

Aged Care Act and Commission Act and many sets of principles

System Entry

Single entry point for all aged care services

Common eligibility criteria across all programs

Limited entry of younger people

Single assessment framework and workforce

### System Entry

Multiple entry points

Varied and unclear eligibility criteria

Multiple assessment frameworks and different assessors

Services

All aged care services covered by the new framework and culturally appropriate

Single assessment process used to determine access to services based on individual need

New home care program (from 1 July 2025)

Access to residential care no longer based on allocation of places

#### Services

Only some aged care services fully covered under the Act

Different assessment processes and requirements for different services

ACAR rounds determine available residential care places

### Regulation

New risk-based regulatory model, including streamlined obligations and robust new standards

Providers required to be registered to provide funded aged care services

Wider range of providers able to enter the market

New obligation to commit to business improvement, new statutory duty, tougher penalties and access to compensation

#### Regulation

Not all providers 'approved' and gaps in regulation

300+ provider obligations

Regulator lacks flexibility to take riskproportionate action

#### Funding

Funding for all services brought within the new Act, including where grant funding utilised

Existing subsidies re-framed in the Act as person-centred or provider-based (TBC)

AN-ACC to continue with minor adjustments where required

Block funding available to provide flexibility where appropriate

### Funding

Three types of subsidies – residential, home. flexible care

Many programs funded outside of the Act

Complex funding provisions

Complex funding provisions



Old

Act

agedcareengagement.health.gov.au

# What should the Objects of the new Act be?

|   | Give effect to Australia's obligations under the Convention on the Rights of Persons with Disabilities,  |   |
|---|--|---|
|   | the International Covenant on Economic, Social and Cultural Rights, and other relevant instruments   |   |
|   | Assist older people to live active, self-determined and meaningful lives   |   |
|   |  |   |
|   | Ensure equitable access to, and flexible delivery of, funded aged care services that takes into account the individual needs of older people, including people of diverse backgrounds and needs and vulnerable people                      |   |
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|   | Assist older people accessing funded aged care services to effectively participate in society on an equal basis with others, which will help promote positive community attitudes to ageing  |   |
|   |  | ) |
|   | Enable older people accessing available funded aged care services to choose who will deliver their services, and when and how they do so   |   |
| ' |  | ) |
|   | Ensure people accessing funded aged care services are free from mistreatment and neglect, and harm from poor quality or unsafe care  |   |
|   |  |   |
|   | Provide and support education and advocacy arrangements that can assist older people to access funded aged care services, understand their rights, make decisions, and provide feedback on the delivery of their services without reprisal |   |
|   |  |   |
|   | Promote innovation in aged care based on research and supports continuous improvement.   |   |
|   |  | / |

# **Proposed Purpose Statement**

Facilitate access by older people to quality and safe, funded aged care services based on their individual needs, with the aim of assisting them to continue to live active, self-determined and meaningful lives as they age.



# Statement of Rights – Which rights should be included?

- Exercise choice and make decisions that affect their lives, be supported to make those decisions where necessary, and have those decisions respected, including where they:
  - involve personal risk, and
  - are made in pursuit of quality of life, social participation or intimate relationships
- Equitable access to have their need for aged care services assessed, including in a culturally appropriate manner
- Exercise choice between available aged care services they have been assessed as needing, and how these services are delivered
- · Communicate in their preferred language or method of communication, with access to interpreters and communication aids as required
- Be treated with dignity and respect, including being listened to and informed, in a way they understand, about the services they are accessing
- Freedom from all forms of degrading or inhumane treatment, violence, exploitation, neglect and abuse
- Safe, fair, equitable and non-discriminatory treatment in accessing aged care services
- Freedom from inappropriate use of restrictive practices

# Statement of Rights – Which rights should be included?

- Equitable access to palliative and end-of-life care when required
- Be supported to exercise their rights, voice opinions and make complaints without fear of reprisal, and have complaints dealt with fairly and promptly
- Have their identity, culture and diversity valued and supported, including in accessing funded aged care services that are culturally appropriate, trauma aware and healing informed
- Their personal privacy and to have their personal information protected
- Seek, and be provided with, personal information about them held by Commonwealth agencies and registered providers, as well as
  information about their rights and the aged care services they access
- Have the role of persons who are significant to the individual acknowledged and respected
- Be supported by an advocate or a person of their choice
- Opportunities and assistance to stay connected (if the individual chooses) with family members and other significant persons in the individual's life, including safe visitation by family members and friends at reasonable times in residential care homes

#### Placing the person & their rights at the centre of the new Aged Care Act

- New constitutional basis for the Act, primarily relying on external affairs power, where available
- Relevant International Conventions referenced on face of the Act
- Independent system oversight
- Equitable access with eligible individuals assessed against a culturally-appropriate, single assessment framework

A rights-based legislative framework

Clear rights & obligations on registered providers and aged care workers

- Statement of rights & principles in the Act
- Streamlined and clarified obligations
- Code of Conduct
- Revised Standards (Quality and Financial & Prudential)
- New obligation to demonstrate a commitment and capability to continuous improvement designed to achieve high quality care

- New nominee arrangements based on supported decision-making model, including increased protections for maintaining autonomy and dignity
- Revised information management framework and increased system transparency
- New complaints management framework, including whistle-blower protections and restorative practice
- Advocacy network supported and funded

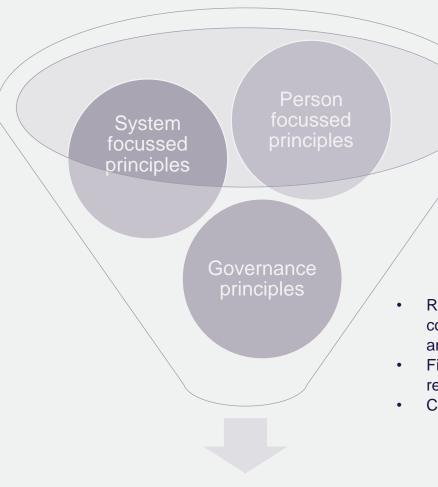
Empowerment approach

Rights upheld in a risk-based regulatory model

- Enhanced, risk-based approach to regulation
- Pathways for rights to be upheld
- Additional powers for the regulator
- New complaints commissioner
- New statutory duty of aged care
- Criminal penalties for breach of duty
- Additional civil penalties available
- Access to compensation

### Establishing the guiding principles of the new aged care system

- System is transparent
- Care is targeted to those most in need and for whom aged care services are appropriate
- System supports continuity of care and access to integrated services
- Aged care workforce is trained, skilled and empowered
- Feedback is used to inform continuous improvement



- Safety, health, wellbeing and quality of life of older people is the primary consideration
- · Care is person-centred
- The aged care system puts older people first
- Services are accessible and culturally appropriate

- Regulation is risk-proportionate, promotes innovation and continuous improvement, and is focussed on the health and safety of older people
- Financial and prudential regulation encourages registered aged care providers to operate viable services
- Commonwealth investment represents value for money

**Statement of Principles** 



# **Defining High Quality Care**

#### The delivery of aged care services that prioritises:

- compassion and respect for the individual, their life experiences, self-determination and dignity, and their quality of life
- being trauma aware and healing informed
- being responsive to the person's needs, aspirations and preferences
- regular clinical and non-clinical reviews
- enhancing physical, cognitive and mental health, social connections and ability to participate in cultural or recreational activities

# Who will be able to access Commonwealth funded aged care?

# Application & initial eligibility test



# Individual needs assessment



# **Approval** decision



# **Granted** access

Persons who are aged 65 or over who have care needs and make a verbal application will be determined to be eligible to proceed to have their individual needs assessed.

First Nations or homeless individuals aged 50-64 who have care needs, will also be eligible to proceed following a verbal application, as long as they have been informed of alternative options to meet their needs and still wish to proceed.



All eligible persons to undergo a formal individual needs assessment with an approved needs assessor from the single assessment workforce.

The assessor will assess which funded aged care services the person requires access to meet their needs (and the level of required funding\*).

The assessor will prepare a report of their findings and recommendations for the delegate.

\*Note: for residential care this will only occur later if the person decides to enter a residential care home.

A delegate will consider the assessor's report. They will then decide which funded aged care services that the person is approved to access (as well as their funding level\*) and whether access should be prioritised based on their individual circumstances.

A written decision notice will be provided, which is expected to include an easy-tounderstand support plan.

Once the person is advised that they are now able to access funded aged care services, they can find and make an agreement with a registered provider(s) to provide them with services (consistent with their written decision notice).

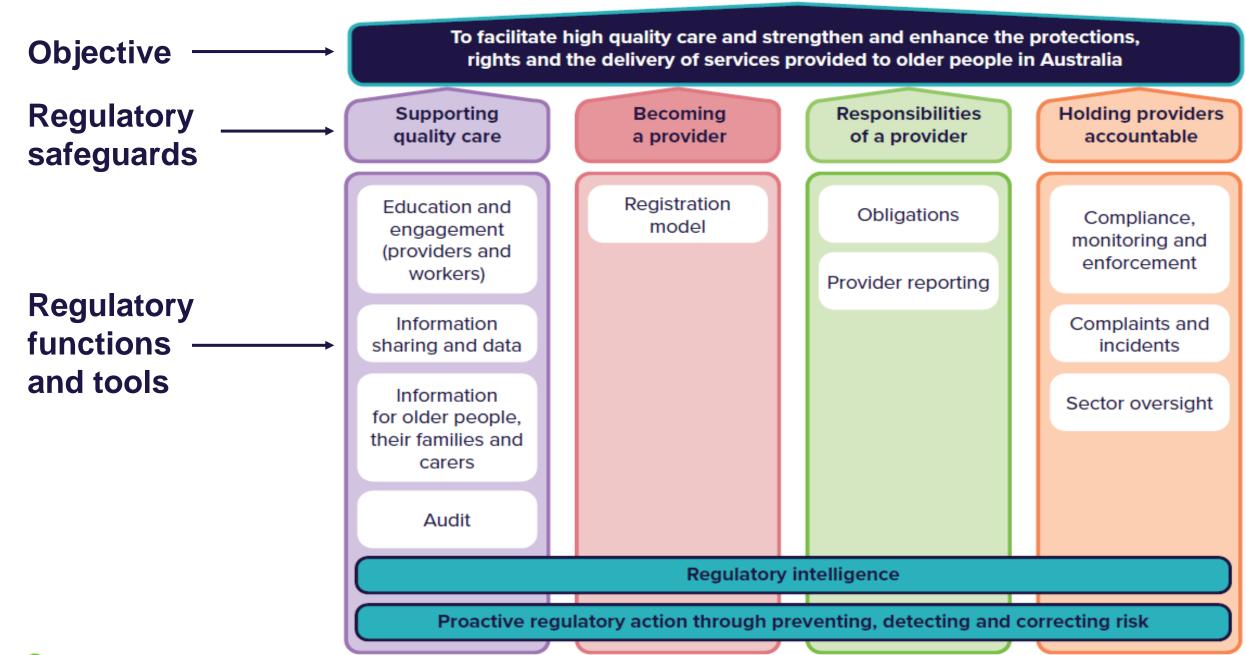
**Note:** A person can access aged care services prior to assessment in specified situations, including emergencies or where assessment may be delayed due to regional/remote location. Where this has occurred, the application process will follow commencement of service provision.

# Cathy Milfull

Director, New Aged Care Framework Development Section

- o Regulatory framework update
- Statutory duty
- Compensation pathways





# **New Statutory Duty**

a new overarching duty on registered aged care providers is being considered to:

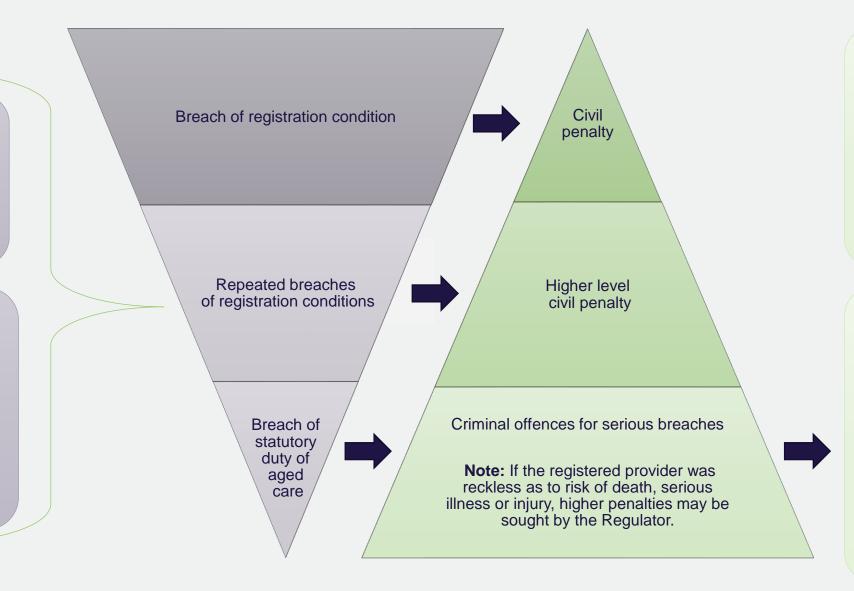
ensure, so far as is reasonably practicable and taking into account the rights of older persons, that their acts or omissions do not adversely affect the health and safety of persons to whom they are providing funded aged care services.

- a breach of this duty would only occur where there is a serious failure to act in a manner consistent with the duty
- serious breaches would attract criminal penalties that is, where the failure of a
  registered provider to take reasonable steps results in a risk of, or actual, serious illness,
  injury or death of an individual to whom the duty is owed
- a compensation pathway would also be available where registered providers are found guilty of an offence and serious illness or injury has been suffered by the individual

### The duty of care for registered providers and compensation pathways

Registered provider may agree to provide compensation as part of conciliation or mediation activities facilitated by the Complaints Commissioner

Compensation damages may be sought by any person available under common law (i.e. private right of action) due to actions of a registered provider (e.g. where any common law duty is considered breach, or negligence is claimed).



The Regulator may agree to accept an enforceable undertaking under the Act from a registered provider to make an undertaking to provide compensation

Compensation
order from the
court may be
sought by the
Regulator on behalf
of one or more
person(s)
who suffered
serious illness or
injury
or
by the person(s)

themselves (i.e. private right of action)

### Should there be additional duties?

# Duty on responsible persons

To exercise due diligence and ensure registered providers comply with the statutory duty?

# Duty on aged care workers

To take reasonable care that their actions do not adversely affect the health and safety of individuals they provide care to, and to comply with reasonable instructions and directions?

# Duty on some organisations

To ensure advertised workers and providers on digital platforms are screened and/or registered?

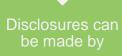
# **Naomi Lavithis**

Director, New Aged Care Framework Development Section

- Whistleblower protections
- Supported decision-making



# Proposed new arrangements - making a qualifying disclosure



- 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.



- 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.



- 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.



## **Current nominee arrangements**

#### Regular representative

- Voluntarily appointed by consumer
- Should seek
   permission/ consult with
   consumer for any
   decisions made on their
   behalf

#### **Authorised representative**

- Only if consumer is unable to provide consent. Person needs to apply to My Aged Care to become representative (with legal documentation)
- Can act on consumers behalf

### **Agent**

- Approved body such as an advocacy organisation, voluntarily appointed by consumer
- Supports consumer to make own decision but cannot make any decisions on their behalf

#### Steps for making a proposed nominee arrangement under the new Aged Care Act

# Person receiving (or seeking to receive) aged care

Seeks to appoint a nominee



# Department Secretary or delegate (as System Governor)

Appoints the nominee



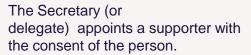
#### Nominee

Supports person receiving aged care



#### Supporter

Request to the Secretary to appoint a support person (e.g., a family member or close friend) to help with navigating the aged care system. Can be for a specified term, limited to certain types of information, and can be cancelled or suspended at any time.



The supporter provides support and may seek or receive information on the person's behalf but does not make any decisions.

#### Representative

The person may request a representative nominee to have the power to make decisions on their behalf (e.g. if they do not want to make a decision or if their capacity may decline later). Can be for a specified term, and can be cancelled or suspended at any time.

The Secretary (or delegate) appoints a representative nominee with the consent of the person.

The representative nominee can make aged care decisions, respecting the person's wishes and preferences.

Secretary may have regard to certain information to guide decision (e.g. any current guardianship arrangements)

In some cases, e.g., where the person lacks capacity to make decisions, the Secretary may appoint a representative nominee to make aged care decisions on the person's behalf without the person's consent.

The representative can make aged care decisions, respecting the person's wishes and preferences.

The nominee's duties include: ascertaining the wishes of the person; acting in a manner that promotes the person's personal and social wellbeing; maintaining the decision-making capacity of the person; avoiding/managing any conflicts of interest; and, complying with any other duties under the legislation.



### **Duties for Nominees**

Refrain from acting or making a decision on an older person's behalf, unless:

- They are satisfied it's not possible for the older person to do so
- It's possible for the older person to do so, but they want the representative to make the decision on their behalf

# **Decision-Making Principles**

When a representative needs to act or make a decision:

- The older person's will and preferences are given effect
- Where these cannot be determined, the representative must give effect to what the older person would likely want
- If this isn't possible, the representative must act to promote and uphold the person's human rights

### **Further information**

Foundations of the new Aged Care Act Consultation Page – Aged Care Engagement Hub



COTA and OPAN
consultations –
Register for upcoming
workshops



### Consultation – Foundations of the new Aged Care Act



#### We invite you to have your say on the foundations of the new Aged Care Act (new Act).

We are building a new Act that responds to the issues facing older people, their families and carers, aged care providers, and the aged care sector. The new Act will put the rights and needs of older people at its centre.

The foundations are some of the core components that will make up the new rights-based Act. They provide a broad view of how the new Act will work.

#### Have your say on:

- the structure, purpose and constitutional foundation for the new Act
- · the Statement of Rights
- · the Statement of Principles
- · the definition of high-quality care
- · a new duty of care and compensation pathways
- · protections for whistle-blowers
- · embedding supported decision-making



Read the consultation paper outlinin proposed foundations of the new Ac

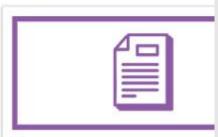
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#### Survey

Have your say on the proposed foun



Resources

