



A new Aged Care Act: exposure draft

Consultation paper No.2 –
summary

Plain English version

Introduction

About the new Aged Care Act

The Royal Commission into Aged Care Quality and Safety (Royal Commission) recommended that the Australian Government develop a new Aged Care Act (new Act).

The new Act is the next step in the Government's plan to fix the aged care crisis, it follows:

- making aged care transparent with Star Ratings
- increased direct care for more than 250,000 older people in residential care
- delivering higher standards for the valued workforce
- putting nurses back into nursing homes and increasing wages for aged care workers.

The Government is taking a phased approach to achieve significant reform in aged care and develop the new Aged Care Act.

The Aged Care Act is the main law that sets out the rules for the Australian Government-funded aged care system (aged care system). Aged care includes services delivered to older people in their homes, in community settings and in residential care homes (also known as nursing or aged care homes).

The Government will introduce the proposed new laws (draft law) for the new Act in 2024.

The new Act will aim to strengthen the aged care system. It will make sure that people accessing funded aged care:

- are safe
- are treated with respect
- have the quality of life they deserve.

We, the Department of Health and Aged Care (the department), have already asked Australians to provide feedback on the new Act. We have used this feedback to help us develop a draft of the law. This is called an exposure draft.

We would like to hear what you think about the exposure draft.

What is this summary?

This is a summary of the full exposure draft consultation paper. The chapters in this summary match the chapters in the full paper. This summary aims to explain:

- the ideas and terms that we have included in the exposure draft
- how the new Act will work
- how laws made under the new Act will work.
 - These laws are called Rules and describe how the aged care system will operate.

It also gives information about the parts of the law we are still drafting.

You can find a glossary of key terms at the end of the document.

Tell us what you think

We want to know:

- Do we describe a rights-based approach well? Is it clear that older people will be at the centre of aged care?
- Is it clear how older people's rights will be upheld?
- Is it clear how older people will be empowered to make decisions?
- Is it clear what aged care providers and workers must do?

Anyone can take part in this consultation. This includes:

- older people, their families and carers
- aged care providers and workers
- researchers and experts
- anyone who is interested in Australia's aged care system.

There are different ways you can have your say. You can:

- come to one of our workshops
- complete an online survey
- call us on 1800 318 209
- email us at AgedCareLegislativeReform@health.gov.au
- register for a workshop or access the online survey at: www.health.gov.au/aged-care-act-consultation.

You need to submit your feedback by 7 pm AEDT, Friday 8 March 2024.

More information

If you want to learn more, you can:

- join one of our online webinars and ask questions
- read a more detailed version of the consultation paper
- read information and stories online about how the new Act will affect older people, their families and carers, aged care providers and workers
- read our frequently asked questions.

See the Department of Health and Aged Care's website: www.health.gov.au/aged-care-act-consultation for more information.

We will publish a summary of the key issues and themes that come out of this consultation on the Aged Care Engagement Hub:

agedcareengagement.health.gov.au.

Summary of the new Act

The new Act aims to create a simple, rights-based legal framework that focuses on the needs of older people. This framework will include the main legislation (the new Act) and a set of supporting Rules. Where possible, the new Act will follow the aged care journey and how older people use the system.

We've summed up some of the key points of the new Act below.

Using aged care services

People who meet certain requirements will get an aged care needs assessment to work out which funded aged care services they need. If there is a high demand for services, there will be a process to decide who gets priority.

We explain this in more detail in [Chapter 2](#).

Delivering aged care services

Services will be delivered in an approved residential care home, at home or in a community setting. Providers must register with the Aged Care Quality and Safety Commissioner (the Commissioner). Registered providers must meet set requirements, called obligations. We will outline these in the Act and the Rules. There are separate obligations for workers and key staff members.

There are new duties under the law for providers, key staff members and organisations that run digital platforms.

We explain this in more detail in [Chapter 3](#).

Payments and subsidies

The Government will pay registered providers a subsidy or grant to deliver funded aged care services. The funding a provider can receive will depend on:

- an older person's classification level
- means testing and how much a person needs to pay towards the costs
- whether the service is provided through a specialist aged care program.

We explain this in more detail in [Chapter 4](#).

Overseeing the aged care system

The Secretary of the Department of Health and Aged Care (the System Governor) and the Commissioner will manage the aged care system. The Inspector-General of Aged Care will provide independent oversight of the system.

We explain this in more detail in [Chapter 5](#).

The Commissioner and System Governor will have powers to regulate the system under the new Act.

We explain this in more detail in [Chapter 6](#).

Managing and protecting information

The new Act will do more to protect information. This includes protecting whistleblowers.

We explain this in more detail in [Chapter 7](#).

Chapter 1 – Introduction

We will base the new Act on:

- a Statement of Rights – an outline of the rights older people have in the funded aged care system
- a Statement of Principles – guidelines that the Government must consider when making decisions under the new Act.

This chapter explains the ideas and terms used in the new Act. This makes sure everyone uses the terms in the same way, and that roles and duties are clear.

Part 1 – Objects of the new Act

The objects of the Act:

- describe the overall purpose of the laws to help courts and others understand
- make clear that upholding the rights of older people is important.

They explain that a goal of the new Act is an aged care system that:

- is sustainable and able to continue long into the future
- has funded services provided by a workforce that is diverse, trained and skilled.

Part 2 – Key concepts

The new Act will include a set of key concepts to help make it easier to read.

What services will be delivered to older people?

The new Act will have a new list of aged care services the Government funds. To start, this will include services already being delivered. We will update the list for the new Support at Home program, which we expect to start in 2025.

Services on the list will be organised by types of service. For example:

- ‘domestic assistance’ may include general house cleaning, laundry and shopping delivery
- ‘accommodation’ may include room furniture, personal laundry, meals and drinks at an aged care home.

One or more service groups will deliver the different types of services. These service groups are:

- home support – providing support under the current Commonwealth Home Support Programme (CHSP) to help older people live independently in their homes and communities
- home care – providing support under the current Home Care Packages program to older people with more complex care needs to live independently in their own homes, up until the introduction of the Support at Home program
- short-term restorative care – providing support under the current Short-Term Restorative Care program to help older people delay or avoid long-term care
- transition care – short-term specialised care that helps an older person recover after they've been in hospital
- permanent residential care – long-term care for an older person who can no longer live in their own home
- residential respite care – short-term care that supports an older person and their carer to take a break.

Who will deliver funded aged care services?

There are a number of key roles in aged care services.

A **registered provider** can claim Government funding for delivering aged care services on the list. Providers must register in one or more categories based on the types of services they provide.

An **associated provider** can deliver services for a registered provider. They don't have to be registered.

In both cases, the registered provider must meet their obligations under the Act. For example, they must report on their finances and comply with the Aged Care Code of Conduct.

Aged care workers deliver the care older people need. A definition of aged care workers in the new Act makes clear who a 'worker' is.

The **responsible person** is a person who manages a registered provider or specific parts of their business. They must be suitable to be involved in aged care services.

Where will providers deliver funded aged care services?

Providers will deliver services in approved residential care homes, in a person's home and in community settings.

How will providers deliver services?

Registered providers must deliver quality and safe aged care services.

They must meet their obligations under the new Act and follow the Statement of Rights.

The Aged Care Code of Conduct (www.agedcarequality.gov.au/for-providers/code-conduct) sets the rules of behaviour for aged care providers. It also covers their responsible persons and workers.

Providers delivering certain services must also follow the strengthened Aged Care Quality Standards (Quality Standards) (www.agedcarequality.gov.au/providers/quality-standards).

Registered providers will also have to follow rules about reporting incidents and using restrictive practices.

Embedding high quality care

The new Act outlines what ‘high-quality care’ means. This is to create a shared understanding across the aged care sector.

High quality aged care is care that puts older people first and upholds their rights. It also prioritises:

- kindness, and respect for mental health and wellbeing
- delivering services in a timely and responsive way
- delivering care that meets personal needs, including a person’s goals and preferences
- respecting a person’s choice for privacy and time alone
- keeping a person mobile and engaged, if they choose to be, when they are living in an aged care home
- making sure activities are meaningful and respectful
- supporting a person to stay connected to the natural environment, and their pets, if they would like to
- inclusive policies and procedures that are created with Aboriginal and Torres Strait Islander people, to make sure care is culturally safe and accessible. This care should be flexible and recognise the unique experience of Aboriginal or Torres Strait Islander people
- supporting policy, practices and places that make sure services are culturally appropriate
- engaging a diverse workforce
- involving those who have personal experience of diversity in decision-making
- providing bilingual aged care workers and interpreters if requested
- keeping staff
- training to skill and empower aged care workers who can develop and maintain a relationship with the person they are caring for.

Part 3 – Aged care rights and principles

The new Act will include a Statement of Rights and a Statement of Principles. These will describe:

- what older people using aged care services can expect from providers
- what people or organisations must think about when acting or making decisions under the new Act.

Aged care rights

The Statement of Rights will help make sure the needs of older people are at the centre of the new aged care system. The statement includes how to support specific rights.

The new Act will make it clear that providers:

- follow the Statement of Rights
- must have ways of working that support upholding these rights.

Providers must also:

- show that they understand the rights
- explain these rights to the older people who use their services.

An older person can make a complaint if they feel a provider has not upheld their rights. They can complain to the Aged Care Complaints Commissioner (Complaints Commissioner) at the Aged Care Quality and Safety Commission (the Commission).

Aged care principles

The Statement of Principles guides how people make decisions and what they do under the new Act. This includes what the department and the Commission do.

It aims to make sure that people and organisations manage the new Act in a way that is in line with its purpose.

It reassures people that aged care services will respect and understand their interests, needs and personal situation.

Part 4 – Supporters and representatives

The new Act makes clear the roles of people chosen to be supporters and representatives under the law. It also makes clear what they can and can't do to help an older person to make decisions.

Making clear the roles and duties of supporters and representatives will support the rights of older people.

This includes the right to:

- independence
- have others assume the older person is able to make their own decisions
- get the right support so the older person can have control over their life
- make decisions about their own care, quality of life and how they take part in the community.

This is also one of the ways the new Act supports the cognitive abilities of older people. This includes the ability to think, reason and solve problems.

Supporters and representatives will need to:

- be honest, careful and fair
- promote the older person's values, choices, and cultural, personal and social wellbeing
- do their best to help the older person make their own decisions.

These duties will help older people to have choice and control over their lives and their care.

Questions to think about for Chapter 1

1. Are the updated objects, Statement of Rights and Statement of Principles clear? Do they meet their aims? If not, what changes do we need to make?
2. Some First Nations stakeholders would also like to add a right to stay connected to Island Home in the Statement of Rights. This would be in addition to 'Country'. Do you agree? We would like to get feedback from First Nations people about whether we should include Island Home in the rights and in other parts of the new Act.
3. Do you think the updated definition of high-quality care will encourage providers to do better? Does the definition match your idea for aged care in the future?
4. Do you think a single list of services will make it clearer which services the funded aged care system provides?
5. Are the proposed roles of supporters and representatives clear? Please tell us why or why not.
6. Do you think it's okay that an older person can only have either representatives or supporters? Are there times when an older person, or their families and support networks, would want a representative and a supporter?
7. Providers will need to interact with supporters and representatives about a range of decisions that people using their aged care services can make. What support will providers need to move to these new arrangements?

8. What sort of penalty should apply to supporters and representatives who don't carry out their duties, if any?
9. Representatives must always try to help a person to make their own decisions. But sometimes the older person might not want to make the decision, even if they are able to. Should an older person be able to choose to have a representative, if they are still able to make their own decisions? Please tell us why or why not.

Chapter 2 – Entry to the aged care system

The draft Act shows the steps a person needs to take to get approved to use aged care services. The key steps are as follows:

- A person can apply through a single entry point for aged care services. They can do this on the phone or in writing.
- If they meet certain requirements, they will then get an assessment. This is to work out what services and what level of services they need.
- They can use services that they are approved for once they (or their provider) has a place. If they are given a priority category, this may affect when they can get a place and start using services.
- If a person's situation changes, they can get another assessment. For example, if their health gets worse.

There will be alternative entry steps, which are not yet included in the exposure draft. These will allow people to use services before they apply for aged care services or get an assessment. For example, in emergency situations or if there is likely to be a long wait for an assessment.

Part 2 – Who can use aged care services

To be able to use aged care services, a person must provide information about their care needs. They must also be either:

- 65 years or older
- 50 years or older, if they are an Aboriginal or Torres Strait Islander person, or homeless or at risk of becoming homeless.

A needs assessor will do an aged care assessment, either in person or online. The assessor will discuss:

- which aged care services the person needs
- what would help them to keep their independence
- preferences and goals
- next steps to apply for funded aged care services
- how the person will find out the application results.

After the assessor submits the assessment, a member of the assessment workforce, on behalf of the System Governor, will decide:

- whether the person can use funded aged care services

- what services the person is approved for.

If the person has given false or misleading information, approval to use aged care services may be removed. The person can also ask for their approval to be removed.

Part 3 – Classification

Each person approved for a service group (for example, permanent residential care) will be put into a class for a group or groups of services. This is called their classification level. The classification level will show the level of care the person needs and can affect the amount of funding available.

In most cases, the classification assessment is done at the same time as the needs assessment. If a person needs permanent residential care, the classification will only happen after they have already moved into a residential care home.

If a person needs more care at a later time, their classification can be reassessed.

Part 4 – Priority process and getting a place

Many people who are approved for funded aged care services will be able to find a provider and use services straight away. But if too many people want to use the same services, a process may be applied to decide who gets priority.

Priority – who can use the services first – is related to the group of services a person needs. A decision about a person's priority category will only be made after they have been approved for home care or permanent residential care. The decision will take into account a person's urgent need for services.

Each person (or their provider) will be given a place to use aged care services. A person will get a place straight away if the service is available. In other cases, the person's priority category will affect when they can get services.

Under the new Act, permanent residential care places will be given to the person and not their provider. The person will be able to move into an available aged care home and their funding will follow them to the provider.

Questions to think about for Chapter 2

10. What plans would you like to see put in place to make sure there is a smooth change to the new rules around who is eligible for aged care services? And to manage how this affects people who don't meet the rules?
11. Do you think there are other services that can or should be available for Aboriginal or Torres Strait Islander people aged 45 to 49 who are homeless or at risk of becoming homeless? Do the current aged care services meet their

needs? We would like to hear from First Nations people about their experiences. Or the experiences of their family and community.

12. Are you under 65 and using aged care services in your home or community? If so, have you thought about using other available services? For example, services through the NDIS? Why do you continue to use aged care services? We welcome your feedback.
13. Is there anything else about the needs assessment process that you think we should include in the laws?
14. Are you comfortable with the proposal to maintain flexibility to vary services that a person can use under the Commonwealth Home Support Programme (CHSP) when the Act is introduced? **Note:** these changes won't affect Home Care Packages.
15. Is it clear in the new Act that a person can have their classification reviewed and changed if needed?
16. We will develop alternative ways to enter the aged care system in the future. Do you have any feedback about emergency entry to aged care? Is there anything you would like us to address when we develop the alternative entry arrangements for the new Act?

Chapter 3 – Registered providers, aged care workers and digital platforms

To deliver funded aged care services, providers must be registered by the Commissioner.

Registered providers must meet certain requirements to be able to provide services.

The Commissioner must approve residential care homes as part of the registration process.

Providers must reapply for registration every 3 years. The Commissioner will keep a list of all the current and former registered providers.

A registered provider must meet their obligations and conditions. If a registered provider does not do this, civil penalties or offences may apply.

Part 2 – How to become a registered provider

To become a registered provider, the organisation must:

- have an Australian business number (ABN)
- show that they, and their responsible persons, are suitable to deliver funded aged care services.

Providers must register in one or more categories. The categories they need to register in will be based on the types of services they deliver.

Certain providers must also do an audit as part of the registration process.

Specific registration requirements for residential care homes

Providers in the residential care category must have at least one residential care home approved by the Commissioner. They must confirm that any home:

- is well looked after
- does not have more residents than it should
- follows health and safety laws and building standards.

Part 3 – Changing, suspending and removing registration

The Commissioner can:

- remove a provider’s registration
- suspend a provider’s registration
- change the categories a provider is registered in
- remove approval for a residential care home.

The Commissioner can do this if they find that the provider isn’t suitable to provide funded aged care services.

Part 4 – Provider obligations

Provider obligations are about making sure providers deliver quality and safe aged care services. If a provider does not meet their obligations, they might receive a penalty or be excluded from the sector.

Conditions on provider registration

Registered providers must meet the conditions on their registration. For example, they must:

- follow the Aged Care Code of Conduct
- meet requirements to screen workers
- keep certain records
- prevent damage to a person’s property, such as their personal items in a residential care home
- meet Financial and Prudential Standards where these apply – these standards cover how providers need to manage and report on their finances
- provide certain information to people in their care. For example, about their rights, and fees and payments.

Certain registered providers must also:

- meet the Quality Standards – these outline what quality and safe funded aged care services look like
- set up and maintain systems to manage incidents and complaints
- show they are able and committed to keep improving
- meet certain requirements about how they manage their services
- meet specific service requirements
- keep their residential care homes in good condition

- follow rules around using restrictive practices.

Obligations on registered providers, responsible persons and aged care workers

Registered providers must:

- follow all other Commonwealth, state and territory laws that apply
- meet reporting and notification requirements
- action any Commissioner decision about one of their responsible persons
- review every 12 months whether a responsible person is suitable
- cooperate with people carrying out functions or powers under the Act
- make sure that at least one registered nurse is on site, on duty, at all times in an aged care home
- protect personal information.

Responsible persons must:

- let their registered provider know if anything has changed that might affect if they are suitable
- follow the Aged Care Code of Conduct.

Aged care workers must follow the Aged Care Code of Conduct.

Part 5 – Duties under the law (statutory duties) and compensation

The new Act includes new duties on registered providers and their responsible persons. They must take reasonable steps to avoid harming the health and safety of older people in their care. These steps should take into account that a person has a right to make decisions that affect their life and take personal risks.

Registered providers will face criminal penalties if they fail to meet these duties.

These may apply where a provider's actions:

- cause death, serious illness or injury
- put a person at risk of death, serious injury or illness and involve:
- a significant failure to do what is expected of them, or
- are part of a pattern of poor conduct.

Registered providers and their responsible persons can't give their duty to someone else.

If a registered provider and their responsible persons causes serious illness or injury and they are guilty of a criminal offence, the person affected can ask for compensation from the courts, like a payment. The Commission can also do this for them.

Part 6 – Digital platforms for funded aged care services

Aged care digital platforms are websites or apps that help connect older people with providers of funded aged care services.

The new Act puts new obligations on organisations who operate these platforms to make sure that older people engage aged care workers with relevant experience, qualifications, skills and training.

The organisations that run the websites or apps will have a duty to check and display certain information on their platform. This includes whether the provider is registered or not.

They will also have obligations to:

- notify the Commissioner that they run a platform
- put in place systems to manage complaints and incidents, and explain these on their platform
- display the Statement of Rights on their platform in a way that is easy to find
- report to the Commissioner, System Governor, Complaints Commissioner or Inspector-General.

Questions to think about for Chapter 3

- 17.** Do you think the draft statutory duties on registered providers and responsible persons meet the aims of the policy?
- 18.** Do you think the definition of aged care digital platform correctly describes the kinds of online platforms we should regulate?
- 19.** What kind of information should aged care digital platforms show? For example, to help protect people who use aged care services. What responsibility should people who run digital platforms have to check information provided by aged care workers and providers? Can you think of any practical issues with digital platforms checking and confirming the information?
- 20.** Do the proposed responsibilities on digital platform operators address the key risks and areas of oversight for online platforms?

Chapter 4 – Fees, payments and subsidies

Part 2 – Means testing

Means testing is a way we assess an older person's income and what services they can use. The new Act will make changes to the structure and terms we use in means testing. This may change with advice from the Aged Care Taskforce report. We will publish this report in December 2023.

Part 3 – Subsidies

The new Act includes a clear subsidy framework.

This framework will include:

- the current home care subsidy
- 2 new types of subsidies.

These 2 new subsidies will be based on the type of costs needed to deliver aged care services:

- person-centred – for funding directly linked to the costs of delivering services to a specific person
- provider-based – to fund the fixed cost of delivering aged care services. These relate to a provider, such as their location, capacity or specialisation.

They will include current funding models. For example, the Australian National Aged Care Classification (AN-ACC) funding model for residential care homes.

Part 4 – Payments and fee arrangements

The new Act will make changes to the structure and terms we use in fees and payments. This may change with advice from the Aged Care Taskforce report.

Questions to think about for Chapter 4

21. What do you think about the structure proposed in Chapter 4?
22. Do you think having 'person-centred' and 'provider-based' types of subsidies reflects the person-centred approach of the new Act?
23. Are there any other ways you think we could improve the subsidy framework for the new Act?

24. Do you agree with registered providers getting access to extra Government funding that they can use for a particular purpose? This would be rather than using it to deliver specific aged care services. For example, a one-off subsidy payment for extra equipment in a pandemic situation.

Chapter 5 – Managing the aged care system (governance)

The aged care system is managed by:

- the Secretary for the Department of Health and Aged Care. They will be called the System Governor in the new Act.
- the Aged Care Quality and Safety Commissioner.

The Commissioner leads the Aged Care Quality and Safety Commission. The Aged Care Quality and Safety Advisory Council and the Complaints Commissioner are also part of the Commission.

Inspector-General of Aged Care

The Inspector-General of Aged Care is independent from the department and the Commission. This role was set up under a different Act in 2023. They monitor and report to the Minister for Aged Care and to Parliament on how the Government runs the aged care system. Their role includes:

- finding and looking into issues affecting the aged care system
- making recommendations to the Government about ways to improve the system.

Part 2 – System Governor

The System Governor is the Secretary of the department. They will oversee and manage how the Government runs the aged care system. This includes:

- supporting fair access to funded aged care services for older people no matter who they are or where they live
- making sure people can keep getting funded aged care services if there is a break in services from their registered provider
- encouraging providers and workers to deliver high-quality care
- discussing with, and hearing from, people from different backgrounds to develop policy
- promoting availability and choice of registered providers
- protecting and supporting the integrity of the aged care system, including collecting and providing accurate information about how the system is run
- reviewing how the Government runs the aged care system.

The System Governor will also keep a record and report on the death of people who access the aged care system. They will do this where the department has received a report from a coroner that contains a recommendation to the department.

Part 3 – Aged Care Quality and Safety Commission

The role of the Aged Care Quality and Safety Commission is to assist the Commissioner with their work.

The Commissioner will carry out their work in a way that:

- focuses on the rights of older people, and
- makes sure that care is safe and of good quality.

The Commissioner protects and improves the safety and wellbeing of people who use funded aged care services. This includes:

- encouraging services that are culturally safe, trauma aware and healing informed
- promoting high quality care to build trust and confidence in the system
- making sure care is ongoing and consistent. It does this by checking whether registered providers have stable and sustainable finances
- making sure aged care providers and workers follow the rules and standards
- supporting providers to manage incidents, particularly incidents that they must report on.

The Commissioner also engages with and educates people who use funded aged care services. As well as their families and carers, and providers and workers. This includes about:

- developing best-practice models
- the Statement of Rights
- what the Commissioner does
- what registered providers are responsible for.

The Commissioner's role also includes:

- managing complaints and feedback, including resolving complaints, finding trends and system-wide issues
- reporting
- registering providers and monitoring and auditing how providers deliver funded aged care services
- making Financial and Prudential Standards, including setting requirements for providers to have stable and secure finances.

Part 4 – Aged Care Quality and Safety Advisory Council

The Advisory Council checks how well the Commission carries out its work. It provides advice to the Commissioner and Minister for Aged Care about the Commission. This includes advice about:

- the Commission’s strategies and plans to meet its goals
- finding system-wide issues.

Part 5 – Complaints Commissioner

The Complaints Commissioner is a member of staff at the Commission. The role is responsible for how the Commission manages complaints. This includes resolving and investigating complaints made to the Commission.

Questions to think about for Chapter 5

- 25.** Do you think the role of the Commissioner should include other activities?
- 26.** Is it clear how the roles of the System Governor and Commissioner are different? But also how they fit together, as roles that oversee and manage the aged care system?
- 27.** Do you think the arrangements for the Complaints Commissioner clearly show what their role is?
- 28.** Do you think requirements for providers to make sure they maintain stable and secure finances should also apply to the home services sector? For example, to protect ongoing and consistent care and check that finances are sustainable in that sector?

Chapter 6 – Regulating the aged care system

The Commissioner and the System Governor will have a range of powers. These will include some new powers, so that they can carry out their roles in the aged care system.

Parts 2, 3 and 5 – Powers to monitor and investigate

The Commissioner and the System Governor will have standard powers to monitor and investigate under the *Regulatory Powers (Standard Provisions) Act 2014*.

This includes the power to enter, search and seize as part of:

- checking that people are following the new Act
- collecting evidence if someone has gone against penalty and offence requirements.

The Commissioner and the System Governor can use these powers with the occupier's consent or with a warrant.

They will also have the power to access electronic equipment, such as computers, and data where relevant.

Part 4 – Monitoring and investigating authorised by the Commissioner

The Commissioner may permit an officer to enter an approved residential care home so they can monitor and investigate. They can do this without the occupier's consent or a warrant.

This is a special power that the Commissioner can only use:

- where they consider it is necessary to do so
- there is a severe risk to the safety, health and wellbeing of a resident.

Parts 6, 7, 8 and 9 – Powers to enforce under the Regulatory Powers Act

The Commissioner and the System Governor will have standard powers under the Regulatory Powers Act to make sure providers meet their obligations under the new Act.

They will be able to:

- apply to a court for a civil penalty, such as a fine
- issue an infringement notice – a notice of a fine
- apply to court for an injunction – to make a provider do, or stop doing, something
- accept and enforce actions a provider agrees to take.

Part 10 – Notices requiring action and other notices

The Commissioner and department can use notices to make a provider do, or not do, certain things. There are different types of notices.

Required action notices:

- The provider must report on the action they have taken.
- If they don't, this may result in a penalty.

Compliance notices:

- The provider must report on the action they have taken.
- If they don't, this may result in a penalty.
- These can affect a provider's Star Rating (which can be found on the department's website).

Adverse action warning notices:

- If the provider doesn't act, the Commissioner may remove, suspend or change their registration.

Part 11 – Critical failures powers

We are still considering extra powers for the Commissioner. This would allow them to appoint an external manager for a registered provider.

This could happen where significant or ongoing failures result in:

- immediate risks to the health and safety of people using residential aged care services, or
- the provider being unable to pay their debts.

The powers would only be used where the Commission does not believe that the provider can address the situation.

Part 12 – Banning orders

The Commissioner can use a banning order to stop or restrict a registered provider from delivering funded aged care services, in certain situations. This includes where a provider:

- goes against the new Act
- is not fit to deliver those services
- presents a severe risk to the health, safety and wellbeing of older people using services.

A banning order can also restrict someone from being an aged care worker or responsible person.

Parts 13 and 14 – System Governor functions

The System Governor will have more powers to make sure aged care funding is used for its intended purpose. They will be able to:

- make findings and recommendations public following reviews of aged care programs
- get back overpayments of subsidies and grants.

Questions to think about for Chapter 6

29. Do you think the Commissioner's added powers will make sure they can regulate the sector in a proactive way that balances risk?
30. Do you have any concerns about the new powers for the Commissioner to enter a residential care home without consent or a warrant? Are there any other safety measures you think should be put in place?
31. Does the new Act explain the System Governor's role in managing the integrity of the aged care program clearly enough? Is there anything you would like us to include in the new framework to make sure we make sure aged care funding is used correctly?
32. What are the pros and cons of the proposed new critical failures powers? Are these powers needed to make sure the Commissioner can protect older people and keep residential care homes if the provider gets into difficulties?
33. Are the reasons listed for using the critical failures powers fair? Or are there others we could consider?

Chapter 7 – Managing information

The new Act includes new arrangements for how information must be managed. This is to help make sure the aged care system is more transparent.

A new narrower definition of protected information makes it an offence to use, record or share unless the Act authorises you to do so. This includes:

- personal information as listed in the *Privacy Act 1988*
- information that is not public or easy to find that might harm the financial interests of an organisation.

Part 2 – Confidentiality of information

The Act outlines who can record, use or share protected information and when. This includes the Commissioner, the System Governor and the Independent Health and Aged Care Pricing Authority in certain situations.

There are limits on when courts can make a person share protected information.

Part 3 – Record keeping

Registered providers must keep required records. It is an offence if they don't, or if the records are false or misleading.

Part 4 – Sharing data

The System Governor must publish specific information about funded aged care services, registered providers and responsible persons. The new Act and Rules will detail what information they must publish and when.

Part 5 – Protection for whistleblowers

The new Act will do more to protect whistleblowers – people who call out issues. This is to make sure older people, people who are close to them, and aged care workers can report information without fear that they will be punished or treated unfairly. They can make a report to:

- the Commissioner or a staff member of the Commission
- the department, or an official of the department
- a registered provider

- a responsible person of a registered provider
- an aged care worker of a registered provider
- a police officer.

People can make the report in person, over the phone or in writing. The report can also be anonymous.

The report can be made about someone who has not followed the aged care law.

If someone makes a report, they will:

- be protected from any negative results that come from making the report
- have their identities or identifying information protected. There are some limited exceptions, such as where it is necessary to share with the Commission, a lawyer or to prevent a serious threat to a person or people.

Registered providers also must make sure people who report are protected.

Questions to think about for Chapter 7

- 34.** Do you agree with the scope of protected information under the new Act?
What information do you think should be protected under the new Act?
- 35.** What challenges could there be with the whistleblower framework? How do you think we could solve these challenges?
- 36.** What else might stop people reporting about what they experience in the aged care system? How can we make this easier for people?

Chapter 8 – Miscellaneous

This chapter outlines other practical arrangements that will support the operation of the new aged care system.

Part 2 – Review of decisions

The System Governor and the Commissioner will be able to review certain decisions made under the Act where requested.

If the person affected is still not happy with the result, they can ask an independent body to review the decision.

Part 3 – Delegate provisions

This part outlines how and when the System Governor or Commissioner can delegate their powers. This is when they ask another person to act or make decisions on their behalf.

Where relevant and necessary, the System Governor can give powers and functions to another Government organisation or position. For example:

- Chief Executive Officer Independent Health and Aged Care Pricing Authority
- Chief Executive Centrelink
- Chief Executive Medicare
- Veterans' Affairs Secretary
- Repatriation Commission
- Social Services Secretary.

Part 4 – Appointing of supporters and representatives

The new Act will explain the process for:

- appointing supporters and representatives
- suspending and cancelling these appointments.

Part 5 – How the new Act will apply to certain groups

The new Act will apply to a broad range of organisations or entities, including partnerships and unincorporated associations.

Part 6 – Grants

The System Governor will be able to provide grants of financial support to registered providers or organisations that support:

- the rights of older people
- people with specialised complex needs, such as early onset dementia.

Grants can be given to:

- start, or increase delivery of aged care services
- strengthen the skills and abilities of providers and aged care workers to support specialised complex needs
- raise awareness of specialised complex needs
- provide extra support to focus on specialised complex needs
- support and uphold the rights of older people using aged care
- deal with staff shortages and issues keeping staff.

Part 7 – Use of computer programs

The new Act will outline how computer programs may be used to make certain decisions. The types of decisions will be listed in Part 7 of Chapter 8 in the new Act. This includes decisions about a person's classification for permanent residential care.

Part 8 – Applications, requests and notifications

People must use the approved form when they submit applications to the System Governor and the Commissioner. The System Governor and the Commissioner can ask for more information.

If someone submits false or misleading information or documents, a penalty will apply.

Part 9 – Application fees and fees for services provided by the System Governor and Commissioner

The System Governor or the Commissioner may charge a fee for services to carry out certain activities, except where the Act prevents this. For example, if someone makes a complaint, the Commissioner can't charge them a fee to process their complaint.

Part 10 – Annual report on the operation of the Act

At the end of each financial year, the System Governor will provide the Minister for Aged Care with a report on how they have carried out their work. The report will include information about:

- demand for funded aged care services that hasn't been met
- the length of waiting periods to use aged care services
- number of registered providers coming into and leaving the aged care market
- financial stability and security of registered providers
- building, upgrading and renovating residential care homes.

Part 11 – Rules

The new Act will allow the Minister for Aged Care to make Rules relating to the new Act. There will be strict requirements for what those Rules can do. In particular, they must be necessary and convenient to carry out the new Act.

Questions to think about for Chapter 8

- 37.** Do you have any concerns about the process of asking for an independent review body to review a decision under the current aged care laws? Would you like any concerns addressed in the new Act?
- 38.** Are there any decisions that the System Governor and the Commissioner should only assign to staff of senior levels?

Chapter 9 – The timeline for the new Act

The new Act will make several changes to Australia’s aged care system.

To make sure that older people continue to get safe, quality care, the aged care sector must prepare for the changes. This includes having arrangements in place to manage the changes.

A phased approach to delivering the new Act

We will deliver the new Act in stages. This will make sure that we can roll out key parts without delay, such as the Statement of Rights and a new regulatory model.

This approach will also allow for time to keep consulting on the coming home care reforms.

The department is trying to balance:

- delivering the changes to benefit older people as soon as possible
- training and supporting providers and workers to put the changes in place.

We want to do this in a way that won’t disrupt services.

What will be different in 2024?

Changes that will affect older people using funded aged care services

These include:

- aged care rights put into law, together with ways to uphold these rights
- appointing supporters or representatives who must follow supported decision-making principles
- a single entry point with one assessment for all aged care programs
- new rules about who can get an aged care needs assessment
- First Nations or homeless people aged 50 to 64 with aged care needs will be able to get an assessment
- older people approved for residential care will be given a place directly rather than through a provider
- the Statement of Rights, streamlined obligations and strengthened quality standards outline what older people can expect from providers and aged care workers

- National Aboriginal and Torres Strait Islander Flexible Aged Care (NATSIFAC) and CHSP will be regulated in the same way as other aged care programs
- people making a complaint or reporting that someone hasn't followed aged care law will be protected from being punished or treated unfairly
- compensation will be available if a registered provider or responsible person causes a serious injury or illness.

Changes that will affect aged care providers

These include:

- actions guided by the Statement of Rights
- needing to be registered with the Commission and have aged care homes approved
- NATSIFAC and CHSP providers will be registered and regulated by the Commission
- revised provider obligations, including registration conditions
- strengthened Quality Standards will apply to specific provider categories
- new financial and prudential standards
- screening process for aged care workers
- new duties under the law.

Changes that will affect aged care workers

These include:

- the important role of workers recognised in the Statement of Rights and the Statement of Principles
- workers making a complaint or reporting that someone hasn't followed the aged care law will be protected from being punished or treated unfairly
- screening process for aged care workers.

Readiness support for older people and the sector

We are developing a plan to help you prepare for changes to the aged care system.

This will explain what is changing and what support you can get to prepare for the changes.

We aim to release the plan in early 2024 for your feedback.

Changes for 2025

More changes will be made to align with the new Support at Home program in 2025.

These include:

- a contributions framework and new aged care service list
- setting up a First Nations Aged Care Commissioner
- aged care worker training requirements.

Questions to think about for Chapter 9

39. Do you agree with the new Act being developed in phases?
40. Do you think this approach will allow for more time to consult on key changes? Or do you think this will be more challenging for the aged care sector?
41. What do you think will be the benefits delivered through each phase of the changes?
42. Do you have any ideas about the best way to schedule putting these important changes in place? For example, to help support a smooth transition and help people comply with the new laws?
43. Are there any particular reform initiatives that you consider must be prioritised for commencement? Alternatively, are there any initiatives that you think would benefit from delayed commencement?
44. What will you need to do to get ready for the new aged care system?
45. Is there anything that will affect you getting ready for the new aged care system?
46. Do you have any concerns about the sector being ready to move to the new aged care system from 1 July 2024?

Glossary of terms

Term	Definition
Aged Care Quality and Safety Commission (the Commission)	The aged care system regulator.
Aged Care Quality and Safety Commissioner	Head of the Aged Care Quality and Safety Commission.
Compliance	The process of making sure aged care providers and workers meet their responsibilities in delivering care and services.
Department of Health and Aged Care (the department)	<p>The department is responsible for managing and overseeing Australian Government funded aged care services.</p> <p>The department's Secretary is the System Governor. The department will manage parts of the new Act.</p>
Enforcement	Actions taken by the Commission to address aged care providers or workers who are not meeting laws or responsibilities.
My Aged Care	The starting point for using funded aged care services. Provides information and support to help older people, their families and carers to understand and use the aged care system.
Obligations	What a registered provider must do to follow the aged care laws. Their responsibilities. If they fail to follow one or more obligations, they might face penalties, fines or other legal action.
System Governor	The Secretary of the Department of Health and Aged Care.



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