



# Foundations of the new Aged Care Act

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Quality and Assurance Division



# Housekeeping

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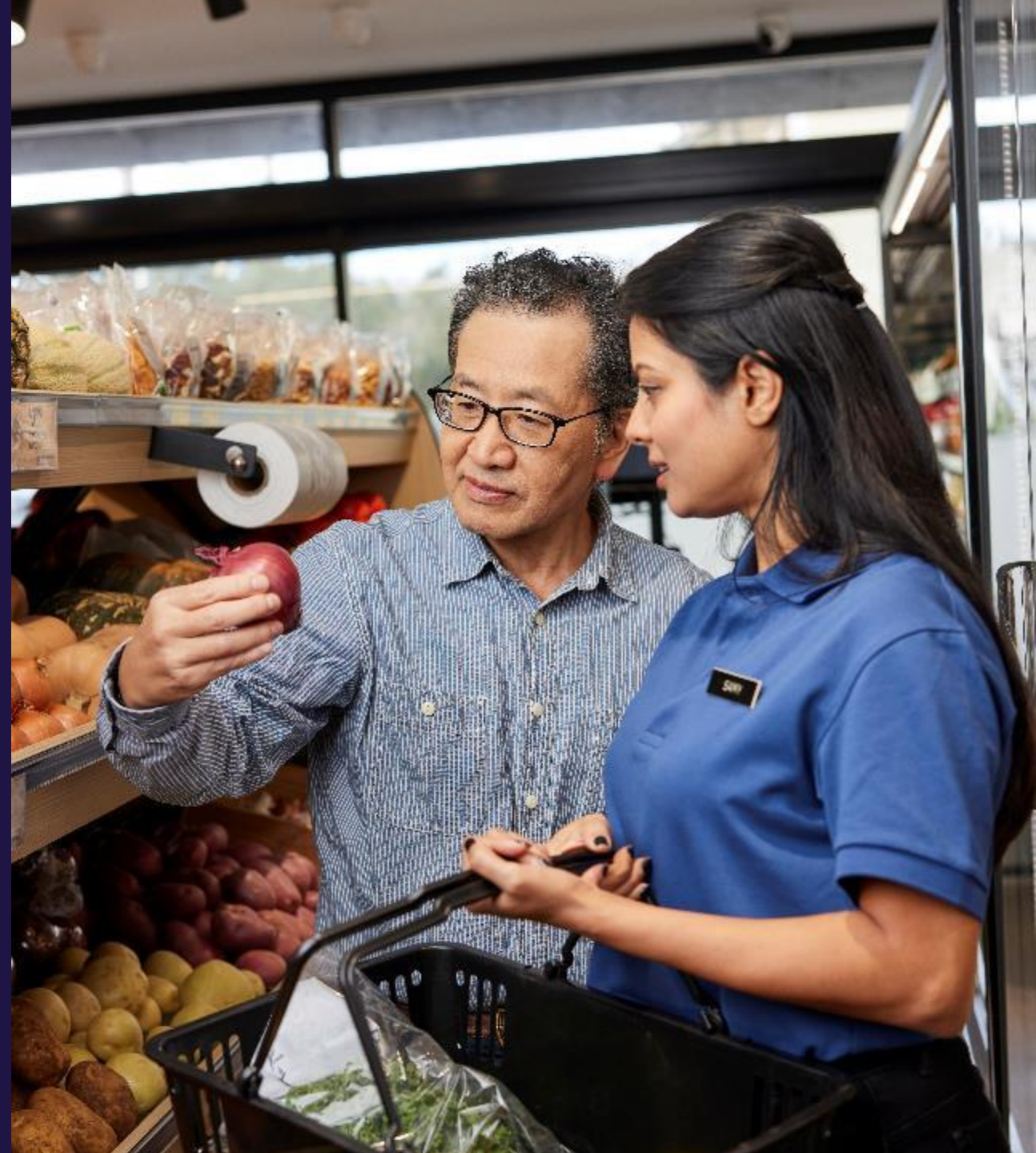


# Mel Metz

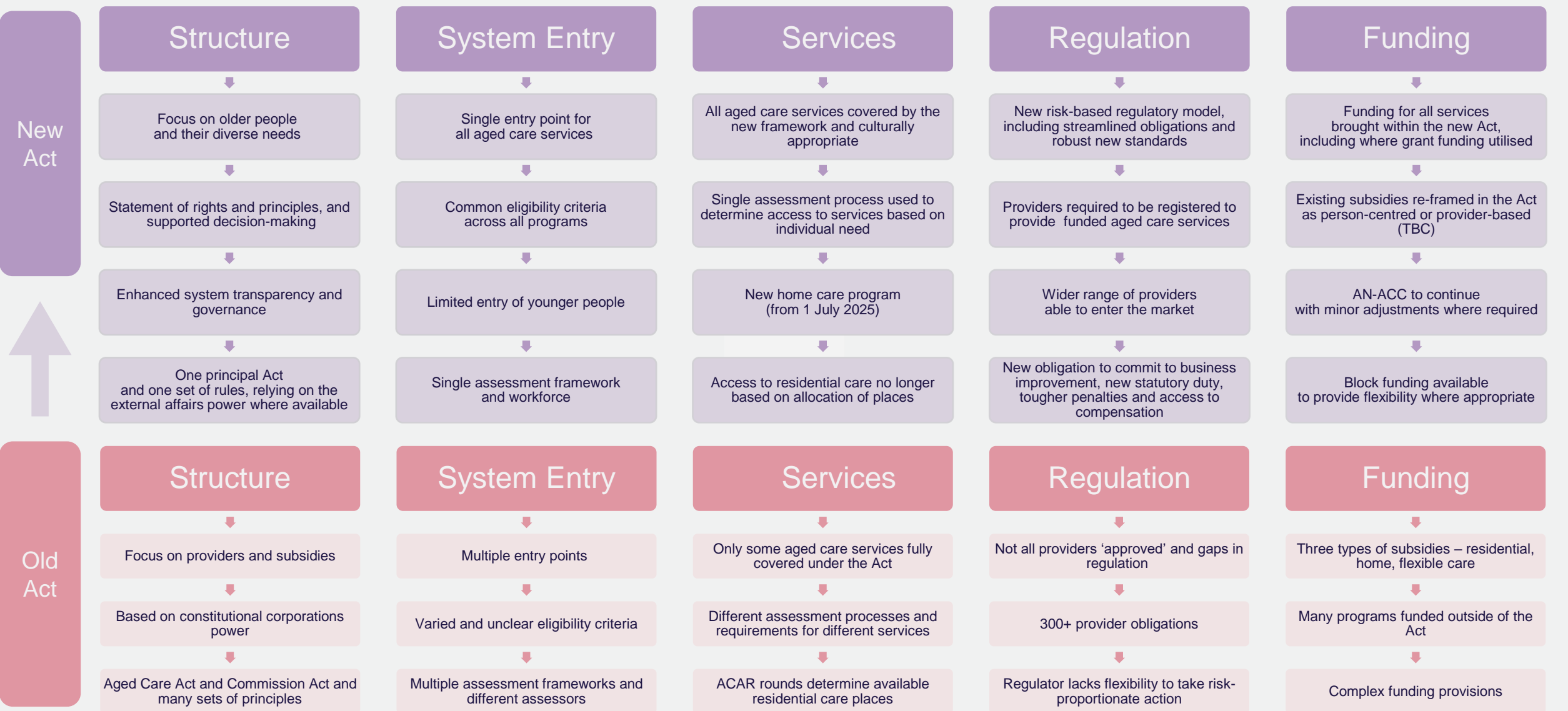
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Assistant Secretary, Legislative Reform  
Branch

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



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



# 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

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

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*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?

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- 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

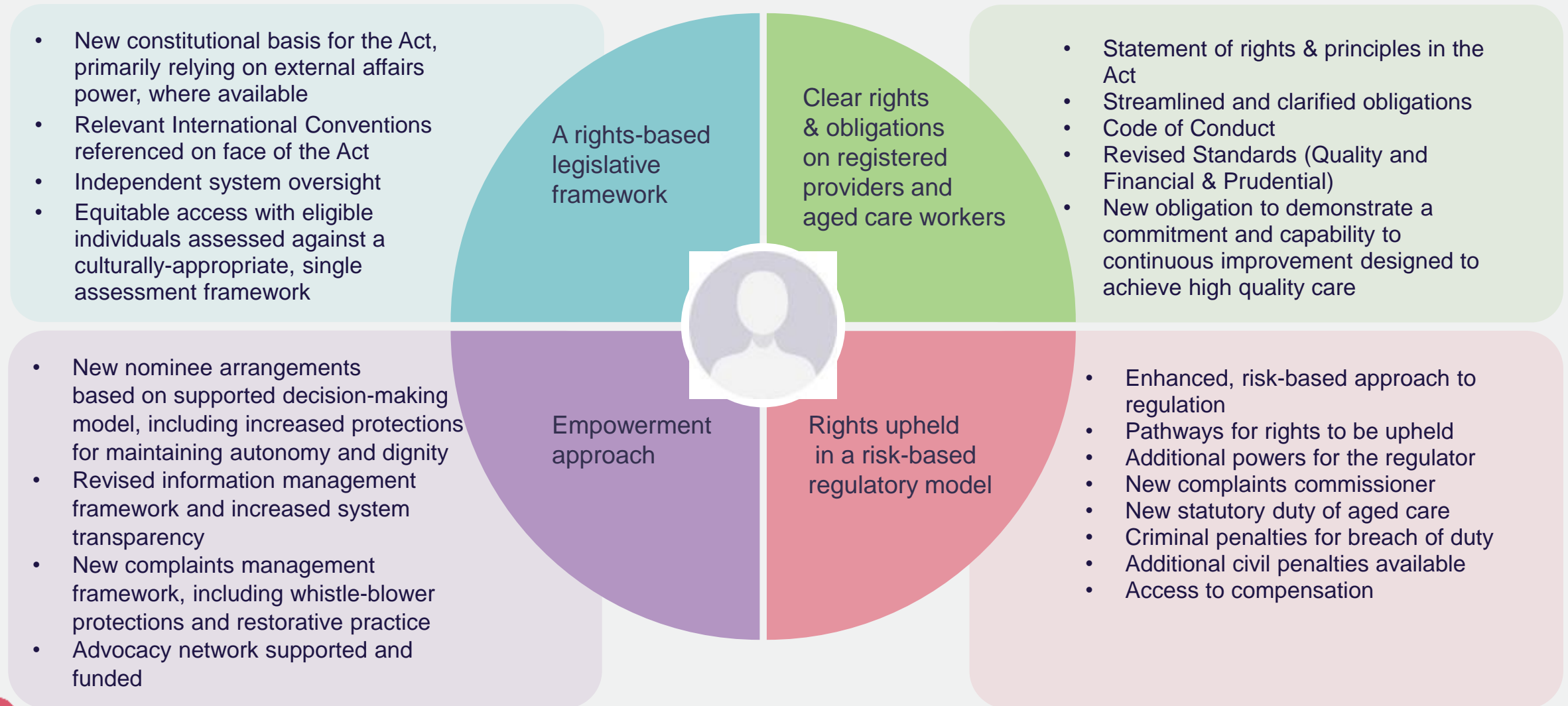
# Statement of Rights – Which rights should be included?

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- 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

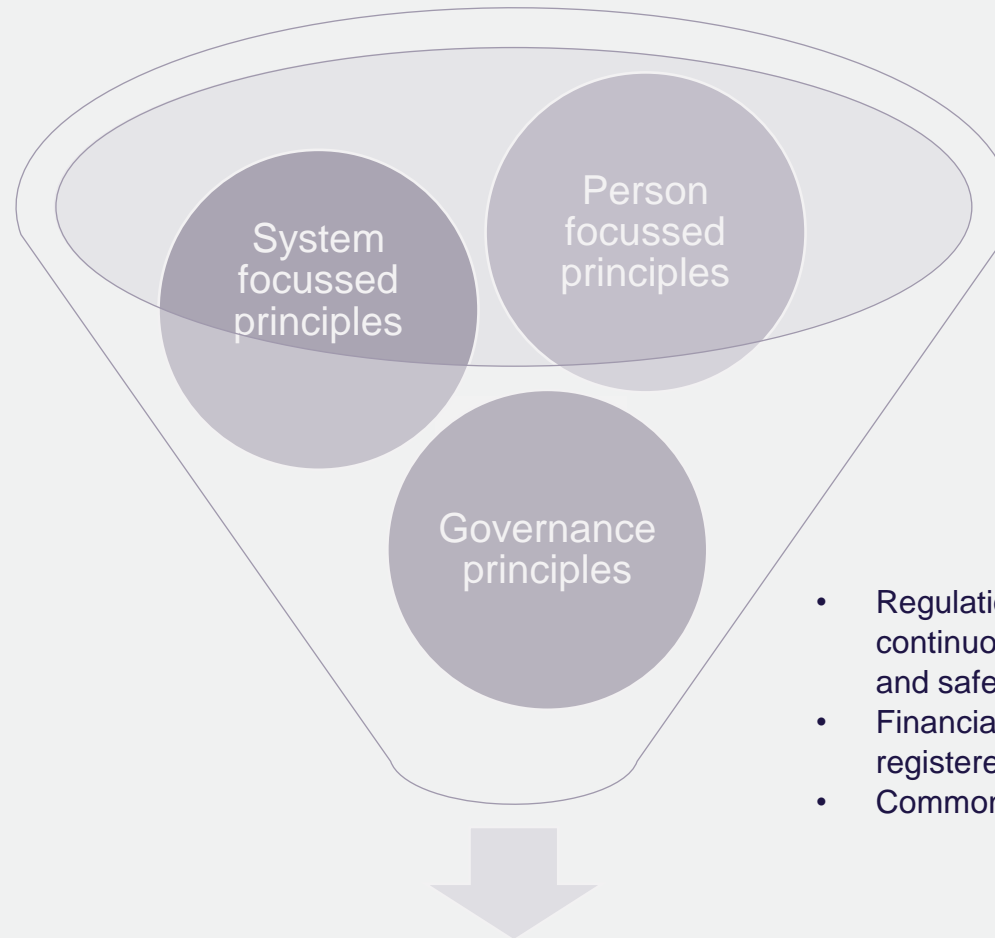


# Placing the person & their rights at the centre of the new Aged Care Act



# 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**

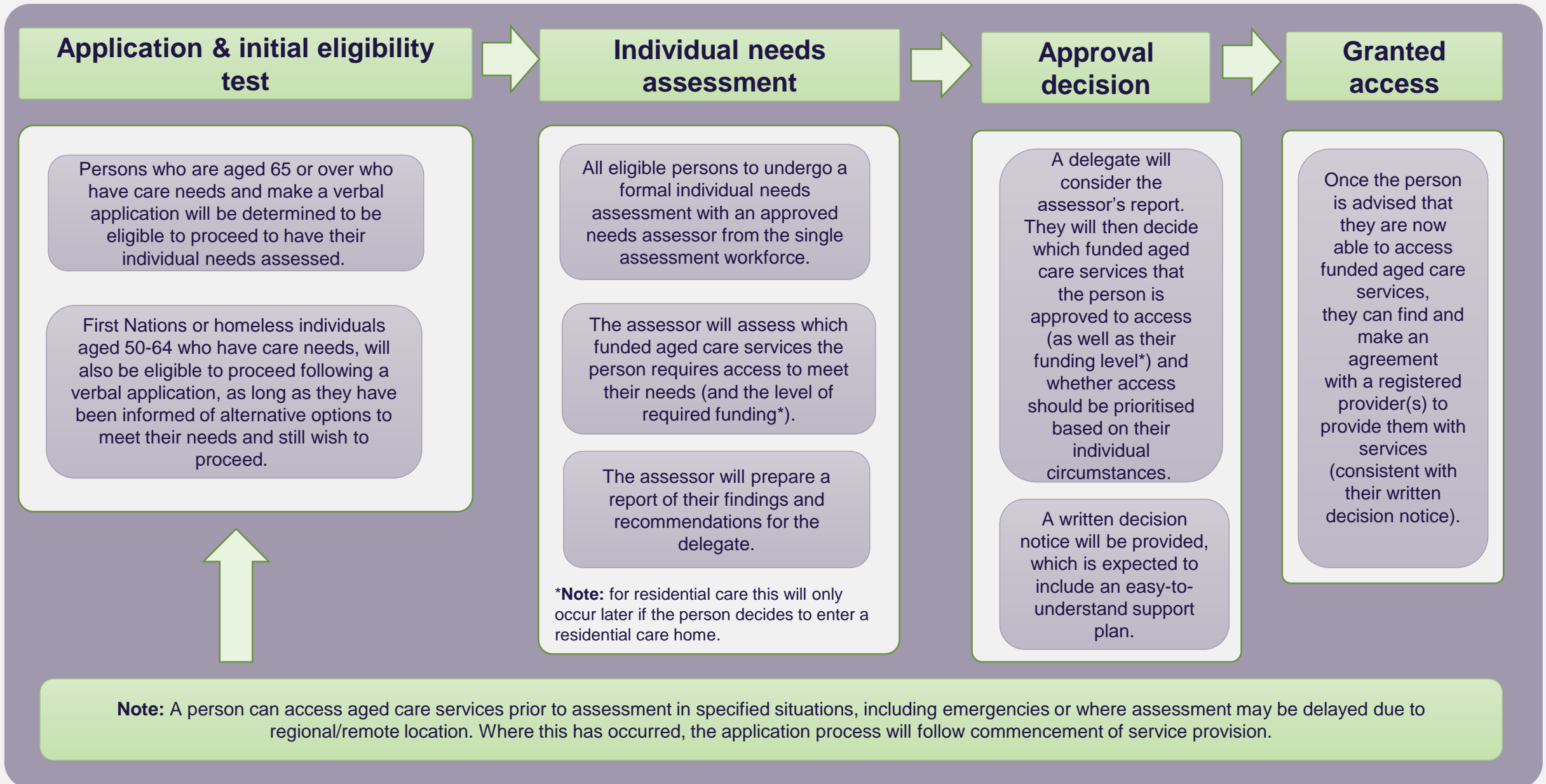
# Defining High Quality Care

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## **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?



# Cathy Milfull

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Director, New Aged Care Framework  
Development Section

- Regulatory framework update
- Statutory duty
- Compensation pathways





**Objective**

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

**Regulatory safeguards**

Supporting quality care

Becoming a provider

Responsibilities of a provider

Holding providers accountable

Education and engagement (providers and workers)

Registration model

Obligations

Compliance, monitoring and enforcement

Information sharing and data

Provider reporting

Complaints and incidents

Information for older people, their families and carers

Sector oversight

Audit

**Regulatory functions and tools**

Regulatory intelligence

Proactive regulatory action through preventing, detecting and correcting risk





# New Statutory Duty

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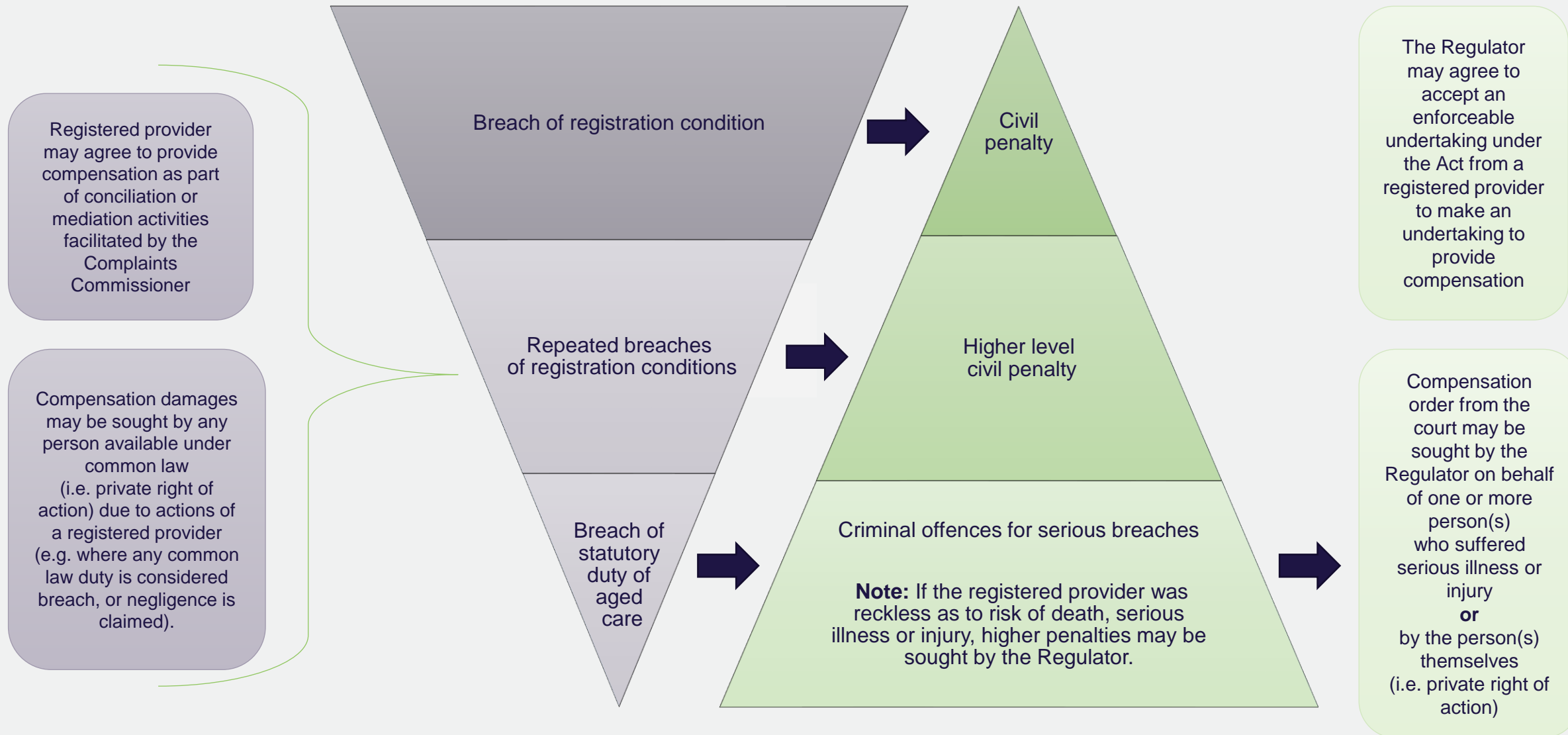
- a new **overarching duty** on registered aged care providers is being considered to:

*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

## Breaches of rights and/or obligations



# Should there be additional duties?

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## 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

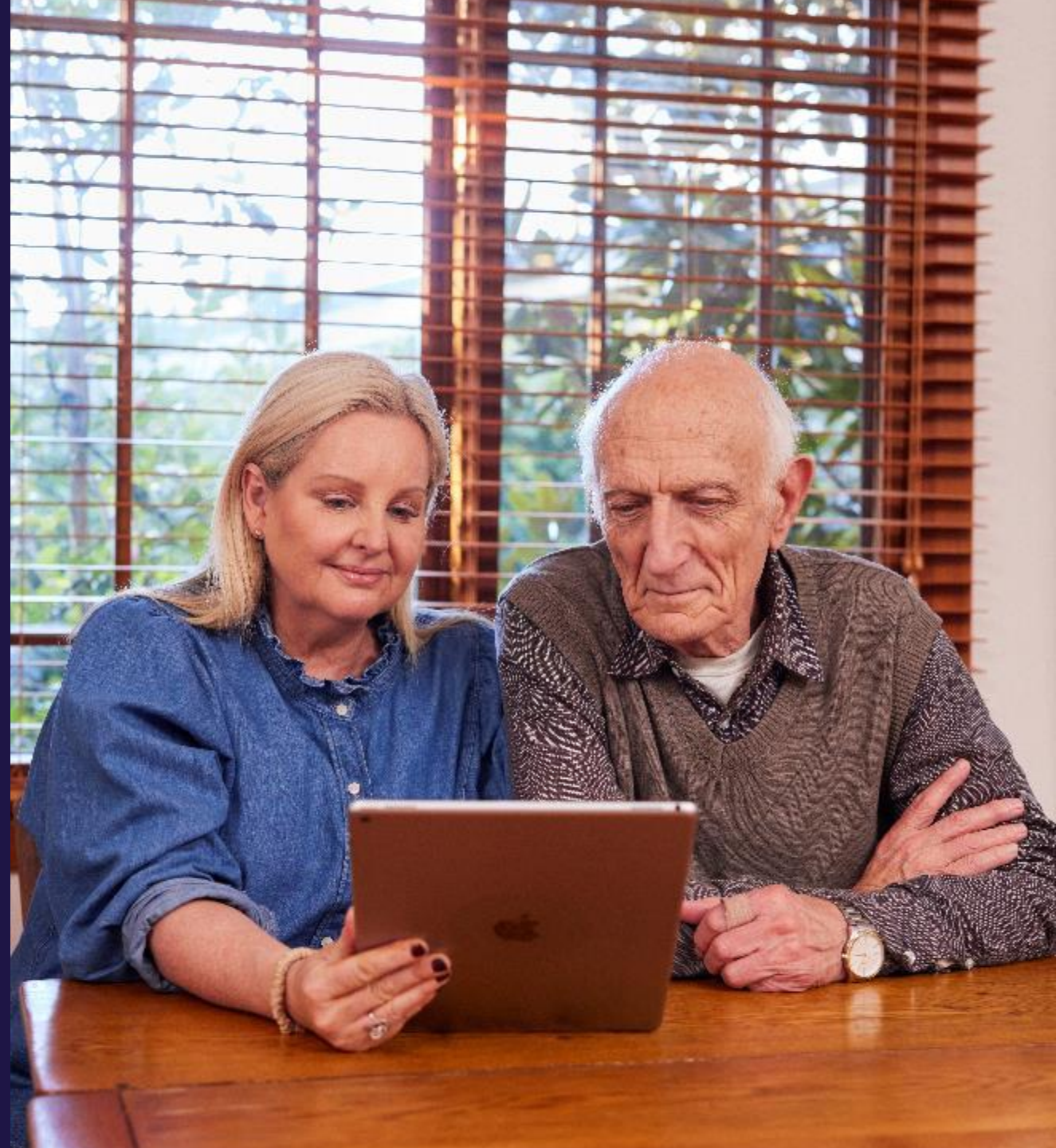
To ensure advertised workers and providers on digital platforms are screened and/or registered?

# Naomi Lavithis

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Director, New Aged Care Framework  
Development Section

- Whistleblower protections
- Supported decision-making



# Proposed new arrangements - making a qualifying disclosure

## Disclosures can be 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.

## Disclosures can be 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

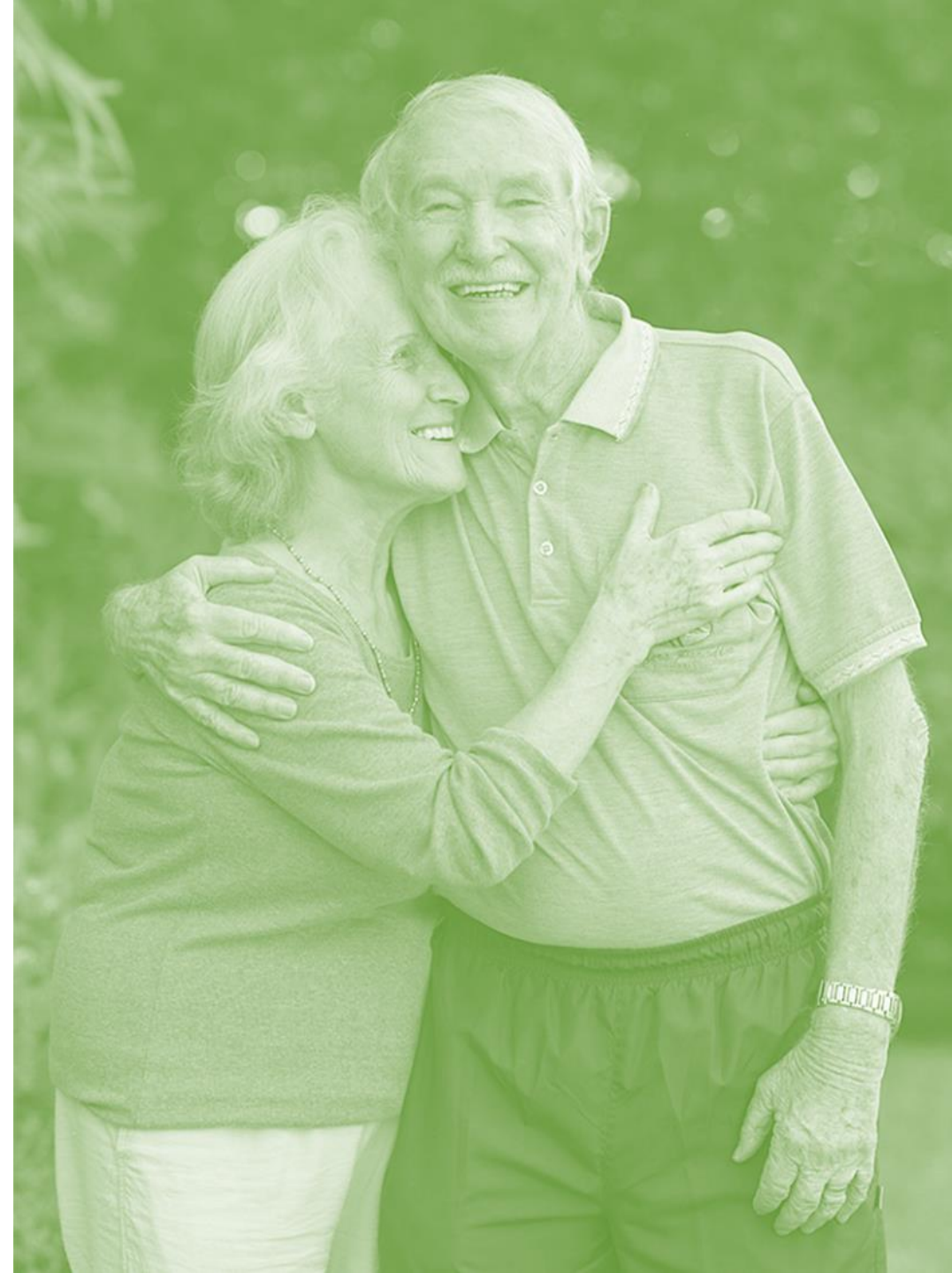
- discloser informs the person to whom the disclosure is made of their name, before making the disclosure; and
- the discloser has reasonable grounds to suspect that the information indicates that an aged care provider, aged care worker, volunteer or contractor has, or may have, contravened a provision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





# Current nominee arrangements

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## Regular representative

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

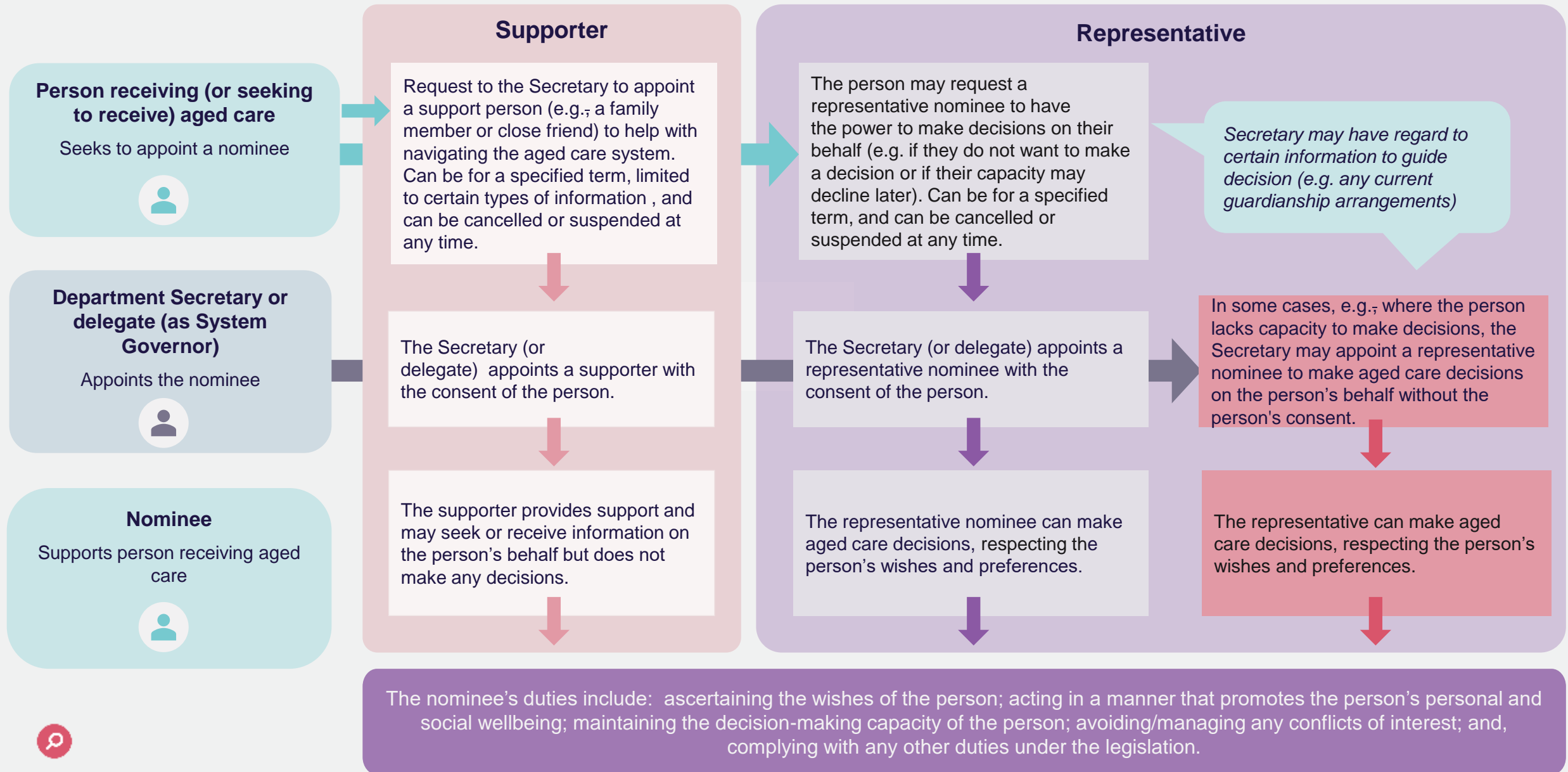
## Authorised representative

- 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



## 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 outlining proposed foundations of the new Act

PDF

Word



### Survey

Have your say on the proposed foundations



### Resources





[agedcareengagement.health.gov.au](https://agedcareengagement.health.gov.au)



Phone **1800 200 422**  
(My Aged Care's free call phone line)