



A New Aged Care Act: the foundations

Consultation Summary Report



Contents

Acknowledgements	5
Introduction	6
Why are we developing a new Aged Care Act?	6
What will the new Act cover?	7
Consultations	7
Consultations on foundations of the new Act	8
Key themes arising from the consultations	13
Next steps	14
Proposed structure, purpose and constitutional foundation for the new Act	15
Proposed Objects of the new Act	15
Proposed purpose of the new Act	15
Proposed constitutional foundation for the new Act	16
Survey response data	17
The Statement of Rights	20
Proposed changes to the Statement of Rights	20
Upholding rights under the new Act	21
Survey response data	23
The Statement of Principles	25
Differentiating the Statement of Rights and Statement of Principles	25
Upholding principles under the new Act	26
Survey response data	28
Definition of high quality care	30
High quality care that promotes continuous improvement	30
Proposed changes to the definition	31

Survey response data	32
A new duty of care and compensation pathways	33
Additional duties on workers, responsible persons and organisations	33
Compensation pathways	34
Survey response data	35
Disclosure protections for whistleblowers	38
Proposed changes to whistleblower protections	38
Survey response data	39
Supported decision-making arrangements	41
Alignment of the new Act with existing decision-making arrangements	41
Proposed changes to supported decision-making	42
Survey response data	43
Eligibility for funded Aged Care Services	45
Younger people in residential aged care	45
Survey response data	47

Acknowledgements

The Department of Health and Aged Care (department) would like to thank everyone who took the time to contribute to the public consultation on the foundations of the new Aged Care Act (new Act).

Your experiences, thoughts and expert advice are valued and will help to deliver a better Aged Care Act to support the future aged care system.

We would like to thank older people with lived experience of aged care, their families and carers for their valuable insights about improving the key structural components of the new Act.

The department engaged the Older Persons Advocacy Network (OPAN) and the Council on the Ageing (COTA) to conduct a series of face-to-face workshops around Australia. We would like to thank all those who participated in these workshops, providing valuable feedback on the proposed arrangements under the new Act.

The department also engaged Matthews Pegg Consulting Pty Ltd (mpconsulting) to facilitate a roundtable of independent advocates, advocacy organisations and subject-matter specialists. The feedback provided throughout the consultations is valuable to provide insights into the operation of the policy underpinning the legislation and to help the department continue progressing aged care legislative reforms.

Introduction

The department published [The new Aged Care Act: The foundations – Consultation paper](#) (Consultation Paper 1) in August 2023 for public feedback.

The foundational aspects covered were:

- 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, and
- eligibility for Commonwealth funded aged care services.

This consultation provided an early opportunity to test aspects of the new Act and provided a vision of the future legislative framework for Commonwealth funded aged care.

We welcomed the engagement of older people, their families and carers, aged care providers and workers, researchers and professional bodies, state and territory governments, and advocacy bodies. This feedback is critical for ensuring the changes we are making to aged care will deliver quality, security and dignity for older people now, and in the future.

Why are we developing a new Aged Care Act?

The Royal Commission into Aged Care Quality and Safety (Royal Commission) recommended that a completely new Aged Care Act be developed.

“A new Act is required to achieve the fundamental reforms we envisage to put older people’s needs and wellbeing first.”

Royal Commission into Aged Care Quality and Safety, Final Report Volume 1 p79

The new Act will replace existing legislation, including the *Aged Care Act 1997* (Aged Care Act) and *Aged Care Quality and Safety Commission Act 2018*. It will provide the foundations of a new aged care system where there is no place for substandard care.

The new Act will deliver the next phase in a series of aged care legislative reforms. It will build on the priority aged care reforms already delivered via the *Aged Care and other Legislation Amendment (Royal Commission Response) Act 2022*, the very first Act of the 47th Parliament, and the *Aged Care Amendment (Implementing Care Reform) Act 2022*, which was enacted on 9 November 2022.

Once fully implemented, the new aged care legislative framework will respond to over 50 recommendations of the Royal Commission. The new Act will address 33 of these (29 in full, 4 in part) and implement 6 Government election commitments.

Legislative amendments introducing the new approach to home care, commencing from 1 July 2025, will address 20 additional recommendations (17 in full, 3 in part). Further legislative amendments the following year would then deliver on any remaining Royal Commission recommendations requiring legislative changes.

What will the new Act cover?

The new Act and related subordinate legislation will:

- adopt a rights-based approach, outlining the rights of older Australians in a proposed Statement of Rights, and placing older Australians and their needs at the centre of the legislative framework
- provide a single system entry point, with clear eligibility requirements
- incorporate a fair, culturally safe single assessment framework
- support delivery of a range of aged care services
- establish new system oversight and accountability arrangements
- introduce a new risk-based regulatory model designed to increase provider accountability and strengthen enforcement powers for the regulator
- encourage delivery of high quality and safe aged care services
- deliver a number of key election commitments, including new protections for whistleblowers, increased penalties for the provision of substandard care, and enhanced investigatory powers for the regulator.

The department is focused on delivering these much-needed reforms of the sector as soon as possible, while ensuring we effectively consult with older people and the Australian community.

Consultations

The specific policy reforms related to the new Act have separately been subject to their own consultation process. Policy arrangements and the drafting of legislative reforms are also being informed by regular consultation with external stakeholders including the Council of Elders and the National Aged Care Advisory Council.

So far, thousands of people have engaged to have their say on aged care reforms and policy arrangements, including over 18,000 people participating in past webinars.

Key consultations have included:

- the new model for regulating aged care, including future registration, complaints, and monitoring of providers. Consultations on this aspect of the reforms involved:
 - a paper setting out concepts for a new framework for regulating aged care, released 8 February 2022
 - *Consultation Paper No.1 A new model for regulating Aged Care* released 5 September 2022 with consultations concluding on 10 October 2022, and
 - *Consultation Paper No.2 Details of the proposed new model* released 26 April 2023 with consultations concluding on 23 June 2023.
- a review of the Aged Care Quality Standards, which involved:
 - public consultations on the revised Quality Standards over a 6-week period from 17 October to 25 November 2022 through a range of activities including an introductory webinar, online focus groups and a survey, and
 - a pilot of the strengthened aged care standards.
- extensive consultations on reforms to in-home aged care, including recently to obtain feedback on the draft aged care funding principles to support the work of the Aged Care Taskforce.

Consultations on foundations of the new Act

From 4 August to 8 September 2023, over 2,000 people participated in the consultation activities and events to discuss the foundations of the new Act.

On 10 August 2023, the department hosted a webinar to walk through the details on the foundations of the new Act and address questions from the public. Attendance at the webinar exceeded 1,300 participants, with more than 300 participants also attending a series of face-to-face workshop held around Australia, hosted by the Older Persons Advocacy Network (OPAN) and the Council on the Ageing (COTA).

The department hosted a roundtable on 23 August 2023, attended by individual advocates, advocacy organisations and subject-matter experts. The department also hosted four targeted briefings for worker, advocacy and provider peak bodies.

The department supported sector engagement by providing a range of supporting materials on the topics covered in the consultation paper. The department published a series of fact sheets and diagrams, and released a survey to gauge public perceptions of the draft policy.

The department received 291 survey responses and 119 submissions from organisations, individuals and from state, territory and local governments. Written submissions were received up until 23 October to allow for more well considered responses to the consultation paper.

The map below shows the locations of face-to-face workshops hosted by OPAN and COTA. These workshops informed the consultations on the foundations of the new Aged Care Act undertaken during August and September 2023.

Workshop locations



Survey demographics

Table 1 highlights the top six survey respondent types. Of the 291 surveys received, the majority (20%) were submitted by a family member or carer of an older person, followed by aged care providers (15%), aged care workers (14%), and older people receiving in-home care (12%).

Figure 2 provides the geographic distribution of respondents. As expected, the majority of responses were received from residents of capital cities (49%). However, there was good representation from residents of regional centres (20%) and rural towns (14%).

Figure 3 shows the language of respondents. Also as expected, the largest language group represented was English speakers (71%), followed by those who spoke another language (11%).

The demographic breakdown has provided an indication of areas the department can seek to improve its engagement for the next round of consultations, particularly to boost engagement with:

- older people in residential aged care, who only accounted for 2% of survey responses, and
- First Nations communities, with only 1% percent of responders indicating they identified as being Aboriginal and/or Torres Strait Islander.

Table 1. Top six survey respondent types

Survey respondent type	Percentage of respondents
Family member or carer	20%
Aged care provider	15%
Aged care worker	14%
Older person accessing in home aged care services	12%
Representative for an advocacy or support organisation	4%
Older person accessing residential aged care services	2%

Figure 2. Survey respondent place of residence

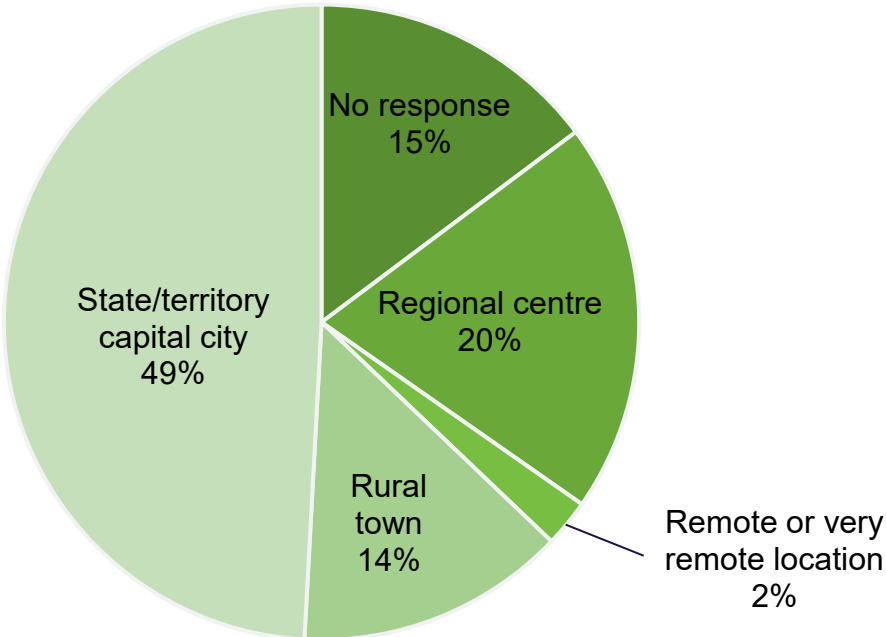
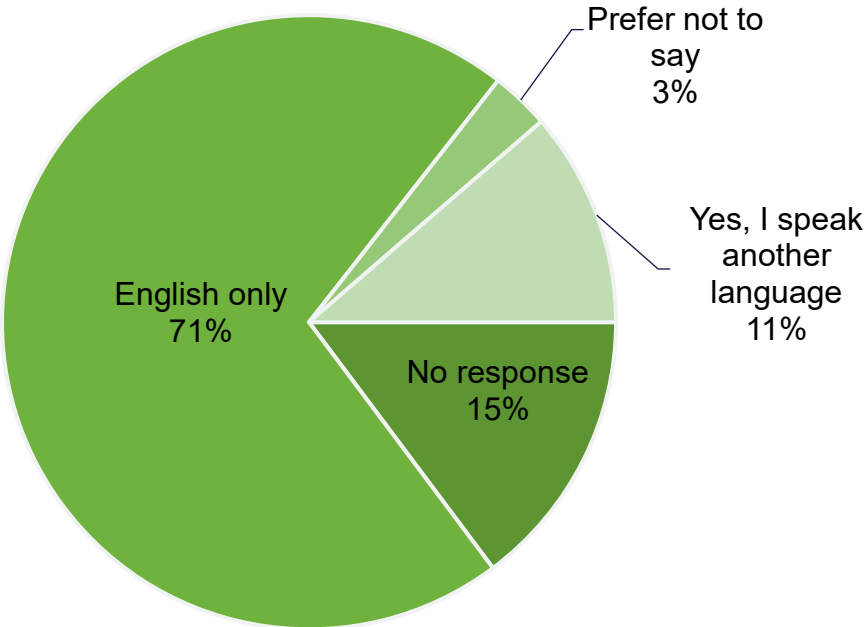


Figure 3. Survey respondent language



Written submissions demographics

Throughout the consultation period, the department received public submissions in response to the consultation paper, ranging from single-sentence emails to large, multi-chapter submissions. In total, the department received 119 submissions as at the end of October 2023. The department continued to accept submissions following the formal close of the consultation period to ensure we obtain a diverse range of feedback as we finalise development of the draft Bill for the new Act.

Table 2 and table 3 present the breakdown for each category, including how many submissions were received for each respondent type. The majority of submissions came from organisations (68%), which included advocacy organisations (n=45), providers (n=14), government (n=10), universities or academic organisations (n=8) legal organisations (n=2), and unions (n=2)

There was good representation from individuals choosing to lodge a submission (32%). This included older people (n=9), aged care workers (n=7), individual academics (n=4), family members and carers (n=3), individual advocated (n=2), and government workers (n=1).

Table 2. Submission respondent types for organisations

Submission respondent type (organisations)	Number of submissions
Advocacy or support organisations	45
Providers	14
Government	10
Academic organisations	8
Legal organisations	2
Unions	2

Table 3. Submission respondent types for individuals

Submission respondent type (individuals)	Number of submissions
Older people accessing in-home care	5
Older people accessing residential aged care	2
Older people considering accessing services in the future	7
Aged care workers	7

Academics	4
Family members or carers	3
Advocates	2
Government workers	1
Other or not specified (submission received anonymously or with no specified background).	12

Key themes arising from the consultations

Overall, the feedback from participants demonstrated mostly positive sentiment towards the proposed foundations of the new Act. They welcomed the proposed approach to creating a simplified, rights-based legislative framework centred on older people.

The consultations highlighted that linkages between the legislation and broader regulatory framework must be made clear. They suggested further work is required to make these clear and accessible to all users of the aged care system. Most important to participants was that the enforcement of rights is critical and there are meaningful outcomes available to support the rights of older people.

Some of the feedback indicated further work for the department as we draft the legislation, including to:

- refine the Statement of Rights and Statement of Principles
- look at ways to more clearly define high quality care so that it is measurable and aligned with other components of the new Act, and
- clarify the interaction of the proposed nominee arrangements with existing state and territory guardianship and power of attorney regimes.

The consultations also drew out competing views of whether a duty of care should be extended to the aged care workers and responsible persons of registered providers.

Further feedback is explored in greater detail in the following chapters, which provided the department with insights on how to progress drafting of the new Act. The following chapters also set out some of the key actions that have been taken by the department to address the feedback received for the development of an exposure draft of the Bill for the new Act.

Next steps

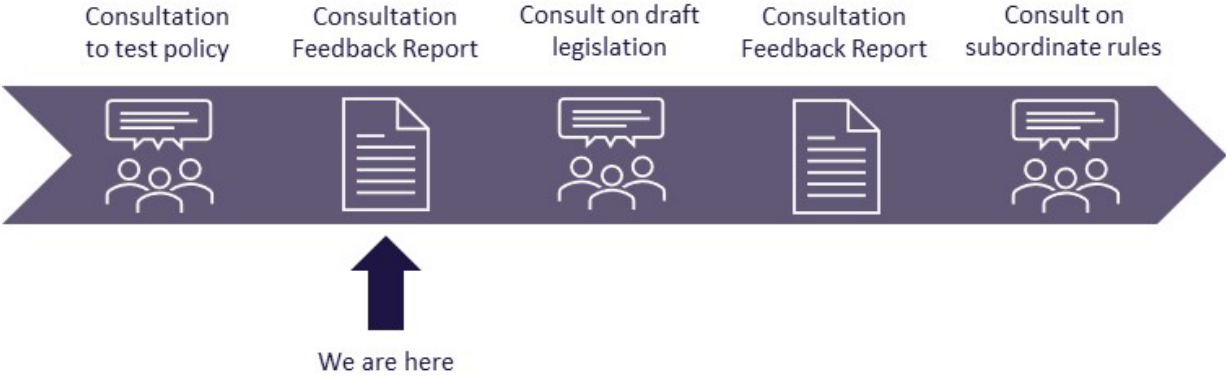
Ahead of the final Bill for the Act being introduced to Parliament, we are planning to release an exposure draft of the Bill for public consultation.

Our intent is for the exposure draft process to provide an opportunity for older people, their families and carers, workers, providers and peak bodies to participate in a range of targeted engagement and information sharing events.

The consultations will also be used to identify issues with the drafting which can be addressed ahead of the Bill's introduction to Parliament.

Consultations on policy for amendment Bills related to future phases of the legislative reforms will continue as the new Act progresses, with the Aged Care Taskforce expected to hand down its final report in December 2023.

New Aged Care Act consultation process



Proposed structure, purpose and constitutional foundation for the new Act

The feedback received on the proposed structure of the new Act was generally supportive of replacing the current suite of aged care legislation with one main piece of primary legislation.

Feedback generally noted that the current structure of the Aged Care Act, following so many successive amendments since it was first enacted in 1997, has become difficult to navigate and is internally inconsistent.

There was consensus that the new Act should improve navigation and ease of use of the legislation, including accessibility of the legislation for older people to reflect the new, rights-based approach.

However, some feedback noted there was the potential for overlap and duplication between the proposed Objects, Purpose Statement, Statement of Rights and the Statement of Principles. While it was acknowledged that each component had its proposed respective purpose, there was the potential for confusion without further delineation between these aspects of the proposed legislation.

Proposed Objects of the new Act

We heard that it was important for the Objects to include a stronger reference to the importance of the rights of older people and that they reference sector viability. It was consistently highlighted that sector funding is a prerequisite to achieving all Objects of the Act and needs to be included.

Another common piece of feedback we heard was that the Objects should better incorporate upholding rights – either by referencing the Statement of Rights or by setting out how relevant international conventions relating to the rights of older people are incorporated into the aged care system. Some of the feedback received also suggested there should be better alignment of the wording of the Objects with the Royal Commission’s recommendations.

Proposed purpose of the new Act

Feedback relating to the proposed purpose of the new Act generally focussed on its proposed wording and where it could be strengthened to better reflect the rights-based approach of the new Act. A number of stakeholders suggested that the proposed Purpose Statement reiterates matters already outlined in the draft Objects,

and suggested that for simplicity, these parts of the new Act could be merged. It was similarly expressed that the proposed purpose statement may not accurately capture the functions of the new Act, or reflect the importance of those functions, in the same way as the draft Objects.

Commentary on the proposed Purpose raised the need to re-evaluate terminology of “facilitate access” to instead reflect the provision of care, encompassing both enablement and reablement of older people’s well-being. Similar sentiment was noted regarding language of older people being “active” and “self-determined” such that it was seen to undermine the complexity of health and care needs of people in the aged care system and that these terms are not necessarily synonymous with providing quality and safe care.

“The three sections [Statement of Objects, Rights and Principles] each have a clear purpose but at present contain many overlapping elements that could be confusing. Each needs to be streamlined and tightened up to provide a clear mutually reinforcing overall framework.”

COTA Victoria

Proposed constitutional foundation for the new Act

The proposed constitutional basis for the new Act, which would include reliance on particular international conventions, was broadly supported. It was considered to be a positive step towards upholding human rights for older Australians. However, feedback received also indicated there was a desire for further international conventions to be drawn on to ensure the human rights of older people are protected.

Common additional international conventions requested to be included were the:

- Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment
- Convention on the Elimination on all forms of Racial Discrimination, and
- United Nations Declaration on the Rights of Indigenous Persons.

Some comments indicated that the need for a different constitutional basis for the new Act was not clear and needed to be better expressed.

Responses to feedback

We are pleased to see the broadly positive feedback on the proposed structure, purpose and constitutional foundation for the new Act.

In progressing the draft Bill for the new Act, other feedback and suggestions have been responded to as follows:

- The Objects at Section 5 of the Exposure Draft are proposed to include a clear and prominent reference to the Statement of Rights and upholding these rights. They will also reference the goal of providing sustainable funding arrangements for the delivery of funded aged care services by a diverse, trained and skilled workforce.
- As feedback expressed that the proposed Purpose Statement did not add significant value to the new Act and was arguably duplicative, it is no longer intended that a Purpose Statement be included in the Bill for the new Act.

Some stakeholders requested that we reference additional international conventions in the Objects provisions. We have not referenced every international convention relevant to older people. Instead, we have limited references to those conventions that are directly relevant to the constitutional authority for the new Act.

We note there was confusion around why a different constitutional basis is required for the new Act. To clarify, this change is required to facilitate the expanded range of entities able to register as providers of aged care services. However, it is also designed to reflect the shift in focus of the new Act to be on the needs of the individual, rather than on funding providers as is the case with the existing legislation.

Survey response data

Question 1.	The new Aged Care Act will support fundamental change and improvements in aged care.
Agree	56
Somewhat Agree	63
Neither Agree nor Disagree	21
Somewhat Disagree	12
Disagree	6
(No Response)	133
Total responses to statement	158

Question 2.	The new Aged Care Act will place the needs of older people at the centre of the new aged care system.
Agree	62
Somewhat Agree	64
Neither Agree nor Disagree	19
Somewhat Disagree	8
Disagree	6
(No Response)	132
Total responses to statement	159
Question 3.	The proposed Purpose Statement, Objects and Principles of the new Act reflect what I want to see in aged care legislation.
Agree	51
Somewhat Agree	64
Neither Agree nor Disagree	21
Somewhat Disagree	17
Disagree	4
(No Response)	134
Total responses to statement	157
Question 4.	Details about how aged care programs operate should be in the Rules (subordinate legislation), so they are easier to update to improve outcomes for older people or address operating issues.
Agree	96
Somewhat Agree	40

Neither Agree nor Disagree	15
Somewhat Disagree	6
Disagree	4
(No Response)	130
Total responses to statement	161

The Statement of Rights

Feedback overwhelmingly supported taking a rights-based approach to the new Act and to include a Statement of Rights, designed to be the centrepiece of the new Act. Sources supported references to person-centred principles, choice and control for decision-making, and reference to equitable access to assessment.

There was also broad support for using complaints pathways to safeguard the rights of older Australians, although it was noted that additional measures and clarity are needed to ensure complaints pathways are practicable and accessible.

Proposed changes to the Statement of Rights

Harmonisation between the various parts of the Statement of Rights was seen as a spotlight area for submissions. The Statement of Rights needs to be expressed clearly, consistently and avoid duplication with the Statement of Principles. This was considered crucial to ensure balance is achieved in the following areas:

- Differentiating consumer and human rights to ensure they are not conflated.
- The right to equitable assessment, and the right to equitable access and equitable service provision. Submissions expressed that high quality care and well-being are achieved when needs are not just accurately assessed, but also addressed. It was suggested that the Statement of Rights could be amended to reference that there will be no statutory barriers to access.
- Mapping the relevant international conventions against each of their respective rights. Similarly, it was proposed that the new Act should clearly map the Quality Standards, Objects and Statement of Principles to the Statement of Rights and ensure consistent use of language across these components of the legislation.
- Differentiating rights and responsibilities for both consumers and providers, with many respondents proposing the new Act should include a Statement of Responsibilities to ensure it encompasses the rights of both consumers, providers and workers.

There were also some topics that participants felt to be inadequately considered in the Statement of Rights. These included:

- carers' rights and workers' rights
- the inclusion of rights to voluntary assisted dying, and end-of-life care options
- recognising rights to diversity, culture and spirituality; and
- the right to equitable access to (quality) healthcare.

Upholding rights under the new Act

Feedback repeatedly expressed that the enforcement of rights is critical for sector change. One written submission stated that it currently remains unclear how the Statement of Rights will be interpreted from a regulatory standpoint and that it will not be enough to dovetail the Statement of Rights with the revised Quality Standards. More generally, submissions stated the legislation must clearly outline how rights will be enforced and what remedies will result.

“Implementation was viewed as key to the success of the Act and the delivery of rights-based care and support. In particular, the transition of rights into practice.”

OPAN/COTA consultation report

In a similar tone, feedback from providers expressed that it was difficult to discern how providers will need to show they act consistently with the Statement of Rights. There was concern for an overly onerous system, which similarly follows the concern for lack of resourcing to support providers to effectively implement rights.

Complaints pathways

It was reinforced that complaints pathways, while supported in-principle, need to be accessible ensure the rights-based approach is effectively realised. Feedback was supportive of an empowerment approach to regulation that addresses risks early, but that this should be reinforced by a strong complaints system that upholds the rights of older people.

Feedback was supportive of a revised complaints system led by the Complaints Commissioner, as long as there are effective procedural steps to deal with complaints, including:

- timely responses
- incorporating the voice of older people at all levels; and
- differential pathways between complaints, and allegations of violence, abuse and neglect.

Responses to feedback

The Statement of Rights will continue to be a centrepiece of the new Act but has been further strengthened and refined based on the feedback the department has received.

To ensure the Statement of Rights is easy to understand by both older people and providers, the rights up have been split up into sections within the Statement, under simple, easy-to understand headings.

Amendments have also been made to include:

- recognition of a right to delivery of services by appropriately qualified and skilled workers of registered providers, consistent with the requirements imposed on registered providers under the Act
- recognition of the need for accessibility of complaints mechanisms, and of assessment (and re-assessment) processes for those living with dementia or other cognitive impairment
- a right to equitable access to palliative and end-of-life care
- references to spirituality and connectedness with reference to the role of pets, friends, community activities and public life - as well as community and Country for Aboriginal and Torres Strait Islander persons
- references to both intimate and sexual relationships, freedom from sexual misconduct and coercion
- references to other methods of communicating (noting these may be non-verbal)
- references to cultural safety, trauma-aware and healing informed service delivery.

We have been unable to make amendments to specify that there will be no statutory barriers to accessing funded aged care services or include a universal right of access to funded aged care services. This is because as recognised by the Royal Commission, the system should be financially sustainable and based on need. Any rights or entitlement to access funded aged care services must be balanced against these considerations.

At this stage, we have not included workers' or carers' rights under the Statement of Rights. This is because such rights are covered by other legislation and this particular Statement focusses on the rights of older people when accessing or seeking to access services under the new Act. The important role of carers and workers are highlighted in the Statement of Principles.

Feedback also expressed that the new Act should include a list of the responsibilities of older people, as well as their rights. This feedback has not been actioned at this time – noting such responsibilities were removed from the aged care framework several years ago and can be dealt with outside of the legislation if considered useful.

We have incorporated feedback to better clarify responsibilities to ensure provider conduct is consistent with the Statement of Rights in the Exposure Draft. Future materials will also provide information to clarify the functions of the Complaints Commissioner and how breaches of the Statement of Rights will be addressed.

Survey response data

Question 1.	The proposed Statement of Rights is clear and understandable.
Agree	60
Somewhat Agree	59
Neither Agree nor Disagree	17
Somewhat Disagree	8
Disagree	7
(No Response)	140
Total responses to statement	151
Question 2.	The proposed Statement of Rights will empower users of the aged care system, provide clarity, and promote confidence.
Agree	39
Somewhat Agree	61
Neither Agree nor Disagree	22
Somewhat Disagree	18
Disagree	9
(No Response)	142
Total responses to statement	149
Question 3.	I should be able to make a complaint to the Aged Care Quality and Safety Commission where I feel my own or someone else's rights have been breached.
Agree	122
Somewhat Agree	16
Neither Agree nor Disagree	5

Somewhat Disagree	2
Disagree	6
(No Response)	140
Total responses to statement	151
Question 4.	The Aged Care Quality and Safety Commission should be able to intervene in an issue early before the situation deteriorates.
Agree	119
Somewhat Agree	22
Neither Agree nor Disagree	3
Somewhat Disagree	4
Disagree	3
(No Response)	140
Total responses to statement	151

The Statement of Principles

The proposed Statement of Principles will guide the decisions, actions and behaviours of government agencies operating under the Act.

Feedback acknowledged the Statement of Principles articulates that the new Act system goes beyond individuals accessing funded aged care services and needs to include everyone responsible for the system. Feedback praised references to rights, dignity and high quality care, well-being, and a continuously improving system.

Some written submissions queried how the Statement of Principles will operate in practice. There was some concern for its subjectivity and how it might be interpreted, which may be counterintuitive to sector innovation and striving for continuous improvement. We heard similar feedback in workshops where participants noted that the Statement of Principles reads more like guidelines, which may dilute the Statement of Rights.

Some stakeholders raised whether the new Act needed both a Statement of Rights and a Statement of Principles. However, there was no strong sentiment to exclude the Statement of Principles. Feedback focussed on how the statement can be refined with reference to empowering principles that strengthen the whole aged care system.

Differentiating the Statement of Rights and Statement of Principles

As highlighted in above chapters, harmonisation of the Statement of Principles with the Objects and Statement of Rights was a key point of feedback. This reinforces a need to focus drafting efforts on refining the statement's clarity, purpose and differentiation to the Statement of Rights.

Some feedback that focussed on the two statements viewed them as interrelated and complementary. Contrary feedback expressed that if language between the statements is too synonymous then they may be too conflating.

Generally, however, we heard that the Statement of Principles needs to be streamlined and reframed in more empowering and active language so as not to cause unnecessary complexity.

Upholding principles under the new Act

Accountability for the Statement of Principles was highlighted in a similar tone to the accountability and enforcement of the Statement of Rights. Questions were raised in both written submissions and face to face workshops, including:

- how will the Principles operate in practice?
- how would whole of sector adherence to the statement be assured?
- who would be responsible for sector progression according to the Principles?

We saw consensus that the Statement of Principles should not be used as another compliance mechanism, but that improvements could be made to clarify what the Statement means operationally. As legislative drafting progresses, these questions will drive the areas of focus for clarifying the role of the Statement of Principles.

“The Principles should not be used as another tool to measure providers’ compliance (or influence the Commission’s decision-making in relation to compliance action), given this will already be done through the obligations framework under the new regulatory model.”

Aged & Community Care Providers Association

Responses to feedback

We consider that both the Statement of Rights and a Statement of Principles play an important, but different, role in delivering cultural change within the aged care sector. However, we aim to ensure the Statement of Principles is complementary, but not duplicative of the Statement of Rights.

Taking feedback we have received into account, we have also:

- incorporated more active, empowering language into the Statement of Principles
- incorporated a clear link to the Statement of Rights from the Statement of Principles and removed duplicative concepts
- streamlined the principles, and
- as with the Statement of Rights, included simple, easy-to-understand headings to help split the principles into sections for easier readability.

In response to specific feedback, we have updated the principles in the draft Statement, including to:

- not assume that all people prefer to reside at home as they age

- ensure the focus of the aged care system is on the needs of the individual, regardless of their location, background and life experiences, and their choice and preferences
- expand the groups of individuals captured by the Note under subsection 22(4), noting this is not an exhaustive list
- reflect that the aged care system needs to build capacity in communities, including to support service continuity and access to integrated services that older people may require over time
- recognise the importance of an aged care system that values workers and empowers them so that they can support innovation, continuous improvement and the delivery of high quality care
- reflect the important role of volunteers in improving an older person's experiences in the aged care system
- recognise the valuable contribution carers make to the aged care system, consistent with the *Carer Recognition Act 2010*
- include reference to information being available in a way that is not only understandable, but also accessible and communicated through a variety of methods and languages
- expand on the concept of a 'value for money' aged care system, and
- reference that regulation of the aged care system will be undertaken collaboratively with older people.

We recognise feedback sought greater clarity for the operation of the Statement of Principles and how they will be adhered to. Attaching penalties where principles are not upheld, as suggested by some stakeholders, is not consistent with principles-based legislation, but we have validated this feedback in areas such as:

- placing a clear obligation on government agencies operating under the Act, including the Commission, to have regard to the Statement of Principles
- mirroring the language of the first key over-arching principle in a registration condition and the Quality Standards, such that providers must demonstrate that they understand that the safety, health, well-being and quality of life of individuals is the primary consideration in the delivery of funded aged care services.

Survey response data

Question 1.	Including a Statement of Principles in the new Act will provide guidance to make sure the new legislation achieves its purpose.
Agree	71
Somewhat Agree	48
Neither Agree nor Disagree	13
Somewhat Disagree	6
Disagree	6
(No Response)	148
Total responses to statement	143
Question 2.	The proposed Statement of Principles is clear and understandable.
Agree	56
Somewhat Agree	52
Neither Agree nor Disagree	17
Somewhat Disagree	12
Disagree	5
(No Response)	149
Total responses to statement	142
Question 3.	The Statement of Principles should clarify what is expected of the Aged Care Quality and Safety Commission and the Department of Health and Aged care.
Agree	97
Somewhat Agree	33

Neither Agree nor Disagree	7
Somewhat Disagree	2
Disagree	4
(No Response)	148
Total responses to statement	143

Definition of high quality care

We sought feedback for the proposed definition of high quality care to test whether it enlivened the vision for an aged care system that had no place for substandard care, encouraged innovation and continuous sector improvement. We received a diverse range of feedback that gave a better sense of what everyone thought would best reflect the concept of high quality care in the new Act.

We found that while sentiment for including the definition as part of the legislative framework was positive, there were concerns raised that the definition was not sufficiently clear or measurable. It was noted that the current wording in the proposed definition lacked objectivity. For example, the use of terms such as ‘compassion’ and ‘respect’ were seen as too subjective.

High quality care that promotes continuous improvement

The majority of feedback noted the concept of high quality care needs to foster a change in sector culture by promoting innovation without fear of breaching compliance. It was recognised this can only be achieved with the availability of appropriate resources. We heard that a key challenge for providers to manage compliance is limited funding and limited workforce, which translated to a primary barrier of achieving high quality care.

Views were mixed with regard to the definition setting the baseline standard of care or whether the definition should be flexible to allow for sector growth and as the evidence changes for what is considered high quality care.

We were cautioned to not use high quality care as another tick box compliance mechanism or to be used as a dutiful requirement. The reasoning provided was that enmeshing high quality care with compliance goes against promoting innovation, providing integrated care at the risk of breaching compliance, and that it will continue to promote a punitive culture with lack of transparency.

“The implementation of person-centred, quality and safe care will require a systems approach that goes beyond ‘ticking boxes.’ It will require culture change and a balance between over-specification and unrestrained innovation.”

UTS Ageing Research Collaborative

Proposed changes to the definition

Many submissions and feedback provided suggestions to improve the proposed definition. We heard that high quality care should better reflect the Statement of Rights. It was suggested to use language across the Statement of Rights and Statement of Principles that reflect the constructs of high quality care.

We also heard from First Nations stakeholders a greater need to include cultural safety as an integral component of high quality care and that the definition should reflect the unique experience of Aboriginal and Torres Strait Islander peoples.

At the face-to-face workshops, key themes were identified for what high quality care meant to people. These included:

- rights-based care
- individualised care
- quality of health care
- quality of nutrition and meals
- quality of staffing; and
- the care environment.

Responses to feedback

In response to the feedback we have received, the definition of high quality care in the new Act has been amended to make it clearer that this is about the delivery of care at a level above the delivery of quality and safe funded aged care required under the new Act.

High quality care will be person-centred and consistent with the Statement of Rights and the new Act – but in addition, it will **prioritise** particular matters that we have heard lead to excellent care outcomes and improved quality of life for older people.

In response to feedback, amendments have been made to the draft Statement of Principles to reflect that the aged care system is expected to support aged care workers to be empowered to suggest measures and take actions that support the delivery of high quality care.

In addition, the new Act will make it a function of both the System Governor and the Commissioner to encourage and promote the delivery of high quality care.

Some categories of registered providers will also be required to have a continuous improvement plan in place to show how they are working towards the delivery of high quality care.

Survey response data

Question 1.	The definition of high quality care needs to be flexible enough to change over time and encourage the aged care sector to aim higher.
Agree	130
Somewhat Agree	31
Neither Agree nor Disagree	5
Somewhat Disagree	8
Disagree	7
(No Response)	110
Total responses to statement	181
Question 2.	The proposed definition of high quality care reflects what high quality care means to me.
Agree	74
Somewhat Agree	62
Neither Agree nor Disagree	22
Somewhat Disagree	10
Disagree	8
(No Response)	115
Total responses to statement	176

A new duty of care and compensation pathways

Feedback on the proposed statutory duty of care and compensation pathways was generally supportive of the new Act including strong penalties, enforcement of rights and ensuring providers are held accountable for breaches of rights through risk-proportionate pathways.

However, this sentiment was equalled with feedback that stated the current proposed duty does not necessarily meet all these requirements, nor does it provide enough clarity for what constitutes a breach or resulting remedy pathways.

Some submissions were concerned for the additional compliance and administrative burdens tagged onto a new statutory duty for providers. There was commentary that highlighted additional compliance requirements might deter providers from providing complex care or taking on clients with intense care needs. This feedback was a part of the broader theme that there may be unintended consequences of a statutory duty, which the department will consider in further drafting of the legislation.

Additional duties on workers, responsible persons and organisations

There was a clear majority that did not support an additional duty on aged care workers. We consistently heard at workshops and in written submissions that such a duty goes further than what was recommended by the Royal Commission and that it would be a dis-incentivisation for the aged care workforce.

“The extension of this new statutory duty to aged care workers (with criminal penalties) is without precedent in health care. In a sector that is already struggling to attract talent due to a lack of funding for well-deserved wage increases, such penalties are only going to further deter workers where there is little reward and significant risks in providing high-quality care to our most vulnerable.”

Anglicare

Some submissions also highlighted the variability of the aged care workforce and that it would be unreasonable to place equal duty on paid versus non-paid aged care workforce, or clinical versus non-clinical workforce.

There were mixed comments towards an additional duty on responsible and governing persons. Some submissions supported shifting more responsibility to responsible persons and that this could be achieved by a new duty. However, there were also submissions that highlighted the dis-incentivisation this could cause for highly skilled people to sit on governing boards as it adds a layer of personal liability.

It was unclear to those providing feedback how this additional duty would create behavioural change, beyond recent governance reforms. Feedback further stated that this issue would be particularly detrimental for regional and rural provider governance.

The least commented on duty across all sources of feedback was the proposed duty on facilitating organisations. Some written submissions highlighted the unique risk such organisations pose and that they should have an additional duty, while others felt an additional duty would be unnecessary. One submission noted older people should at-minimum, be made aware that safeguards and regulation of such organisations is limited.

“Caution may be warranted as it would be difficult to ensure organisations can operate a system with the same level of safeguards and oversight as offered by other aged care providers. Older people should be made aware of the fact that safeguards and oversight is limited.”

Royal Australasian College of Physicians

Compensation pathways

There was concern from the perspective of both older people and providers as to how compensation would be costed or funded. Older people expressed concerns for cost filtering down to the individual, while there was also concern of the additional risk posed to smaller providers who, for example, may not be able to carry additional insurance costs.

However, both sides of feedback provided in-principle support for creating compensation pathways, caveated they are simple, accessible and cost effective for both older people and providers. Key suggestions to take into consideration were:

- pathways should be easily accessible, such as through easy language formats.
- restorative pathways should not always be the preference when compensation is warranted.

Responses to feedback

In response to the feedback received on the statutory duty of care, the department has kept the duty on registered providers, focussed on registered providers taking reasonable steps to avoid their actions adversely affecting the health and safety of persons in their care.

Addressing feedback around unintended consequence and dis-incentivisation, a breach of the duty will also only occur where a provider engages in conduct that amounts to a serious failure – with higher penalties available where conduct results in the actual death of, or serious injury to, or illness or the individual to whom they owed the duty.

Based on the strong feedback regarding an additional duty on aged care workers, such a duty has not been included in the exposure draft.

A duty on responsible persons will be included to reinforce responsibility across all parts of the aged care system.

We will also look to uphold Recommendation 14 of the Royal Commission as well as support feedback that highlighted the need to regulate aged care digital platforms and organisations that facilitate access to funded aged care services, by imposing a separate duty on the operators of these platforms.

The intention is for this duty to complement the obligations imposed on registered providers and aged care workers, not simply duplicate those requirements.

Survey response data

Question 1.	A new statutory duty of care should be included in the new Act even though there are existing similar duties under the common law and work, health and safety legislation.
Agree	116
Somewhat Agree	22
Neither Agree nor Disagree	15
Somewhat Disagree	2
Disagree	5
(No Response)	131

Total responses to statement	160
Question 2.	Criminal penalties should be available in serious cases where the duty of care is breached (without a reasonable excuse), resulting in serious illness, injury or the death of an individual.
Agree	118
Somewhat Agree	29
Neither Agree nor Disagree	6
Somewhat Disagree	5
Disagree	4
(No Response)	129
Total responses to statement	162
Question 3.	A separate duty should be placed on managers, board members and other responsible persons of registered providers.
Agree	110
Somewhat Agree	30
Neither Agree nor Disagree	7
Somewhat Disagree	8
Disagree	7
(No Response)	129
Total responses to statement	162
Question 4.	A separate duty should be placed on aged care workers.
Agree	86

Somewhat Agree	43
Neither Agree nor Disagree	12
Somewhat Disagree	12
Disagree	9
(No Response)	129
Total responses to statement	162
Question 5.	There should be a formal pathway for compensation available under the new Act where breach of the duty results in serious illness or injury.
Agree	106
Somewhat Agree	29
Neither Agree nor Disagree	12
Somewhat Disagree	6
Disagree	6
(No Response)	132
Total responses to statement	159

Disclosure protections for whistleblowers

Feedback was supportive, in-principle, of the proposed additional protections for whistleblowers. Many agreed that there is a need in aged care for additional protections that empower whistleblowers to speak up without fear of retribution and that safeguards need to be clearly legislated.

“There should also be strong protections for people living with dementia, their carers and chosen support people if they make complaints or provide feedback, and for those who are whistle-blowers.”

Dementia Australia

There were questions raised at face-to-face workshops and in written submissions regarding the relationship between complaints processes and the circumstances that would translate a serious complaint to a whistleblower disclosure.

There was general consensus that the effectiveness of strengthening whistleblower protections depends on implementation. Some people expressed concern that it may go against the ongoing efforts to improve transparency and open disclosure of adverse events.

Proposed changes to whistleblower protections

Ensuring appropriate streamlining of whistleblower protections with existing legislation was of high importance to participants. Provisions in the new Act should not cause further fragmentation or confusion. A critical lens should be applied to new provisions to avoid duplication and promote harmonisation.

We heard concerns that the legitimacy of the proposed framework may be undermined due to deeply engrained fears of retaliation and retribution in the aged care system. Some feedback put forward that the proposed framework currently offers little to restore current power imbalances.

Feedback repeatedly stated that anonymous disclosures should be allowed and there should be no additional barriers for prospective whistleblowers.

The consultation paper noted that for information to be dealt with and investigated appropriately, it will be necessary to include some limited exceptions to disclosing the whistleblower’s identity. It was also noted that disclosures will need to be made

in good faith. Both conditions were not received warmly by participants across consultations and were considered unnecessary barriers to whistleblowers.

Feedback was supportive of the requirement for providers to have an internal whistleblower policy, although it was expressed this could easily result in an undesirable level of variability across the sector. A standardised approach to internal whistleblower policies was strongly supported, which involves provider compliance and standard policy provisions.

Responses to feedback

In response to the feedback received on the proposed whistleblower protections, we have considered the following:

- The new Act seeks to provide stronger safeguards and empowerment to whistleblowers. As such, a person will no longer need to provide their name to be offered protection as a whistleblower. We have also removed the condition of good faith when making a disclosure.
- We recognise that this consultation only provided high level information for provider internal whistleblower policy requirements. The exposure draft specifies that this policy will be a condition of provider registration and that this policy must be maintained in accordance with the Rules.
- We have expanded the types of people who will be able to make a disclosure, such that anyone will be able to be a whistleblower. This amendment intends to further remove any additional barriers for whistleblowers.

Survey response data

Question 1.	Including disclosure protections for whistleblowers will provide clarity and improve confidence of people in the aged care system to come forward.
Agree	116
Somewhat Agree	21
Neither Agree nor Disagree	5
Somewhat Disagree	6
Disagree	5

(No Response)	138
Total responses to statement	153
Question 2.	Formal volunteers, such as those in the Community Visitors Scheme, should be authorised to receive whistleblower protections? Please select the response that most aligns with your views.
Agree	110
Somewhat Agree	21
Neither Agree nor Disagree	5
Somewhat Disagree	7
Disagree	11
(No Response)	137
Total responses to statement	154
Question 3.	The proposed whistleblower provisions should provide greater clarity around the difference between making a whistle-blower disclosure and the complaints process.
Agree	118
Somewhat Agree	22
Neither Agree nor Disagree	8
Somewhat Disagree	1
Disagree	5
(No Response)	137
Total responses to statement	154

Supported decision-making arrangements

The new Act is an opportunity to ensure that the role of legal representatives and their responsibilities relating to supported decision-making is clarified. Feedback received during consultations was supportive of this intent. Feedback was encouraging of clear and consistent arrangements that would be easy to understand and bring together the current fragmented approach.

We heard, however, that there is more work to be done for clarifying how new supported decision-making arrangements will fit with existing state and territory legislative arrangements. Similarly, greater clarification is required for the roles and responsibilities of both supporters and representatives.

We also heard the significant need for strong safeguards in relation to potential elder abuse. Feedback expressed the new framework should give no room for manipulation of potentially vulnerable people, such as older people from CALD backgrounds or older people with dementia.

“We agree that the introduction of formal nominee arrangements divided into the role of supporters and the role of representatives is a great improvement on the confusing array of nominee arrangements under the current Act. However, the new arrangements do seem to open their own can of worms in some instances.”

Carers Australia

Alignment of the new Act with existing decision-making arrangements

There was frequent discussion at face-to-face workshops and in written submissions on the need for the Commonwealth and State and Territory Governments to harmonise arrangements relating to enduring powers of attorney, consent and guardianship.

When discussing conflicting legislative arrangements, participants expressed the potential risk of different people being responsible for decisions relating to aged care services under the Act and for health-related issues. Participants raised various examples of complex decision-making arrangements and felt such pathways were not adequately addressed in the currently proposed framework.

Proposed changes to supported decision-making

The implementation and operation of supported decision-making under the new Act generated diverse discussion. Suggestions from participants of areas for further consideration included:

- making explicit the decision-making role of the Secretary or delegate in appointing a supporter or representative.
- providing further clarification for the appointment process and how it operates on a continual basis, with reference to assessment and re-assessment.
- ensuring definitions are provided for clarity and as with other areas of the legislation, ambiguous language use should be removed.
- the potential need for more than one supporter or representative. Consensus was that there needs to be flexibility around the approach to appointments, such that it is person-centred and reflects the right to choice.
 - This was particularly pertinent for Aboriginal and Torres Strait Islander and CALD participants, where decision-making structures should be able to reflect their culture.

Responses to feedback

Supported decision-making is a significant lever for upholding the rights of older Australians to autonomy, presumption of legal capacity and making decisions about their care. Feedback reinforced this and it is important we are mindful of these principles as drafting progresses. As a result, we have:

- updated the decision-making framework so multiple supporters, or multiple representatives can be appointed for an older person. This change intends to recognise the diverse reality of support networks.
- refined language from the term ‘capacity’ to ‘ability.’ For example, supporters and representatives must use their best endeavours to maintain the older person’s *ability* to make their own decisions.

In response to feedback querying the operation of the supported decision-making framework, the exposure draft clarifies the way supporter and representative arrangements will operate. This includes how they are appointed, suspended and cancelled, and their actions and duties. It also clarifies the administrative process (i.e., the role of the Secretary) of appointing, suspending and cancelling appointments.

The duties for supporters and representatives, and the decision-making principles for representatives have been drafted in Chapter 1 of the exposure draft. Having this upfront in the legislation intends to provide accessibility and guidance for those being appointed under the new Act for the first time.

We note there was strong feedback to harmonise the supported decision-making framework with existing state and territory legislation. The new supported decision-making arrangements do not duplicate or eclipse existing appointments. We have amended the draft legislation to reflect this by including a requirement that where a person who is already appointed under another legislative framework as a guardian (or similar) applies to be a representative under the aged care legislation, the System Governor will be required to appoint them as a representative unless there is clear evidence to the contrary (i.e. allegations of abuse).

Survey response data

Question 1.	Including the roles and responsibilities of supporters and representatives in legislation will promote the autonomy and self-determination of people receiving aged care services.
Agree	77
Somewhat Agree	44
Neither Agree nor Disagree	24
Somewhat Disagree	6
Disagree	5
(No Response)	135
Total responses to statement	156
Question 2.	Supporters will empower older people accessing the aged care system to make their own choices and decisions about how they live their lives.
Agree	94
Somewhat Agree	38
Neither Agree nor Disagree	13
Somewhat Disagree	7
Disagree	4

(No Response)	135
Total responses to statement	156
Question 3.	As a recipient of aged care services, how likely are you to appoint a representative under the new framework.
Agree	8
Somewhat Agree	5
Neither Agree nor Disagree	5
Somewhat Disagree	6
Disagree	3
(No Response)	264
Total responses to statement	27
Question 4.	As a recipient of aged care services how likely are you to appoint more than one person as your supporter?
Agree	9
Somewhat Agree	6
Neither Agree nor Disagree	3
Somewhat Disagree	8
Disagree	1
(No Response)	264
Total responses to statement	27

Eligibility for funded Aged Care Services

As was highlighted by the Royal Commission, the current eligibility and entry framework does not provide for a simple, logical sequence for an older person to enter aged care. We sought feedback on the proposed single assessment framework and common eligibility requirements for all funded aged care services.

Feedback supported the intention to streamline the assessment framework and was welcoming of unambiguous eligibility criteria. A number of stakeholders were pleased to see a lower age limit for Aboriginal or Torres Strait Islander persons, reflecting their unique experiences.

We heard that some areas of the entry pathway and eligibility remained ambiguous, particularly around how the pathway would operate in practice. There were questions around how the single assessment process would consider future or ongoing needs of older people.

There was some feedback that highlighted the hard ceiling for age criteria fails to consider the complexity and diversity of ageing, chronic disease and comorbidities that contribute to premature ageing. A small portion of feedback felt that this did not support the principles of individualised, person-centred care that is reflected in other areas of the new Act.

“Depending on their own individual experience of health and aging, older people can have very different first points of contact with the aged care system, and subsequently very different pathways through different types and levels of care. It is therefore essential that entry into the aged care system is agile and responsive to the older person’s need rather than constrained to a rigid and narrow process.”

Australian Music Therapy Association

Younger people in residential aged care

The intention to limit access of aged care to younger people was welcomed in-principle as it relates to the intentions set by the Royal Commission. However, it was voiced that the reality of younger people in aged care is far more complex and setting restrictions that are too limiting may place additional pressures on other systems.

We saw mixed views with regard to limiting younger people's entry into aged care to that of those between 50-65 and are Aboriginal or Torres Strait Islander and those who are homeless or at risk of homelessness.

Some participants were interested in expanding these criteria to include provisions for younger onset dementia, refugees, palliative care or terminal disease, rural and remote communities, people living with HIV, and complex disability not otherwise supported by NDIS. Many submissions noted NDIS does not adequately address the needs of these populations.

On the other hand, we heard agreement that the aged care system is not an appropriate source of care for any younger person. Generally, stakeholders also highlighted the responsibility of the Government to invest appropriate funding into other service sectors to meet the needs of younger people, so they have genuine alternate options to aged care.

Responses to feedback

The Exposure Draft outlines the proposed eligibility criteria and single assessment processes.

The department will, however, be seeking further feedback in relation to certain cohorts of individuals under the aged of 65 who currently access services in the home or community. We are also progressing further targeted work to ensure younger, vulnerable populations have access to services that are more appropriate for their needs.

Feedback reinforced the diversity of ageing and highlighted the assessment process should recognise this. While the new Act will provide for a single assessment process, assessments will comprehensively identify an older person's individual needs, their goals and preferences and what will help them maintain their independence.

We note feedback that questioned how the single assessment framework would operate on a continual basis. The exposure draft includes provisions for when the needs of an older person change and what the reassessment process will be. It is intended this will reflect person-centred principles and avoid unnecessary steps when an older person may only need a small modification to the funded aged care services they access.

Survey response data

Question 1.	It is important to me that there is a single-entry point to the aged care system.
Agree	143
Somewhat Agree	22
Neither Agree nor Disagree	9
Somewhat Disagree	5
Disagree	4
(No Response)	108
Total responses to statement	183
Question 2.	The new Act should include common eligibility requirements across all aged care programs.
Agree	138
Somewhat Agree	28
Neither Agree nor Disagree	7
Somewhat Disagree	6
Disagree	4
(No Response)	108
Total responses to statement	183
Question 3.	It is not appropriate that people under the age of 65 access funded aged care (with the exception of First Nations people and people at risk of homelessness aged 50-64).
Agree	69
Somewhat Agree	25

Neither Agree nor Disagree	22
Somewhat Disagree	27
Disagree	41
(No Response)	107
Total responses to statement	184



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