



Australian Government
Department of Health and Aged Care



A new Aged Care Act: exposure draft

Consultation paper No.2



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Overview

Recommendation 1 of the Royal Commission into Aged Care Quality and Safety (Royal Commission) was that the Australian Government develop a completely new Aged Care Act (new Act).

Drafting of the Bill for the new Act (the Bill) is now well underway, with an Exposure Draft of the Bill (Exposure Draft) now released for comment. If enacted, it will deliver the first of several phases of legislative reform. Each phase will build towards the Royal Commission's vision of a new, person-centred aged care system that delivers better outcomes for older people and continues to improve over time.

The new Act will set the foundations of this new system and will focus on the safety, health and wellbeing of older people, and put their needs and preferences first. The first phase of reform will also deliver significantly improved outcomes for older people. It will address 33 Royal Commission recommendations (29 in full, 4 in part), and implement 6 Government election commitments.

Importantly, a companion Consequential Amendments and Transitional Arrangements Bill will ensure there are arrangements in place to support existing providers to transition to the new system and older people to continue accessing the services they need. It will also make changes to other legislation that references the *Aged Care Act 1997* (the Aged Care Act), where required.

This is critical groundwork that will pave the way for an amendment Bill to introduce the new Support at Home program from 1 July 2025. The next Bill is expected to respond to 20 Royal Commission 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.

Transformational reform of the aged care system and the legislative changes to support that reform is complex and will take time. The Government remains committed to delivering these once-in-a-generation reforms and taking the time to do it properly. Further legislative amendments will be part of a continuously improving system.

We propose an independent review of the new Act in 5 years to ensure that it works as intended and the reform journey remains on target. The administration and governance of the aged care system will also be subject to ongoing investigation, monitoring and reporting by the Inspector-General of Aged Care.

This Exposure Draft process builds on previous consultation on the foundations of the new Act. It is an important opportunity for the public and interested stakeholders to influence the reforms. We encourage the community, particularly older Australians who can contribute their lived experience of the Commonwealth aged care system, to get involved.

About the Exposure Draft process

The Exposure Draft process will run from 14 December 2023 to 8 March 2024. Members of the public and interested organisations can comment on, and help shape, the Bill before it is introduced to Parliament.

The Exposure Draft released includes the parts of the Bill that incorporate the most significant changes proposed to the aged care system for the first phase of reforms. We want feedback on these changes as a priority before we finalise the Bill.

The Department of Health and Aged Care (the Department) welcomes the engagement of older people, their families and carers, aged care providers and workers, volunteers, researchers, experts and other interested stakeholders. We will consider the feedback we receive through the Exposure Draft process and make changes to the Bill, where appropriate, ahead of the Hon Anika Wells MP, Minister for Aged Care introducing the Bill to Parliament.

Submissions are invited in response to the Exposure Draft by 8 March 2024. The consultation questions set out in this paper can be used to help guide you when drafting your submission.

The Department is particularly interested to hear your views about:

- whether the reform timetable needs to be adjusted, noting the proposal for the new Act to commence on 1 July 2024
- the operation of draft provisions included in the Exposure Draft and what is proposed for the Aged Care Rules (the Rules)
- whether the draft provisions give effect to the policy intent and the Royal Commission's vision for the future of aged care
- how we have responded to feedback received to date on proposed inclusions in the new Act, and
- the intent for parts of the Bill still being drafted, as explained in this consultation paper.

Following the conclusion of these consultation activities, the Department will publish an overview of key issues and emerging themes on the “what we’ve heard” page on the [Aged Care Engagement Hub](#).

How can I get involved?

There are several ways to get involved and provide feedback on the Exposure Draft. By visiting the Aged Care Act Consultation Page, www.health.gov.au/aged-care-act-consultation you can:

- access more detailed information about the consultation process
- access frequently asked questions about the new Act

- register your interest to attend a Q&A webinar on 18 January 2024
- register to attend a workshop or online drop-in session to have your say on topics most important to you
- complete the [survey](#) to have your say on elements included in this consultation paper
- submit a question to agedcarelegislativereform@health.gov.au
- access information about how to prepare and lodge a written submission/response to elements included in the consultation paper.

About this paper

This paper is a companion to, and should be read alongside, the Exposure Draft of the Bill. It provides a summary of the new Act. It then follows the structure of the Exposure Draft and explains how the proposed new provisions are intended to operate. A final chapter provides an overview of the reform timeline and support to help you to be ready for the changes.

Information about parts of the Bill that are still being drafted, transitional arrangements and the contents of the Rules are provided wherever possible.

Note: This paper complements previous materials made available on the foundations of the new Act (see below). It also complements existing consultation documents, which outline new policy initiatives that will be delivered via the new Act. Where relevant, we have provided links to information about those initiatives.

Future consultation

Aspects of the Bill not included in the Exposure Draft will reflect existing arrangements under the current aged care legislative framework, and are not the focus of this consultation process. Existing provisions will, however, need to be re-drafted to fit into the new legislation. Some parts of the Bill, such as fees, subsidies and means testing, are also under active consideration by the [Aged Care Taskforce](#), so further changes may be included following decisions of Government.

We will consult on such matters separately where required, as well as on any policy changes not yet included in the Exposure Draft (for example, the proposed new critical powers for the Aged Care Quality and Safety Commission (Commission) discussed at Chapter 6).

The text of the Consequential Amendments and Transitional Arrangements Bill will be the subject of more limited consultation with relevant groups of stakeholders in 2024.

Drafts of the proposed Rules will also be released later for comment and feedback, ahead of commencement of the new Act.

Previous consultation on the new Act

The Exposure Draft process builds on previous consultations on the development of the new Act. On 4 August 2023, we launched public consultations on the foundations of the new Act with the release of [The new Aged Care Act: The foundations – Consultation paper](#) (Consultation Paper 1). This covered:

- 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
- eligibility for Commonwealth funded aged care services.

We held a series of in-person and virtual consultations with stakeholders.

These included: public webinars, presentation at forums and direct engagement with stakeholder groups. Roundtable discussions were also conducted – with participation from sector representatives, aged care advocates, human rights and legal experts, and aged care peak advisory bodies and councils.

In addition, we commissioned the assistance of the Council on the Ageing (COTA) and the Older Persons Advocacy Network (OPAN) to convene facilitated workshops. These workshops were held across Australia to hear the voices of older people, their families, carers, advocates and workers.

Over 2,000 people engaged in consultation activities and events to discuss the foundations of the new Act. There were over 100 submissions and nearly 300 survey responses.

We heard from a wide variety of stakeholders, including: older people, family members and carers, aged care providers, aged care workers, advocacy organisations, advisory bodies, state and territory governments, human rights organisations, universities and professional bodies.

Your feedback on [Consultation paper No. 1](#) has been considered in developing this Exposure Draft. This paper outlines where we have responded to feedback and how it has been incorporated. More information on the outcomes of the consultations on the foundations of the new Act can be found in the Feedback Report on the [Department's website](#).

Further information on the broader aged care reforms is available on the [Department's website](#) and updates are progressively published on the [Aged Care Engagement Hub](#).

A summary of the new Act

The new Act will outline how funded aged care services will be provided to older people under the Commonwealth aged care system.

It will replace existing legislation, including the Aged Care Act, the *Aged Care (Transitional Provisions) Act 1997* and the *Aged Care Quality and Safety Commission Act 2018* (the Commission Act).

The aim is to create a simplified, rights-based legislative framework that comprises one main piece of primary legislation that establishes and regulates the aged care system, and a single set of subordinate legislation, known as the Rules.

The new Act will focus on the needs of older people and the quality of services provided to meet those needs. Where possible, it will follow a person's journey through the aged care system, rather than focusing on providers and how they are funded. The Rules will set out the details of these arrangements.

The aged care system will be governed by the Secretary of the Department (System Governor) and the Aged Care Quality and Safety Commissioner (Commissioner). The Inspector-General of Aged Care, already established under separate legislation (the *Inspector-General of Aged Care Act 2023*), will provide independent system oversight. The Independent Hospital and Aged Care Pricing Authority, established under the *National Health Reform Act 2011*, will also continue to provide independent advice about aged care pricing to ensure that aged care funding is directly informed by the actual cost of delivering care.

The new Act will be framed by a list of Objects, which explain the purpose of the legislation. Importantly, it will be underpinned by a Statement of Rights, which outlines what older people can expect from registered providers in the Commonwealth aged care system.

A Statement of Principles will also guide the actions of government agencies to ensure that the whole aged care system, and its regulation, is directed towards its primary consideration – the safety, health, wellbeing, and quality of life of older people.

The new Act will establish a shared understanding of high quality care, guiding the sector to continuously improve and transition to a system where there is no place for substandard or low-quality care and high quality care is the norm.

Eligible individuals will undergo a culturally safe and appropriate aged care needs assessment (needs assessment) to identify which funded aged care services they need. These services will be delivered in an approved residential care home, or a home or

community setting, by providers who must register with the Commissioner. Prioritisation and place allocation mechanisms will apply where demand for services exceeds supply.

The Commonwealth will pay registered providers in the form of a subsidy or grant to deliver funded aged care services. The amount of funding available will depend on various factors, including the classification level of individuals, the application of means testing and whether the service is provided through a specialist aged care program – for example, the National Aboriginal and Torres Strait Islander Flexible Care (NATSIFAC) or Multi-Purpose Services (MPS) programs.

Registered providers will need to comply with a set of obligations, including conditions on their registration, even where they subcontract delivery of funded aged care services. Separate obligations will apply to aged care workers and responsible persons of registered providers, and the operators of digital platforms that facilitate access to funded aged care services.

Whistleblowers will have additional protections. There will also be new statutory duties imposed on registered providers, responsible persons and digital platform operators, to ensure that services meet quality and safety expectations, and do not expose older people to harm.

The Commissioner and the System Governor will have access to an expanded suite of regulatory powers to enable them to implement their respective functions under the aged care system.

The Commissioner will exercise available powers in a risk-proportionate manner to ensure that registered providers comply with their obligations and provide quality and safe funded aged care services, while managing financial and prudential risks effectively. These powers will also be used to ensure that aged care workers and responsible persons comply with their obligations.

The new Act will also establish the new Complaints Commissioner in legislation, as committed to by Government, to ensure a more person focussed complaints process.

The System Governor will have access to new powers to help ensure that the integrity of the Commonwealth aged care system is maintained, and to protect the Commonwealth's investment in the aged care sector.

Chapter 1 – Introduction

Chapter summary:

The new Act will be framed by a list of Objects and underpinned by a Statement of Rights and a Statement of Principles, which are included in this chapter. They aim to ensure the delivery of quality and safe aged care services to individuals accessing, or seeking access to, funded aged care services.

Definitions and key concepts are also outlined in this chapter. These are ideas and terms that are central to the operation of the Commonwealth aged care system and will be used throughout the new Act. Importantly, this includes the concept of high quality care and a new list of aged care services that will be delivered and funded. Services will be categorised into service types and service groups.

This chapter also outlines the actions and duties of supporters and representatives, who will be appointed under aged care legislation for the first time, to assist people with navigating the system. Supporters and representatives will be required to act in accordance with new supported decision-making principles.

Consultation questions Chapter 1:

We are particularly interested to hear your responses to the following questions:

1. Are the revised Objects, Statement of Rights and/or Statement of Principles clear and do they achieve their intent? If not, what changes are required?
2. Some First Nations stakeholders indicated that they would also like to see a right to remain connected to Island Home (in addition to 'Country') included in the Statement of Rights? Do you agree? We would appreciate feedback from First Nations persons regarding their views on whether Island Home should be included here and in other relevant places in the new Act.
3. Do you consider the revised definition of high quality care will encourage providers to aim higher? Does it align with your future vision for aged care?
4. Do you think a single service list will increase clarity of the services that the Commonwealth aged care system provides to older people?

Regarding the revised supported decision-making framework:

5. Are the proposed roles of supporters and representatives clear and distinctive? Please tell us why or why not.
6. Are you comfortable that an older person is only able to have representatives **or** supporters? Are there situations where an older person, or their families and support networks, might want both a representative and a supporter?

7. Registered providers will be required to interact with supporters and representatives to exchange information and in relation to a wide range of decisions that can be made by people accessing aged care services. What support will providers need to transition to these new arrangements?
8. What sort of penalty should apply to supporters and representatives who do not comply with their duties, if any?
9. Noting that representatives must always try to help a person to make their own decisions, should an older person be able to appoint a representative when they have decision-making capability but would prefer someone else to make decisions about their aged care? Please tell us why or why not.

Part 1 – Preliminary

Objects of the new Act

The Objects outline the overarching purposes of the legislation to assist the courts and others to interpret the new Act.

Feedback received through [Consultation paper No. 1](#) regarding the proposed Objects for the new Act was largely positive. It was agreed that they would place the needs of older people at the centre of the new aged care system.

We heard it was important that the Objects include a stronger reference to the importance of the rights of older people being upheld and reference sector viability.

The Objects at Section 5 of the Exposure Draft now include a clear and prominent reference to the Statement of Rights and upholding these rights. They also reference the goal of providing sustainable funding arrangements for the delivery of funded aged care services by a diverse, trained and skilled workforce.

Some stakeholders have 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 proposed in [Consultation paper No. 1](#) that a Purpose Statement should be included in the new Act.

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

Feedback indicated that this statement duplicated the Objects and did not add significant value. As a result, a purpose statement has not been included in the Exposure Draft.

Part 2 – Definitions and key concepts

The Exposure Draft outlines important terms that will be referenced throughout the new Act and the Rules. These definitions and key concepts set the foundations for:

- what services will be delivered to older people under the new Act
- where they will be delivered
- who can deliver these services under the new Act
- how these services must be delivered under the new Act, and
- the standards of care that everyone involved in the delivery of funded aged care services should aim to achieve.

These terms are included upfront and in one location to increase readability.

The definitions discussed below can be found in Chapter 1, Part 2, Division 1, section 7 of the Exposure Draft, which lists terms to be used in the new Act in alphabetical order. They are referenced below in *bold italics*.

Key concepts discussed below are referenced below in bold and a section reference provided. They can be found in Chapter 1, Part 2, Division 2 of the Exposure Draft.

What services will be delivered

The new Act will cover the delivery and regulation of ***funded aged care services*** under the Commonwealth aged care system.

These are defined as a ***service*** on the ***aged care service list*** (the service list) for which a subsidy or grant may be payable under the new Act. This distinguishes these services from other similar services that may be delivered privately and which are not covered by the new Act (for example, gardening services that an older person obtains through private arrangements, without Commonwealth funding).

The service list, which will be included in the Rules, will list the wide variety of aged care services that can be accessed under the Commonwealth aged care system (see section 8). For the first phase of reforms, it will reflect services already delivered under existing aged care programs and the current Aged Care Act.

Establishing a single aged care service list will introduce consistency between current aged care programs. It will mean that for the first time everyone can go to one location to see all the funded aged care services that an older person might be able to access.

The new service list is important for several reasons. The new regulatory model has ***provider registration categories*** that group services on the service list together based on the most appropriate way to regulate those services. The service list will help older people have discussions with assessors and make decisions about the services they need. It will also provide older people and providers with clarity about the services that the Commonwealth has agreed to fund to meet an older person's needs.

The service list will also help everyone to get ready for the Support at Home program. This will commence in 2025 and provide funding for services delivered in a home or community setting, including on a fee for service basis. Amendments to the service list will be made for 2025, where required.

The [Aged Care Taskforce](#) is considering matters relevant to the service list for the new Support at Home program, including how services might be means tested. The Taskforce is expected to provide an interim report to Government by the end of 2023.

Services on the list will be grouped into **service types**. For example, the service type:

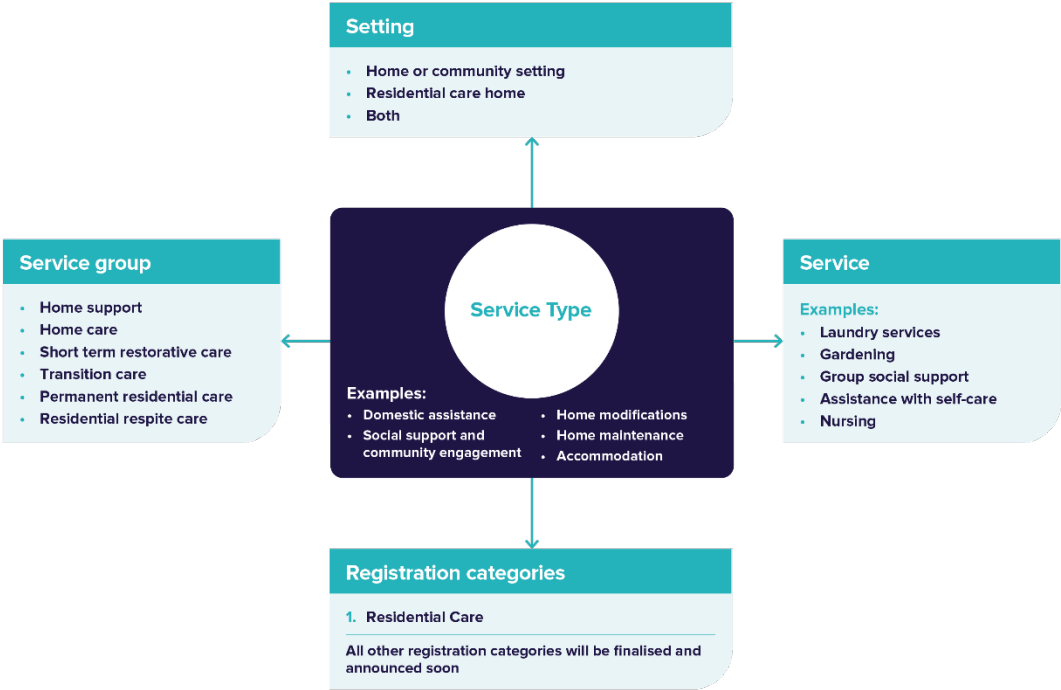
- Domestic assistance is expected to include the services of general house cleaning, laundry and shopping delivery.
- Accommodation is expected to include all the services at a residential care home associated with everyday living (for example, individual room and communal furnishings, personal laundry, meals and refreshments).

Service types will be delivered through one or more of the following **service groups**, which are designed to cover existing aged care programs and are important from a constitutional perspective:

- Home support – catering for the current Commonwealth Home Support Programme (CHSP)
- Home care – catering for the current Home Care Packages program up until the introduction of the Support at Home program
- Short term restorative care – catering for the current Short-Term Restorative Care program (STRC) up until the introduction of the Support at Home program
- Transition care
- Permanent residential care
- Residential respite care.

The diagram below shows the links between service types and the other aspects of the aged care services model.

You can access a full screen version of this diagram on the [Department's website](#).



Existing aged care programs NATSIFAC and MPS are captured in this new framework as **specialist aged care programs**.

If a person is approved for any service group other than short term restorative care, home care or transition care, they can access funded aged care services through a specialist aged care program providing they meet the eligibility criteria. They would still be accessing home support or permanent residential care, for example, but these services would be delivered by a NATISFAC or an MPS provider under specialist arrangements, which are funded differently to other mainstream programs.

See *Chapter 2 – Entry to the aged care system* to see how a person can access funded aged care services through a specialist aged care program.

See *Chapter 4 – Funding* for more explanation about how funding of such programs will be catered for under the new Act.

Where funded aged care services are delivered

The new Act clarifies the locations in which funded aged care services may be delivered (section 9). Each service type must be delivered in an approved **residential care home** or a **home or community setting**, or both.

These new concepts are important in terms of how aged care services delivered in these settings are funded and regulated.

The concept of a residential care home is particularly important, with service types delivered in this location relying on the hospital benefits power (see section 51(xxiiiA) of the Constitution) and the external affairs power as enlivened by the International Convention on Economic, Social and Cultural Rights (see section 51(xxix) of the Constitution) for constitutional authority.

It will replace the current concept of a residential care service, and covers:

- what are commonly referred to as nursing homes or residential aged care facilities
- parts of a hospital where an MPS provider delivers funded aged care services, and
- special arrangements at a retirement village, where a particular part of the village has been converted into a facility that is fitted, furnished and staffed to provide continuing aged care services, including nursing and other clinical services.

As discussed in Chapter 3, when registering in the residential care provider registration category, a provider will need to seek approval for the residential care homes where they will deliver funded aged care services. Registered providers will have obligations that may also require them to take action in relation to their activities at a particular location.

Transitional arrangements have not been finalised, but it is anticipated that existing residential care services of an approved provider will be deemed to be approved residential care homes where they are able to meet the new definition. Further information on what providers will need to do will be released in 2024.

Who delivers funded aged care services

The Bill enables funded aged care services to be delivered by a **registered provider** (section 10). Only registered providers will be able to claim Commonwealth funding for delivering services on the aged care service list to a person who has been approved for those services.

Providers must register in one or more **provider registration categories** based on the service types that they intend to deliver. The provider registration category will determine which obligations and conditions they must comply with. See further discussion in *Chapter 3 - Registered providers, aged care workers and digital platforms*.

The new Act also introduces a new concept of **associated providers** – that is, providers that deliver services on behalf of a registered provider. An associated provider may or may not be a registered provider.

A registered provider must always ensure they comply with their obligations and registration conditions under the new Act, even when another person or organisation does things on their behalf. Registered providers cannot contract out of their legal responsibilities. As outlined at subsection 10(7), a registered provider still **delivers** a funded aged care service even if some or all of the work involved is performed by an associated provider.

Aged care workers, whether employed by registered providers directly or via associated providers, provide the care that older people need and are central to the aged care system. The new Act will have a single definition of aged care worker included in section 10.

Responsible person is a new term defined in section 11 and replaces the existing concept of key personnel. A responsible person includes a person who has responsibilities associated with managing the operations of a registered provider. It also includes a person responsible for the overall management of nursing services delivered by the registered provider or at an approved residential care home. A responsible person is not limited to employees of a registered provider and can include subcontractors.

Before registering a provider, the Commissioner needs to be satisfied that the responsible person(s) are suitable. The Commissioner needs to consider **suitability matters** outlined in section 12. These suitability matters align with current arrangements in aged care and arrangements under the National Disability Insurance Scheme (NDIS).

Consistent with current requirements, registered providers will be required to consider the suitability of responsible persons at least once every 12 months and be reasonably satisfied that they are suitable to be involved in the delivery of funded aged care services (section 114 in Chapter 3, Part 4, Division 2).

The definition of suitability matters has been expanded to include references to:

- the Australian Health Practitioner Regulation Agency, as a body responsible for standards of conduct of health professionals
- state-based complaints bodies who, under a law of a State or Territory, have the function/s to deal with complaints or information about the provision of health or community services, and
- aged care worker screening checks.

As discussed in *Chapter 3 – Registered providers, aged care workers and digital platforms*, specific obligations will apply to aged care workers and responsible persons in addition to obligations on registered providers.

The new Act will not replicate the existing definition of governing person, with these individuals incorporated into the definition of responsible person.

How will services be delivered

To ensure delivery of quality and safe funded aged care services to older people, the new Act requires providers to deliver services in a manner consistent with:

- the Statement of Rights (*see Part 3 - Aged Care Rights and Principles below*) and
- any obligations under the new Act (*see Chapter 3 – Registered providers, aged care workers and aged care digital platform operators*).

The [Aged Care Code of Conduct](#) (Code), introduced in December 2022, will remain a key concept in terms of obligations on all registered providers, responsible persons and aged care workers. Section 13 of the Exposure Draft provides for the Code to be included in the Rules. It will be the same as the existing Code, with some minor changes to terminology to align with the new legislative framework.

A strengthened set of **Aged Care Quality Standards** (Quality Standards) will apply to providers in certain registration categories (section 14). The Rules will include the strengthened Quality Standards. This follows significant [public consultation](#) underway since late 2022 to address the focus areas identified in Royal Commission Recommendations 19 and 21.

The Commission piloted the draft revised standards from April to October 2023. The final proposed Quality Standards are available [here](#). They include amendments in response to pilot findings to clarify requirements and improve. These will be incorporated into the Rules and consulted on.

The Commission and Australian Commission on Safety and Quality in Health Care are in the process of developing guidance materials to support the sector through implementation of the strengthened Quality Standards under the new Act, with public consultation expected to occur in early 2024.

Registered providers will still have obligations in relation to **reportable incidents** and **restrictive practices** under the new Act. The new Act also introduces two new concepts of **significant failure** and **systemic pattern of conduct** (see discussion in *Chapter 3 – Registered providers, aged care workers and aged care digital platform operators*).

Note:

- Restrictive practice requirements will mirror the current legislation with the exception of a hierarchy for a restrictive practices substitute decision-maker and the associated immunity provision. The hierarchy and associated immunity provision in the current legislation were intended as an interim arrangements and are not included in the Exposure Draft.
- As discussed below in the context of supporters and representatives, the Government continues to work with states and territories on establishing clear arrangements for appointing a restrictive practices substitute decision-maker under state and territory consent and guardianship laws. This process will inform if provisions are needed to address remaining gaps between Commonwealth legislation and state and territory legislation.

Embedding high quality care in the new Act

The new Act will include **high quality care** as a key concept (section 19). Establishing a shared understanding of this standard of care is intended to foster a much-needed

change in culture within the aged care sector, as recommended by the Royal Commission ([Recommendations 13](#)).

The new Act will specify the rights of older people who are accessing, or seeking to access, funded aged care services (Chapter 1, Part 3, Division 1). It also establishes clear standards of care and obligations on registered providers and aged care workers, ensuring that unsafe and poor quality care are never acceptable (Chapter 3). Embedding the concept of high quality care in the new Act sends a strong message that we want providers and workers to aim higher and not just comply with minimum requirements. We want them to innovate, continuously improve and strive towards delivery of high quality care at all times, with the support of the Aged Care Quality and Safety Commission.

The Department previously sought feedback on this definition through [Consultation paper No. 1](#) and [A new model for regulating aged care - Consultation paper 2 - Details of the proposed new model](#).

Considering the feedback received, the proposed wording in the Exposure Draft aims to raise the bar for high quality care. It seeks to clarify that high quality is about excellence, that is, the delivery of care at a level above the quality and safety funded aged care required under the new Act.

We heard that high quality care needs to foster a change in sector culture by promoting innovation.

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.

Key new inclusions in the definition, consistent with the feedback we have received, include the **prioritisation** of:

- kindness, and respect for mental health and wellbeing
- the timely and responsive delivery of funded aged care services
- specific tailoring of care to the personal needs, aspirations and preferences of older people, including preferences regarding the time when funded aged care services are delivered
- respecting an older person's preference for privacy and time alone
- keeping older people mobile and engaged if they are living in an approved residential care home, where this is their choice
- ensuring available activities are meaningful and respectful
- supporting older people to remain connected to the natural environment, and animals and pets, if requested by the individual

- inclusive policies and procedures being implemented, in partnership with Aboriginal and Torres Strait Islander persons, to ensure that culturally safe and accessible care, which incorporates flexibility and recognises their unique experiences, is delivered at all times
- bilingual aged care workers and interpreters being made available if requested
- policy, practices and environments being adopted to ensure that services are culturally appropriate for the diverse life experiences of older people
- engaging lived experience of diversity in the organisation's workforce and decision-making
- staff retention and training to facilitate the delivery of the service by well-skilled and empowered aged care workers who are able to develop and maintain a relationship with the individual.

We welcome further feedback on the draft provision, and whether you consider it better achieves the proposed policy intent.

Consistent with the Statement of Principles, regulation of the aged care system by the Aged Care Quality and Safety Commission will be expected to promote the provision of high quality care. The aged care system is also 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.

Part 3 – Aged care rights and principles

As recommended by the Royal Commission and as outlined in [Consultation paper No. 1](#), the new Act will include both a Statement of Rights and a Statement of Principles ([Recommendations 2 and 3](#)). This is different to the *National Disability Insurance Scheme Act 2013*, which includes one list of guiding principles.

As currently drafted, the Statement of Rights focusses on what older people accessing, or seeking to access, funded aged care services can expect from **registered providers**. Importantly, it outlines rights specifically relevant to the aged care sector and delivery of funded aged care services under the Act, not the rights of older people more generally.

The Statement of Principles, while referencing the Statement of Rights and covering similar concepts, focusses on the expected actions of **persons or bodies that will**

perform functions or exercise powers under the new Act (this includes the Minister, the System Governor, the Commissioner and delegated decision-makers).

Aged care rights

Rights to be included in the new Act

The Statement of Rights (section 20) reflects the feedback we received in response to the rights proposed to be included that were outlined in [Consultation paper No. 1](#).

The majority of submissions strongly supported the Government taking a rights-based approach to the new Act and including a Statement of Rights as the centrepiece. Many stakeholders also indicated they felt positively about many of the rights proposed to be included in the Statement.

We heard some priority topics were missing or not adequately highlighted in the Statement of Rights, particularly recognising autonomy, diversity, culture and spirituality, as well as the important connections older people have with their pets and their communities.

Considering the feedback received, we have split the rights up into sections within the Statement, under simple, easy-to-understand headings. The headings summarise the rights that follow in more detailed legal language.

In response to specific feedback from stakeholders, we have also updated the rights in the Statement. This includes amendments to:

- recognise a right to services being delivered:
 - by aged care workers of registered providers who have appropriate qualifications, skills and experience, and
 - consistently with requirements imposed on providers under the new Act.
- recognise an individual's need for funded aged care services to be assessed, or reassessed, and then subsequently delivered, in a manner which is:
 - culturally safe, culturally appropriate, trauma-aware and healing-informed,
 - accessible and suitable for individuals living with dementia or other cognitive impairment.
- recognise a right of equitable access to palliative care and end-of-life care for persons accessing or seeking to access funded aged care services when required – noting that actual delivery of such services may occur outside the Commonwealth aged care system
- expand the proposed right to remain connected, to reflect the significant role of pets, friends, community activities and public life – as well as community and Country for Aboriginal and Torres Strait Islander persons

- include additional references to:
 - both intimate and sexual relationships
 - freedom from sexual misconduct and coercion
 - an individual's spirituality
 - accessible complaints mechanisms
 - other methods of communicating (noting these may be non-verbal).

Some stakeholders may be disappointed that we have not included a universal right of access to funded aged care services. However, the Royal Commission recognised that 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.

We have not expanded the Statement of Rights to include workers' or carers' rights as requested by some stakeholders. This is because such rights are covered by other legislation. Our focus is on what older people should be able to expect when accessing, or seeking to access, services under the new Act.

We also heard from some stakeholders 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.

Ensuring the rights of older people are upheld

Consistent with our views and the findings of the Royal Commission, we received significant feedback that it is critical that the new Act provide for the rights in the Statement of Rights to be upheld. Stakeholders asked for more information regarding how the concerns of older people will be dealt with.

Considering this feedback, we have included section 21 in the Exposure Draft which contains a clear expectation that registered providers must not act in a way that is incompatible with the Statement of Rights, taking into account the need to balance other competing or conflicting rights.

This is supported by registration conditions, outlined in Chapter 3, which require registered providers to:

- demonstrate through their delivery of funded aged care services that they understand the rights of individuals under the Statement of Rights
- have practices in place that are designed to ensure they uphold these rights, and
- provide older people with information about their rights.

Where this is not the case, a provider may be in breach of their registration conditions.

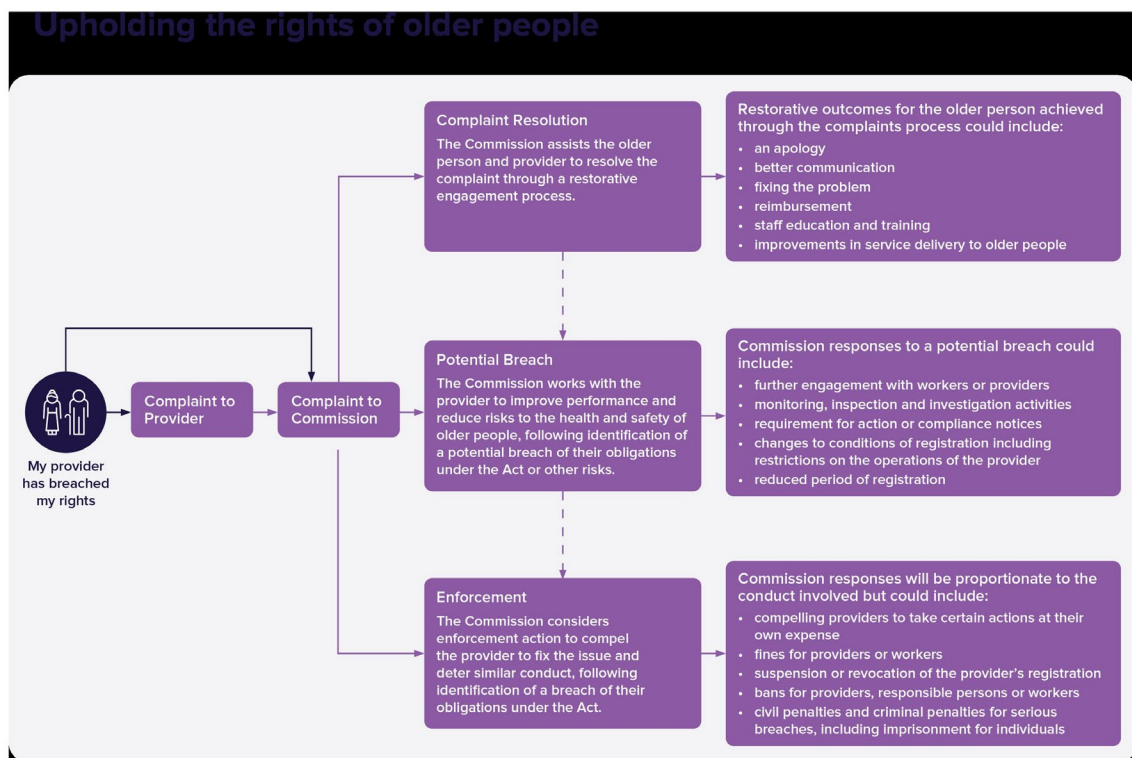
As outlined in [Consultation paper No. 1](#), where a provider has failed to deliver services in a manner consistent with the Statement of Rights, they are also likely to have failed to comply with other specific obligations under the Act. This may include the Code and aspects of the Quality Standards.

An older person can make a complaint to the Complaints Commissioner if they feel that their rights have not been upheld. This is specifically provided for in the complaints functions of the Commissioner, who will delegate these functions to the Complaints Commissioner.

The Statement of Principles reflects the expectation that the Commonwealth aged care system as a whole will support the delivery of funded aged care services by registered providers in a way that recognises the rights of individuals under the Statement of Rights.

The new Act will also specify that one of the Commissioner's functions is to engage and educate individuals, registered providers, responsible persons and aged care workers on the rights included in the Statement of Rights.

The diagram at below outlines how this may work, and the potential regulatory actions that could follow a complaint of this nature. You can access a full screen version of this diagram on the [Department's website](#).



Aged care principles

The Statement of Principles at section 22 of the Exposure Draft reflects feedback we received in response to the proposed principles outlined in [Consultation paper No. 1](#).

We heard that the Statement of Principles needed to be streamlined and reframed in more empowering and active language so as not to dilute the impact of the Statement of Rights and cause unnecessary complexity.

The majority of submissions received supported the inclusion of a Statement of Principles. Stakeholders agreed that it would provide guidance to make sure the new Act would achieve its purpose.

Some stakeholders questioned whether the new Act needed both a Statement of Rights and a Statement of Principles. However, we consider that both statements play an important, but different, role in delivering cultural change within the aged care sector.

The Statement of Rights outlines the specific rights of people seeking or accessing funded aged care services under the new aged care system. The Statement of Principles on the other hand will guide the decisions, actions and behaviours of government agencies operating under the Act.

A significant number of stakeholders expressed concerns about the proposed passive framing of the principles, despite this being consistent with the NDIS approach. They suggested that principles needed to be harmonised with the Statement of Rights. Taking this feedback into account, we have:

- 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.

The majority of stakeholders indicated that the Statement of Principles was clear and understandable, and some enthusiastically supported the inclusion of particular principles. However, in response to specific feedback, we have updated the principles in the 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 list¹
- 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.

Some stakeholders suggested penalties should be attached where the principles are not upheld. However, this is not consistent with principles-based legislation.

A failure to comply with the principles will not affect the validity of any decision made under the Act. However, it should be noted that:

- Section 23 places a clear obligation on government agencies operating under the Act to have regard to the Statement of Principles.

¹ This list currently includes individuals who:

- (a) are Aboriginal or Torres Strait Islander persons, including those from stolen generations
- (b) are veterans or war widows
- (c) are from culturally, ethnically and linguistically diverse backgrounds
- (d) are financially or socially disadvantaged
- (e) are experiencing homelessness or at risk of experiencing homelessness
- (f) are parents and children who are separated by forced adoption or removal
- (g) are adult survivors of institutional child sexual abuse
- (h) are care-leavers, including Forgotten Australians and former child migrants placed in out of home care
- (i) are lesbian, gay, bisexual, trans/transgender or intersex or other sexual orientations or are gender diverse or bodily diverse
- (j) are an individual with disability or mental ill-health
- (k) are neurodivergent
- (l) are deaf, deafblind, vision impaired or hard of hearing; or
- (m) live in rural, remote or very remote areas.

- The new Act will also specify that the Commissioner must have regard to the Statement of Principles in:
 - performing the Commissioner's functions, and
 - in making the Financial and Prudential Standards, alongside the additional principles set out in section 164.
- The first principle in the Statement of Principles – that is, that the safety, health, well-being and quality of life of individuals is the primary consideration in the delivery of funded aged care services, is also mirrored in a registration condition, outlined in Chapter 3 (section 92) and the strengthened Quality Standards. Providers will be required to demonstrate, through their delivery of funded aged care services, that they understand this.

Part 4 – Supporters and representatives

The new Act will clarify the role of legally appointed supporters and representatives and their responsibilities relating to supported decision-making.

Establishing the roles and duties of supporters and representatives in the new Act responds to the Royal Commission's recommendation that the new Act uphold the right of older Australians to autonomy, the presumption of legal capacity, and in particular the right to make decisions about their care, the quality of their lives and the right to social participation ([Recommendations 2\(b\)\(ii\)](#)).

Including supporters and representatives in the new Act is one way that the new aged care system will seek to promote the cognitive capabilities of older people and support their right to autonomy and self-determination ([Recommendation 3\(b\)\(iii\), \(v\), and \(xi\) and Recommendation 28\(1\)\(d\)](#)).

As outlined in [Consultation paper No. 1](#), the new Act will establish a process through which an older person can appoint a 'supporter' or a 'representative' to assist them with their decision-making:

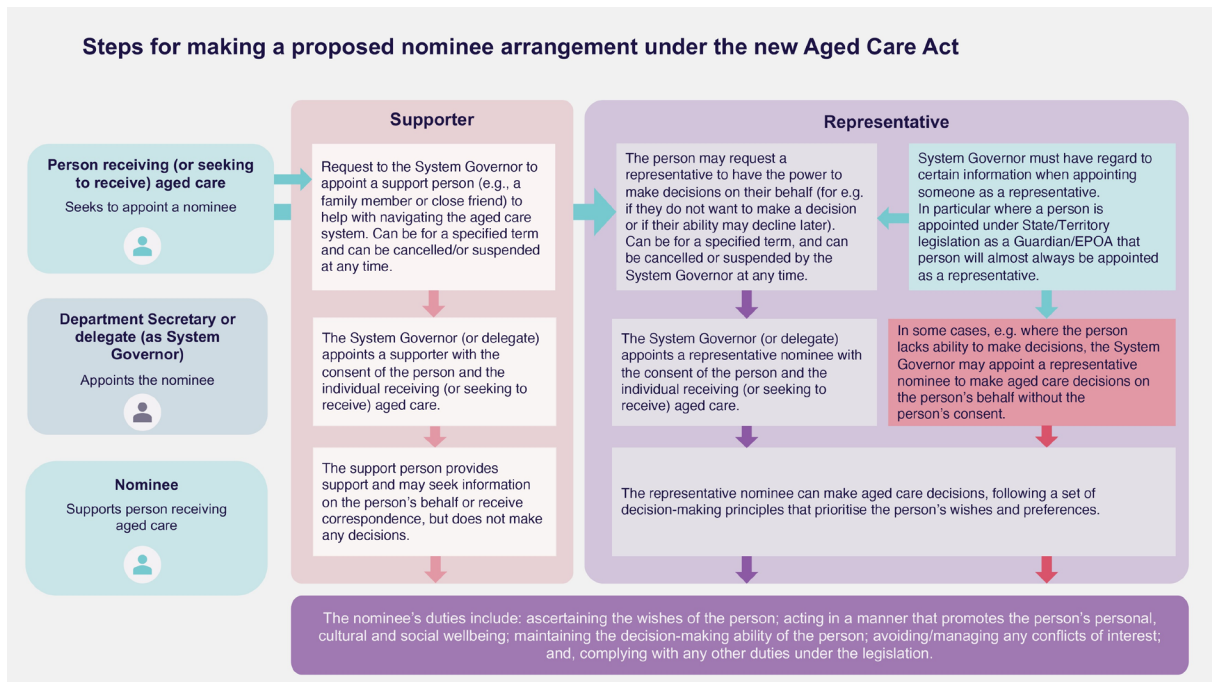
- **Supporters:** are able to receive documents and information, and communicate information on behalf of the older person
- **Representatives:** can do the same things as a supporter, and can make decisions on behalf of an older person when they do not have capacity to do so, or they want the representative to make the decision on their behalf.

The Exposure Draft details how these arrangements will operate. This includes how supporters and representatives are appointed, when their appointment can be suspended or cancelled, as well as their actions and duties, and the protections that relate to them.

The actions and duties of supporters and representatives has been included in Chapter 1, Part 4 of the Exposure Draft because these are key concepts for the new aged care system.

The administrative provisions about appointing, suspending and cancelling appointments of supporters and representatives is included in Chapter 8 of the Exposure Draft.

The diagram below shows the steps for making an appointment under the new Act. You can access a full screen version of this diagram on the [Department's website](#).



The duties of supporters and representatives are outlined in sections 26 and 30 including:

- the duty to act honestly, diligently and in good faith
- to act in a manner that promotes the will, preferences and personal, cultural and social wellbeing of the older person, and
- use best endeavours to maintain the ability of the older person to make their own decisions.

These duties aim to promote maximum autonomy and control for older people over their decisions, lives and the funded aged care services they receive.

Subsection 30(3) sets out additional duties for a representative when, as a last resort, they have to step in and make a decision on behalf of an older person. In these circumstances, the representative has to follow decision-making principles to make sure the older person's views, wishes and preferences are given effect. These principles are based on recommendations of the Australian Law Reform Commission and supported by a [research report](#) released by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability.

Amendments following consultation

In response to feedback received on [Consultation paper No. 1](#), some aspects of the supporters and representatives framework have been updated:

- People will now be able to have multiple supporters, or multiple representatives at the same time. However, they will only be able to have one of either a supporter or representative. This reflects the feedback that people often want to have more than one person appointed as a representative or supporter. It also recognises the complex reality of support networks and social/family relationships. Providing for multiple supporters or representatives, but not both at one time, aims to:
 - make it clear what kind of support network someone has
 - allow people to appoint a number of trusted family/friends/advocates to reflect the complex reality of support networks
 - allow people to replicate appointments made under state and territory schemes (for example, Enduring Power of Attorneys), and
 - clarify who is authorised to receive information and/or make decisions.
- If someone is applying to be appointed as an individual's representative and they are already appointed:
 - as a Guardian under a law of the Commonwealth, or a State or Territory
 - by a court or tribunal and have power to make decisions for the person
 - as an enduring power of attorney, or
 - as a nominee of the older person for the purposes of the NDIS or Services Australia

then the System Governor must appoint them as the older person's representative, unless there is a good reason not to (for example, where it is clear that the person is unable to comply with the duties of representatives). This also covers situations where there is evidence of elder abuse. This change responds to feedback that the supported decision-making framework under the new Act needs to recognise existing appointments under state and territory laws.

- Supporters and representatives must use their best endeavours to maintain the older person's ability to make their own decisions. This change responds to feedback that the new Act should use terminology such as 'ability' rather than 'capacity', when referencing an older person and their decision-making capability.
- Approved bodies and entities, such as advocacy organisations, will be able to operate as agents as they do under the current system. This responds to feedback that an older person should still be able to access advocates while they have a supporter or representative in place.

- The Exposure Draft at subsection 27(2) clarifies that representatives are not automatically authorised to provide consent to the use of a restrictive practice on an older person's behalf where the older person lacks the capacity to give that consent. The Government is working with states and territories on establishing clear arrangements for appointing a restrictive practices substitute decision-maker under state and territory consent and guardianship laws.

Additional resources for Chapter 1

You can access additional resources by visiting the new Aged Care Act consultation page at www.health.gov.au/aged-care-act-consultation.

To provide your feedback you can:

- complete the [survey](#) where you can tell us what is most important to you,
- include a response to the consultation questions in a more detailed written submission to the Department or ask a question by sending an email to agedcarelegislativereform@health.gov.au.

Chapter 2 – Entry to the Commonwealth aged care system

Chapter summary:

People can make a single, simple application for funded aged care services, and will be assessed against common eligibility criteria. If they meet these criteria, they will undergo a needs assessment to identify whether they require access to funded aged care services and which services they need.

This is consistent with the single entry point for access to the aged care system recommended by the Royal Commission ([Recommendations 25](#)).

The results of the needs assessment will inform a decision by a delegate of the System Governor about which services a person is approved to access.

Prioritisation and place allocation mechanisms may apply where demand for services exceeds the supply.

A classification decision will be made by the delegate at the same time as an assessment, or later if the person is entering an approved residential care home. The classification decision will affect the level of Commonwealth funding available to deliver funded aged care services to a person (unless their provider has access to specialist funding arrangements).

Where someone's circumstances change, they can apply for a reassessment. This will facilitate a new approval decision, either on the basis of information provided or following a new needs assessment.

Consultation questions Chapter 2:

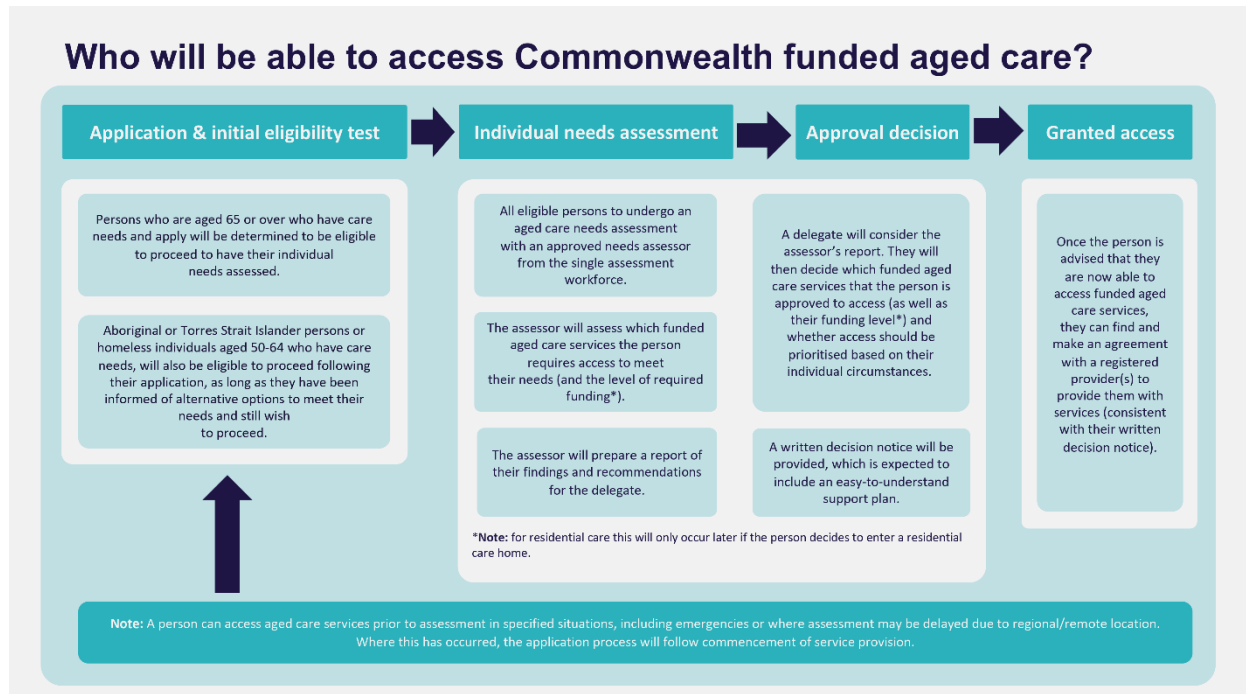
We are particularly interested to hear your responses to the following questions:

10. What transitional arrangements would you like to see put in place to ensure there is a smooth transition to the new eligibility arrangements and to manage any impacts on people who do not meet the eligibility criteria?
11. Do you consider there are alternative services that can, or should, be made available for Aboriginal or Torres Strait Islander persons aged 45-49 who are homeless or at risk of homelessness? Does aged care currently meet the needs of this particular group of individuals? We are keen to hear from First Nations stakeholders about their experiences or those of their family and community.

12. Are you under 65 and currently accessing aged care services in the home or community? If so, we would welcome your feedback about whether you have considered other available services and your reasons for continuing to access aged care.
13. Is there anything else you would like to see specified in the legislation regarding the needs assessment process?
14. Are you comfortable with the proposed arrangements to maintain flexibility to vary services that a person can access under the CHSP when the Act is introduced? **Note:** Home Care Package arrangements are not impacted by these changes.
15. Are you comfortable that there are clear arrangements in place under the new Act for a classification decision to be reviewed and changed if required?
16. Do you have any feedback about emergency entry to aged care that you would like to see addressed in developing the alternative entry arrangements for the new Act?

1The diagram below shows who will be able to access Commonwealth funded aged care services and the common entry pathway for eligibility and assessment.

You can access a full screen version of this diagram on the [Department's website](#).



Part 2 – Eligibility for entry

Section 37 of the Exposure Draft outlines requirements a person ('an individual' in the Act) must meet to be approved for access to funded aged care services.

It shows the steps that a person will go through before they can access funded aged care services. These steps are explained in the sections of the Exposure Draft that follow and are also summarised below.

The new Act will provide for people to access funded aged care services in advance of the application and assessment processes explained below.

These 'alternative entry arrangements' are not yet included in the Exposure Draft, but will cover emergency situations, as well as situations where a needs assessment is likely to be significantly delayed. This could include where the person seeking aged care services is in a remote or rural area. These arrangements will facilitate registered providers being able to claim subsidy or use grants for services delivered prior to these processes being completed.

Applying for access to funded aged care services

A person may apply for access to funded aged care services (section 38). Similar to current pathways to a needs assessment, this could include making a simple application via the Contact Centre, online, through one of the existing referral pathways, or with the assistance of [Care Finders](#) or [Elder Care Support](#) services.

Who is eligible to proceed to a needs assessment

The new Act introduces clear eligibility requirements for a person to access the aged care system and have their needs for funded aged care services assessed (section 40).

As outlined in [Consultation paper No. 1](#), this means that a person will **not** be able to proceed to a needs assessment unless a delegate of the System Governor first makes an *eligibility determination* under section 39, in required timeframes.

This can occur where the person has provided information relating to their **care needs** (defined in section 7) and is either:

- aged 65 or over, or
- aged 50 or over, and an Aboriginal or Torres Strait Islander person, or homeless or at risk of homelessness.

If the person is eligible, the delegate will then organise a needs assessment for them.

If the person is under 65, the delegate will also need to make sure that the person is informed of other services available to meet their care needs and that they still wish to access funded aged care services.

The feedback we received was generally supportive of these proposed arrangements. Most stakeholders welcomed the introduction of unambiguous eligibility criteria and a new streamlined assessment system.

We heard strong support for clear eligibility criteria and streamlining the assessment framework for aged care services.

Some stakeholders also strongly supported changes to the eligibility criteria and reiterated that aged care is not the appropriate place or service system for younger people.

A number of stakeholders were pleased to see a lower age limit for Aboriginal or Torres Strait Islander persons, reflecting their unique experiences.

Some stakeholders, however, raised concerns about the lack of discretion to enable access for other younger people, particularly Aboriginal or Torres Strait Islander persons aged 45-49 who are homeless or at risk of homelessness, people with early onset dementia, people requiring palliative care or people requiring other intensive health care.

The Department is progressing further targeted work to ensure the Commonwealth aged care system is used to meet the care needs of the ageing population, and that younger, vulnerable populations have access to services that are more appropriate for their needs.

It is intended that the delegate in these circumstances would be external to the Department, and part of the new single assessment workforce.

If the delegate decides an applicant for funded aged care services does not meet the criteria discussed above (section 40), the individual will receive a formal notice of this decision and how they can apply for a reconsideration of this decision (section 41).

Aged care needs assessments

A person can participate in a needs assessment once their eligibility is confirmed or in certain circumstances where a delegate decides they need a reassessment (see: *What happens if my needs change: reassessment processes* below).

For more information on the proposed single assessment framework, see the Department's website on [Aged care assessment arrangements](#).

Where and when will a needs assessment occur

A needs assessor will undertake a needs assessment with the person. This will usually happen face to face, in the person's home. There may be instances where this occurs in another location (for example, a hospital). An online assessment can also take place where that is preferred because a face-to-face assessment cannot be undertaken within a reasonable timeframe. This might occur when the person lives in a remote location.

Consistent with subsection 43(2) a needs assessment will not proceed where the person has declined a needs assessment or withdrawn their consent.

What will a needs assessment involve

The needs assessor will use the assessment tool to carry out the needs assessment. This will comprise a suite of validated assessment instruments that assist in identifying the older person's needs and the services they require.

As outlined in subsection 44(2), during the needs assessment the needs assessor must discuss with the person:

- the funded aged care services they may need
- what would help them to maintain their independence
- their preferences and goals
- the next steps for their application for funded aged care services, and
- how they will be informed of the outcome of their application.

What happens after the assessment

The needs assessor must provide a report of their assessment to a delegate of the System Governor for consideration. As outlined in section 45, the content of this report will depend on which service groups they consider the person should be approved for.

- In all instances, the assessment report must include the service group(s) that the needs assessor recommends the person be approved for.
- Where the needs assessor recommends the home support service group, they must also include the service types (for example, nursing, personal care, domestic assistance) and specific services (for example, particular allied health services such as podiatry, physiotherapy) that they consider the person needs based on the needs assessment.
- The assessment report may also include the person's classification report (see Chapter 2 Part 3) and information about prioritisation (see Chapter 2 Part 4).

Approval of access to funded aged care services

The delegate must consider the report of the needs assessor and decide whether or not the person requires access to funded aged care services (subsection 47(1)).

This decision must be made within a specified time after the delegate receives the assessment report or, after any further information that they request is provided (subsection 47(4)). The delegate must provide a notice of this decision within 14 days of the decision being made (section 51). Required processing timeframes are under consideration and will be included in the Rules.

If the delegate decides that the person requires access to funded aged care services, the delegate must decide which service groups the person is approved for (for example, permanent residential care or home care or both). You can find additional information about service groups on the [Department's website](#).

For the home support service group only, the delegate must also approve the person for specific service types and services. These details must be included in the notice of decision.

The new Act provides flexibility to adjust approved service types and services. An assessment process is important to ensure funded aged care services address individual needs and are directed to those most in need. An older person's circumstances, preferences and goals may change over time, so we understand that such flexibility is critical.

These flexible arrangements include conditional approvals and two possible pathways to have needs reassessed. They are designed to avoid people having to take unnecessary steps where only small modifications to their approved funded aged care services are required. It also ensures that funded aged care services are targeted towards a person's needs and constitutional requirements are met.

Specific criteria that must be met for each service group will be outlined in the Rules.

For service groups delivered in a home or community setting (home support, home care, short term services, transition care), this will mirror existing criteria for the CHSP, STRC, TCP and the Home Care Packages programs.

For service groups delivered in an approved residential care home (permanent residential care, residential respite and transition care), in addition to any existing criteria, the delegate must be satisfied that the person has an ongoing need for nursing services (section 48) (unless they are an Aboriginal or Torres Strait Islander). This is required due to the constitutional authority for funded aged care services delivered in these locations.

Why is additional information required for home support decisions

Where an individual is approved to access the **home support service group**, the intention is that they would access particular service types or services consistent with their assessed needs and preferences, and these may vary over periods of time (**note:** this includes CHSP for the first phase of reforms, not Home Care Package arrangements).

Given the wide range of aged care services available for delivery in a home or community setting, an approval decision for home support must provide more detailed information about the services approved and why they are required.

This is consistent with current CHSP arrangements where a person is approved for specific services and given specific service codes, which will be provided for under these arrangements. These arrangements will also be critical moving forward to ensure constitutional authority.

This service group (and the future Support at Home program) will rely on the external affairs power with reference to the Convention of the Rights of Persons with Disabilities (CRPD) (see section 51 (xxix) of the Constitution) for constitutional authority.

As a result, it is important that there is a clear link created between an approval decision under the new Act for this service group and the relevant articles of the CRPD. This will ensure we have sufficient constitutional authority to fund and regulate these services. It will be achieved by the restrictions on approvals for this service group which are set out in section 49.

While this section may appear quite complex, it essentially requires the delegate to be satisfied that a person has a long-term physical, mental, intellectual or sensory impairment, which in interaction with various barriers, may hinder their participation in society on an equal basis with others, and that the services approved will assist the individual for one or more specified reasons.

In practice, these requirements are not expected to impact people who can access services under CHSP. That is, we anticipate the same people will be able to access funded aged care services in a home or community setting. This is because existing home care programs are already aimed at helping to ensure that, for example, a person with an impairment can live in the community, be mobile and not be isolated, which aligns with requirements under the CRPD.

The new assessment tool will be the mechanism to determine the needs of a person for funded aged care services, in comparison to the needs of other older people.

As outlined in subsection 49(2), an impairment can still be long-term even if it is episodic, fluctuating or varies in intensity over time.

Approving specific service types or services is not necessary for other service groups (for example, permanent residential care, residential respite care and home care because of the different constitutional authority relied on for these service groups.

This is also consistent with operational arrangements under current aged care programs for these service groups. For example, a registered provider is expected to be able to deliver all available services where needed by a person in an approved residential care home, taking into account their goals and preferences.

What are conditional approvals

Section 50 allows the delegate to approve services or service types for the **home support service group** on a conditional basis (**note:** this includes CHSP for the first phase of reforms, not the Home Care Packages program).

For example, the delegate might provide conditional access to an additional allied health service(s). This will allow a person to access this service(s) where the specified condition(s) are met in the future, without the need for a reassessment. This could include where certain information is provided to demonstrate the person needs the service or where a particular provider delivers the service.

These arrangements are also expected to be used when the Support at Home program commences to provide flexibility for people to access additional services within their allocated budget (classification) without requiring a new needs assessment.

Note:

- In practice, these arrangements will be used to make it clear that there is additional flexibility where home support services are delivered by a registered provider under the NATSIFAC program – ensuring that existing and important flexibility with this program, which will have different constitutional authority, can be maintained under the new Act.

What happens if my needs change: reassessment processes

The new Act will provide for a person already approved for funded aged care services to apply for a reassessment (section 46). In practice, this is expected to be done by calling My Aged Care.

There will be two types of reassessment – a full new needs assessment and a reassessment ‘on the papers’ where certain information is given to a delegate.

In either case, a new approval decision will be made by a delegate following a reassessment, which will facilitate the person being able to access new or more services where required.

Full reassessment

Where a person has had a significant change in circumstances (paragraph 46(1)(c)(i)), the System Governor or their delegate will organise a new needs assessment for them (paragraph 46(2)(a)). A significant change in circumstances will be defined in the Rules and is proposed to include where:

- a person's carer has stopped providing some or all care (temporarily or permanently)
- the person has experienced an event or decline in their condition that is likely to affect their classification (see *Part 3 – Classification* below), or
- the person has experienced an event or a decline in their condition and are likely to require access to a funded aged care service they are not approved for.

Reassessment ‘on the papers’

An alternative pathway is provided in the new Act to allow a reassessment to occur where certain information is provided to the System Governor or delegate (paragraph 46(1)(c)(ii)).

This will allow a new approval decision to be made, without the person undergoing a whole new needs assessment. It will mean older people do not need to complete unnecessary steps where they may need a small modification to the funded aged care services that they access or the amount of time they access them.

This will cater for:

- existing ‘support plan reviews’ under CHSP – allowing a person to access additional services they had not been previously approved for where this is consistent with their individual needs, and
- an extension being provided to people accessing transition care services, where they require them for a longer period.

A reassessment will not proceed unless certain specified criteria are met. The Rules will prescribe the criteria, for each of the pathways outlined above, that a delegate needs to be satisfied of before undertaking a reassessment.

Where the delegate decides that the person does not require a reassessment, they will notify the person (subsection 46(3)). The notice will contain the reasons for decision and explain how the person may apply for reconsideration (section 46(4)).

Revoking eligibility determinations and access approvals

The System Governor can revoke an eligibility determination or approval decision if the person (or representative) requests it (section 54) or where they gave false or misleading information (section 55).

Part 3 – Classification

A person’s classification determines the amount of funding available to deliver the aged care services that they have been approved for.

When a person is approved for a service group under the new Act, a delegate will decide their classification level for that service group. This decision will follow a classification assessment.

There are no changes to the funding levels that will be available, with the [Australian National Aged Care Classification \(AN-ACC\) funding model](#) for permanent residential care and residential respite only recently introduced via the [Aged Care and Other Legislation Amendment \(Royal Commission Response\) Act 2022](#).

The classification provisions in the Exposure Draft do look different to the current Act. This is because they have been simplified. They have also been adapted to work as much as possible across the whole aged care system in anticipation of upcoming Support at Home changes.

Classification assessments

As with current AN-ACC arrangements, a person approved for permanent residential care will undergo an initial classification assessment with an approved needs assessor after they commence care in an approved residential care home (section 56). The only exceptions to this are:

- in certain circumstances where the person is accessing palliative care and the System Governor can assess them without a face-to-face assessment, and
- if the individual accesses permanent residential care through an MPS or NATSIFAC service provider, they do not require an AN-ACC assessment.

For all other service groups, the needs assessor will undertake the classification assessment at the same time as the needs assessment described at sections 43 and 44.

In limited circumstances, a classification assessment can also be undertaken based on information, rather than a face-to-face assessment. This includes where a person needs an extension to their episode of transition care or more days of residential respite care (sections 56 and 57).

What happens after the assessment

Where there is more than one classification level available for a service group, the needs assessor must provide a report of their assessment to the delegate.

Classification levels

The classification levels for each service group will be in the Rules (section 62).

These levels will mirror the current AN-ACC and Home Care Package levels. For service groups where there is only one funding level, this will continue under the new Act.

Classification decisions

The System Governor will determine a person's classification level for a service group, taking into account the assessment report or other specified information (sections 58 and 59).

For all service groups other than permanent residential care, a classification decision will be made by a delegate. In practice, this will be the same member of the single assessment workforce who makes the approval decision.

For permanent residential care, there will be different arrangements in place. This is because the AN-ACC model implements a form of decision-making where certain compounding factors are 'weighted' by a computer program and a 'classification level' assigned on this basis. This objective process is used to assign people into one of several classes, based on their care needs.

The new Act will include provisions that cater for these arrangements (see Chapter 8, Part 7).

All classification decisions will be reviewable. Similar to the current Aged Care Act, the new Act will also allow the System Governor to change the classification decision if they are satisfied that the original assessment of care needs was incorrect or inaccurate (section 64).

The computer program referred to above is based on a case mix 'AN-ACC study' conducted by the University of Wollongong. For more information, see: [the Resource Utilisation and Classification Study \(RUCS\) Reports](#)

Classification decisions will remain in effect until certain specified events occur (see section 61) – for example, where a person is assigned a higher level Home Care Package.

What happens if an older person's needs increase

For all service groups other than permanent residential care, the person should apply for a reassessment when their needs change (see: *What happens if my needs change: reassessment processes* above).

For permanent residential care, a person or their provider can apply for a further classification assessment in certain circumstances (see section 63).

Similar to the current Aged Care Act, the new Act will allow for the Rules to specify a fee where a registered provider applies for a subsequent classification assessment for the permanent residential care service group (subsection 63(2)). Currently, no fee is charged for classification assessments.

Parts 4 and 5 – Prioritisation and place allocation

Many people approved for funded aged care services will immediately be able to find a registered provider and access those services.

Where demand exceeds supply, this will be managed under the new Act by prioritisation mechanisms and place allocation arrangements.

Prioritisation and place allocation provisions are not yet included in the Exposure Draft. However, the proposed arrangements are summarised at a high level below.

Prioritisation and place allocation changes that will be covered by the new Act have been consulted on separately. Targeted consultation on relevant draft provisions may be progressed alongside or after the Exposure Draft consultation.

Prioritisation

Prioritisation involves determining a priority category for a person approved for a service group.

Under the new Act, a prioritisation decision will only be made if a person is approved for the permanent residential care or home care service groups.

- For home care, prioritisation categories will mirror the current arrangements.
- For permanent residential care, there will be three new priority categories that will reflect the urgency of a person's need for funded aged care services.

This decision will be based on the person's need for funded aged care services in respect to everyone else in the system. It may affect when they can access services in that service group (see *Place allocation* below).

A person's priority category will not impact on their ability to access services through a NATSIFAC or MPS provider.

Place allocation

People (or their provider in limited circumstances*) must be allocated a place to access funded aged care services. A place will be allocated immediately for service groups that do not require a prioritisation decision.

This will also be the case for other services groups where demand does not exceed supply. If or when this occurs, places will be allocated for these service groups based on the person's priority category (see *Prioritisation* above).

This will not be a change for home care, with Home Care Packages already allocated according to a [National Priority System](#). The new Act will, however, introduce new place allocation arrangements for permanent residential care, as outlined below. These changes are referred to as Places to People.

***Note:** For the STRC, TCP, MPS, CHSP and NATSIFAC programs, there will be no change to the way places (or funding in the case of grants) are allocated to registered providers.

Places to People

The new Act will allow places to be allocated to older people for permanent residential care for the first time. This will replace the current Aged Care Approvals Round (ACAR), which allocates places to approved residential care providers. It will provide older Australians with more choice and control over which registered provider delivers their care, consistent with Royal Commission [Recommendation 25](#).

Under the new Act, once a person has been allocated a place, they will be able to move into an approved residential care home with an available bed and access funded aged care. Funding will still flow directly to the registered provider that the individual has chosen to deliver their funded aged care services.

The new Act will allow for permanent residential care places to be allocated to individuals. Given the current demand for permanent residential care, every person approved for residential care will be allocated a place immediately once they are approved, meaning that there will be no wait or 'queue'.

Registered providers will no longer need an allocation of places through the ACAR to provide permanent residential care outside of a specialist aged care program.

The new arrangements aim to:

- give registered providers greater control over their business decisions, including where they build residential care homes, and how many beds they make available, and
- support the development of high quality and innovative models of care and accommodation that best meet the preferences of older Australians.

Consultation on Places to People took place in late 2021 with a [discussion paper](#), online survey and virtual workshops. A summary report, [Places to People – embedding choice in residential aged care: consultation outcomes](#), has been produced to provide the key themes and outcomes resulting from the consultation.

The implications for providers with a grant of Extra Service Status and residents currently living in an Extra Service place under this new system are still being considered. This will be discussed further with relevant stakeholders prior to the introduction of the Bill to Parliament.

Additional resources for Chapter 2

You can access additional resources by visiting the new Aged Care Act consultation page at www.health.gov.au/aged-care-act-consultation.

To provide your feedback you can:

- complete the [survey](#) where you can tell us what is most important to you,
- include a response to the consultation questions in a more detailed written submission to the Department or ask a question by sending an email to agedcarelegislativereform@health.gov.au.

Chapter 3 – Registered providers, aged care workers and digital platform operators

Chapter summary:

Providers must apply and be registered by the Commissioner to deliver funded aged care services. Certain eligibility requirements must be met and providers may be registered in one or more registration categories. Residential care homes must also be approved as part of the registration process.

The registration period is generally 3 years. Providers then need to re-register to continue to deliver services. During a registration period, they can also apply to vary their registration. The Commissioner will maintain a register of registered and formerly registered providers.

A registered provider has obligations that must be met when delivering funded aged care services. Civil penalties and offences can apply where a registered provider has not met their obligations. This includes conditions on their registration. Separate obligations are also placed on the responsible persons and aged care workers of registered providers, including to comply with the Code of Conduct.

The Commissioner can revoke or suspend a provider's registration. They can also vary a provider's registration on their own initiative in certain circumstances.

Criminal penalties are established where registered providers (or their responsible persons) breach new statutory duties designed to target serious, poor quality and unsafe care. A compensation pathway is also available where a registered provider is found guilty of an offence in relation to breach of their duties and serious illness or injury results from that breach.

New statutory duties also apply to operators of aged care digital platforms to ensure that they only advertise the services of those who are suitable to deliver funded aged care services.

Consultation questions Chapter 3:

We are particularly interested to hear your responses to the following questions:

17. Do you consider that the proposed draft statutory duties on registered providers and responsible persons achieve the proposed policy intent?
18. Does the proposed definition of aged care digital platform appropriately identify the kinds of online platforms that should be regulated?

19. What information should be displayed on aged care digital platforms to help protect people receiving services within the Commonwealth aged care system? What obligations should operators of digital platforms have to check information provided by aged care workers and registered providers? Can you identify any practical issues with operators validating the proposed information?
20. Do the proposed additional obligations on digital platform operators address the key risks and areas of oversight for online platforms?

Part 2 – Provider Registration process

As discussed in the public consultation paper [*A new model for regulating aged care - Consultation paper 2 - Details of the proposed new model*](#), a key change under the new Act, and one broadly supported by stakeholders, is the implementation of a universal registration model.

All providers of Commonwealth funded aged care services must be registered. This will ensure greater transparency, regulatory intelligence, and oversight. This is because the Commission will have visibility of who is operating in the sector and the funded aged care services they are delivering, and can respond proactively to emerging risks in the sector.

Providers must register in one or more of the ***provider registration categories***. These categories are grouped according to common characteristics, associated risks and the obligations on providers that address those risks. Transitional arrangements will be put in place for existing providers to ensure there is no impact to continuity of care and services for older people.

This part of the Exposure Draft describes how providers can apply to register with the Commissioner (section 66)² and the registration criteria (section 68). This includes general, category specific and residential care specific requirements. Certain providers must also undergo an audit against the strengthened Quality Standards as part of the registration process.

² For example, registration applications must be in an approved form and be accompanied by an application fee as prescribed. However, there may be circumstances where the application fee is nil for providers of a particular kind (for example, providers in remote Australia who deliver services to First Nations people).

Providers will generally be registered for a period of 3 years (see section 74). The Commissioner can shorten or lengthen this period. For example, a shorter registration period of 1 year may apply:

- for new providers entering the sector (consistent with Royal Commission [Recommendation 93](#)), or
- where the provider is required to rectify identified performance issues and the Commissioner seeks to re-test their suitability to deliver funded aged care services after a shorter period.

The Commissioner will also have the discretion at the time of deciding a registration application to extend a registration period beyond 3 years where the provider consistently demonstrates compliance with their requirements under the Act and delivery of high quality care. This would not limit the Commissioner's ability to undertake risk based monitoring activities or shorten the registration period (via a procedurally fair process) should issues of serious non-compliance occur during that period.

Providers will be notified if their registration application is successful (section 71) and placed on the Register of registered providers that will be maintained by the Commissioner (section 87).

The Commissioner must give a provider written notice if they do not intend to register them in any or all the categories requested, or to approve one or more of their residential care homes (section 70). This will be a reviewable decision.

Discussions are currently underway with the Commission on the proposed time periods for processing registration applications. It is intended these time periods will then be included in the Rules or in the new Act.

Note: Arrangements for State and Territory government providers who wish to deliver funded aged care services have not been finalised. These will be discussed further with relevant stakeholders prior to the introduction of the Bill to Parliament. At this stage, the Exposure Draft only contemplates registration of providers that are not State or Territory government providers.

The Exposure Draft allows the System Governor to deem a provider to be registered for a limited time period in certain circumstances (section 75). These arrangements aim to ensure providers can be engaged quickly in an emergency – for example, where an existing provider must cease to deliver services following a natural disaster, or there is a sudden gap in the market in a remote area of Australia.

General registration requirements

These requirements mirror requirements for NDIS provider registration. To be registered, providers will be required to have an ABN and be able to demonstrate that they, and their responsible persons, are suitable to deliver the types of funded aged care services that they intend to deliver (subsection 68(1)).

Category specific registration requirements

The Commissioner must be satisfied that a provider meets the requirements for at least one registration category to register them – that is, the permanent residential care category and/or another category prescribed in the Rules.

Such requirements include the provider having the experience, commitment, capability and capacity to deliver the funded aged care services they intend to deliver. They must also have a record of sound financial management (subsection 68(2)).

Once registered, a provider can deliver all the service types associated with the relevant registration category. If their intended service offering changes, they will need to notify the Commission (see section 110).

Additional registration categories will be specified in the Rules. More information on the final proposed registration categories will be published on the Department's website soon.

To ensure there is constitutional authority for the regulatory model, a provider's registration will only have effect in relation to certain service groups if they are a constitutional corporation (see section 72). This is required because certain service groups (home care and short term restorative care) are expected to rely on the corporations power for constitutional authority (s51(xx) of the Constitution) for the first phase of reform.

Residential care home specific registration requirements

To be registered in the permanent residential care category, providers must have at least one residential care home approved by the Commissioner. Residential care home requirements will be outlined in the Rules. They will include a requirement for the registered provider to certify that any home:

- is in a good state of repair and is appropriately maintained,
- does not exceed its maximum occupancy, and
- complies with health and safety laws, and applicable building standards.

Audit requirements

To be registered in the residential care category and some other categories of registration, providers will be required to complete an audit against the Quality Standards (see section 69).

Providers must demonstrate conformance with the Quality Standards unless alternative arrangements are in place. This could include where the provider has already been audited under comparable arrangements, or where any non-conformance is minor and a continuous improvement plan is in place.

The type and timing of audits is expected to vary for different registration categories and the types of services being provided. For certain providers, the re-registration process will be supported by audits against the strengthened Quality Standards to determine the provider's suitability to continue offering funded aged care services. Audits will also facilitate continuous improvement across the sector by allowing providers to see where they need to make improvements or adjustments to their service delivery.

Part 3 – Variations, suspensions and revocations of registration

This part of the Exposure Draft outlines how the Commissioner can vary a provider's registration on their own initiative in certain circumstances (section 76), or at the request of a provider (section 77).

For example:

- the Commissioner may seek to impose a new condition on a provider's registration to address an identified performance issue, or
- a provider may seek to be registered in an additional category.

The Commissioner must provide notice of a possible variation of registration that may have a significant adverse impact on the registered provider's delivery of funded aged care services, where this was not requested by the provider. If the Commissioner proceeds to vary the registration, this would also be a reviewable decision.

The Commissioner can also revoke or suspend a provider's registration where, for example, the Commissioner is satisfied that the entity is no longer suitable to deliver funded aged care services (section 83 and 84). This would be a reviewable decision.

Note: Section 82 of the Exposure Draft also enables a provider's registration to remain in force where they have lodged a new application for registration, but their registration period ends before the Commissioner decides their application.

Part 4 – Obligations

The new Act places obligations on registered providers and others operating in the aged care sector to safeguard older Australians. Those who fail to comply with these obligations risk penalty or exclusion from the sector.

This part of the Exposure Draft outlines the nature of these obligations and associated penalties – as discussed below:

- Division 1 outlines conditions on the registration of providers that they will need to comply with if they wish to remain registered.
- Division 2 outlines additional high-level obligations placed on providers, as well as separate obligations placed on aged care workers and responsible persons.

Conditions on provider registration

As outlined in: [A new model for regulating aged care – Consultation paper 2 – Details of the proposed new model](#), some conditions will be imposed on all registered providers (core conditions) and some categories or kinds of providers only (category-specific conditions) (see section 88).

These arrangements ensure that conditions are risk proportionate and only apply where relevant to the registered provider and the funded aged care services delivered. They manage risks of harm inherent in the delivery of aged care services. A summary of these conditions is provided below.

The Commissioner may also impose additional conditions on the registration of specific providers (section 89). Such conditions enable the Commissioner to manage additional risks associated with the specific provider delivering those services. For example, a provider struggling to meet their obligations in a particular area may be required to implement additional training or reporting obligations to ensure improved performance in that area.

Breach of a condition of registration generally attracts a civil penalty of 250 penalty units. A higher penalty of 500 penalty units is available where the breach involves a **significant failure** or is part of a **systemic pattern of conduct** (section 88).

As set out in section 18, a registered provider's conduct amounts to a significant failure if their conduct represents a significant departure from the conduct that could reasonably be expected from them, having regard to their obligations under the new Act.

Further, in determining whether a registered provider or responsible person's conduct is part of a systemic pattern of conduct, consideration must be given to a number of matters, including the number of times a registered provider has breached their obligations under the new Act, the period over which the breaches occurred, and the number of people affected by those breaches.

Aged Care Code of Conduct

All registered providers must comply with the [Code](#) (section 90). This is the same Code that has been in place since 1 December 2022 with minor changes to terminology only.

Workforce requirements

All registered providers must comply with workers screening requirements prescribed by the Rules (section 91). Worker screening will include an assessment of whether a person who seeks to work with people accessing funded aged care services poses an unacceptable risk of harm.

Consistent with Royal Commission [Recommendation 77](#), the new Act will establish nationally consistent worker screening arrangements. It is proposed that aged care worker screening assessments will be conducted by State and territory worker screening units who currently conduct NDIS worker screening checks. Regulatory alignment between the aged care and NDIS sectors, and throughout the care and support sector more generally, aims to reduce red tape for employers (including registered providers) and increase mobility of staff to work across these sectors.

Before the new worker screening model can be implemented, new legislation is needed at the state or territory level. The Australian Government is working closely with states and territories on how and when the new worker screening model could be applied to aged care. During the transition period, existing obligations in relation to worker screening (that is, police check requirements) will continue.

Rights and Principles

Registered providers who do not need to comply with the Quality Standards must demonstrate through their delivery of funded aged care services that they understand the Statement of Rights (section 92). They also need to have practices in place designed to ensure their actions are not incompatible with these rights.

Subsection 92(2) is also designed to mirror Statement 1 of the Statement of Principles, ensuring providers understand that the safety, health, wellbeing and quality of life of individuals is the primary consideration when delivering funded aged care services.

Personal information and record keeping

All registered providers must keep, and retain, specific records in accordance with requirements prescribed by the Rules (section 93). The details of these requirements will be consulted on separately.

We anticipate that the types of records registered providers will need to keep in the new Act will reflect (to a large extent) what is currently set out in the *Records Principles 2014*. This is expected to include records about, for example:

- care minutes provided to older people (for example, a registered provider must calculate and record the relevant staff time provided to residents at each location, based on the needs of each resident and a weighted average of resident classifications)
- compliance with provider governance requirements (such as the names and the details of clinical care experience of governing body members)

- information about people accessing funded aged care services (such as copies of assessments and re-assessments, care plans, medical records and records of fees and payments)
- records about staff member police certificates and worker screening clearances
- records about staff influenza and COVID-19 vaccinations, and
- records of the vaccinations of individuals accessing services in a residential care home.

Registered providers will be required to keep these records in a manner consistent with personal information requirements in the new Act (see below *Chapter 7: Information Management* below).

Requirements around the protection of personal information will be set out in section 117 of the new Act and reflect those in current legislation. A registered provider must ensure the protection of personal information relating to an individual, and not use that personal information other than for certain purposes, such as in connection with their delivery of a funded aged care services.

Fees and payments

All registered providers will need to meet requirements prescribed by the Rules relating to fees and payments (section 94). The details of these requirements will be consulted on separately.

The obligations will reflect the current requirements for managing accommodation payments and charging fees to individuals, with some amendments to resolve administrative issues with the current arrangements.

Currently, these obligations sit in various places in the Aged Care Act (see Chapter 4, Part 4.2, Division 56), the *Fees and Payments Principles 2014* and the *User Rights Principles 2014*. To ensure older people and providers understand their obligations, these will be brought together into one place in the new Act and the Rules.

Incident management

Registered providers in certain registration categories will be required to implement and maintain an Incident Management System (IMS) and manage, and take reasonable steps to prevent, incidents in accordance with requirements prescribed by the Rules (section 95). The details of these requirements will be consulted on separately.

The procedures that must be developed, implemented and maintained, information that must be collected, and the roles and responsibilities of aged care workers in relation to incident management in the Rules will largely reflect the existing requirements in the *Quality of Care Principles 2014*.

Complaints and whistleblowers

All registered providers must implement and maintain a complaints management system, and manage complaints, in accordance with any requirements that will be prescribed in the Rules (section 96). Providers in certain registration categories must also maintain a whistleblower policy in accordance with requirements that will be prescribed in the Rules.

The details of these requirements will be consulted on separately. The aim of this condition is, however, to ensure that registered providers:

- adopt best-practice complaints handling processes and contribute to a positive culture around making complaints, and
- educate and train their aged care workers to recognise and handle whistleblower disclosures and have processes in place to manage and escalate whistle blower disclosures as necessary.

Aged Care Quality Standards

Registered providers in certain registration categories must comply with the Quality Standards (section 97). These are the same standards that they will be audited against as part of the registration process. As detailed above under Chapter 1, the [strengthened Quality Standards](#) will be included in the Rules.

Financial and Prudential Standards

All registered providers must comply with Financial and Prudential Standards where they are applicable (section 98). These standards will be consulted on separately by the Commission, but may include liquidity and capital adequacy requirements on residential care category providers, as well as financial record keeping and reporting requirements.

This condition is designed to ensure that registered providers adopt sound financial management arrangements, and remain financially viable and sustainable.

It is not intended that any financial record keeping or reporting standards made under section 163 of the new Act will duplicate the obligations or conditions on a provider's registration discussed in this Chapter. Rather, such standards will be targeted at:

- financial records about the delivery of funded aged care services, including in relation to refundable accommodation deposits, accommodation bonds and fees and payments, and
- the disclosure of information that may assist the Commissioner to monitor the:
 - financial viability and sustainability of a registered provider; and
 - compliance of providers with the Financial and Prudential Standards.

Continuous improvement

Registered providers in certain registration categories must demonstrate the capability for, and commitment to continuous improvement (section 99). They will also need to have a continuous improvement plan. This condition is designed to ensure providers work with the Commission to improve their delivery of funded aged care services, and towards delivering high quality care.

Provider governance requirements

Certain registered providers must meet several conditions related to provider governance (see sections 100-104).

These conditions largely replicate recent amendments made to the current legislative framework to address Royal Commission [Recommendations 88-89](#). Some minor amendments have been made to respond to feedback received since their commencement on 1 December 2022.

This feedback included concerns around a conflict between aged care legislative requirements that the governing body of approved providers have a majority of independent non-executive members and the Co-operatives National Law that specifies that a majority of directors of a co-operative must be active members. Changes have been included to improve provider confidence in this area (section 102).

The new Act will increase the scope of matters that the Commission considers in determining whether to grant an exemption from governing body requirements and clarify suitability requirements. For co-operatives in practice, this will mean that when they register as providers, they will be able to more readily obtain an exemption from the requirement to have a majority of independent non-executive members.

As part of the registration process, co-operatives will need to demonstrate that they are a registered co-operative under the Co-operatives National Law and that their governing arrangements support objective, independent decision-making.

Delivery of funded aged care services

The condition at section 105 is intended to implement a wide range of service delivery related obligations. The details of these requirements will be in the Rules and will be consulted on separately.

They are expected to include requirements on registered providers to:

- deliver certain combinations of services – for example, all services available under the residential care services group
- meet care minutes targets where applicable

- take reasonable steps to prevent causing damage to an individual's property in the course of providing funded aged care services
- provide people with certain types of specified information including:
 - information about their rights under the Statement of Rights
 - information about fees and payments, and
 - monthly care statements where a residential care category provider.
- maintain their residential care home(s) in a good state of repair
- still ensure, where the Quality Standards do not apply, that:
 - equipment is safe, clean, maintained and meets the needs of the individual accessing aged care services
 - personal protective equipment is made available to aged care workers, individuals and others who may need it
 - aged care workers and people accessing aged care services are supported to correctly use personal protective equipment
 - services are provided in accordance with an agreement between the provider and the person, and
 - meal service providers meet certain requirements relating to meal delivery (under consideration).

Restrictive practices

Providers in certain registration categories must comply with strict requirements prescribed by the Rules in relation to restrictive practices (section 106). These Rules will mirror restrictive practice requirements outlined in the current legislation. They will include checks and balances to ensure restrictive practices are only used in certain circumstances as a last resort to prevent harm (see section 17 and discussion in *Chapter 1 - Introduction*).

Ceasing the provision of funded aged care services

Providers in certain registration categories must comply with requirements prescribed by the Rules where they decide to cease delivery of services to an individual(s) (section 107). These requirements will be included in the Rules and will be consulted on separately.

Obligations on registered providers, responsible persons and aged care workers

Division 2 of this Part outlines additional obligations on registered providers, as well as separate obligation on responsible persons and aged care workers.

These obligations mirror existing obligations under the current framework, with adaptations to reflect the broader structure and content of the new Act. Existing civil penalties have also been replicated under the new Act.

Registered providers must:

- comply with other Commonwealth, or State and Territory laws in which the provider operates (section 108)
- meet reporting requirements – including providing information prescribed in the Rules to the Commissioner, the Complaints Commissioner, the Inspector-General or the System Governor where applicable in specified timeframes (section 109)
 - a breach of this obligation attracts a civil penalty (250 penalty units)
- notify the Commissioner of certain changes of circumstances (for example, relating to the types of services delivered by the provider or a change in the responsible persons of the provider) (section 110)
 - a breach of this obligation attracts a civil penalty (30 penalty units)
- comply with any determination made by the Commissioner regarding the suitability of one or more of their responsible persons (section 113).
 - a breach of this obligation is an offence (300 penalty units)
- consider whether their responsible persons remain suitable to deliver funded aged care services every 12 months (section 114).
 - a breach of this obligation is an offence (300 penalty units)
- cooperate with persons exercising functions or powers under the Act (section 115)
- ensure that at least one registered nurse is on site, and on duty, at all times at an approved residential care, unless an exemption is in place (section 116)
- ensure protection of personal information relating to an individual to whom the registered provider delivers funded aged care services (section 117).

Responsible persons must:

- notify their registered provider of a change in circumstances relating to suitability (section 111)
 - a breach of this obligation is an offence (30 penalty units)
- comply with the Code (section 119)
 - a breach of this obligation attracts a civil penalty (250 penalty units)

Aged care workers must comply with Code (section 118)

- a breach of this obligation attracts a civil penalty (250 penalty units)

Note:

- Reporting requirements for registered providers under the new Act will be streamlined, removing some of the complexities of current arrangements.
- The Rules will prescribe requirements about reporting information relating to matters such as:
 - complaints made to the registered provider
 - compliance by a registered provider with requirements relating to registered nursing coverage at approved residential care homes and care minute targets
 - locations at which funded aged care services are delivered by a registered provider, and
 - information about specified groups of individuals, for example, Aboriginal or Torres Strait Islander persons or those who are experiencing homelessness or at risk of experiencing homelessness.

Part 5 – Statutory duty and compensation

Chapter 3 Part 5 of the Exposure Draft includes new statutory duties on registered providers (section 120) and responsible persons (section 121). It also includes a new compensation pathway (section 127) as recommended by the Royal Commission [Recommendation 102](#).

These arrangements reflect feedback received in response to the proposed statutory duties discussed in [Consultation paper No. 1](#). We welcome further feedback on the draft provisions, which are discussed in more detail below, and whether you consider they better achieve the proposed policy intent.

While some stakeholders were supportive of the proposed duties, extensive feedback opposed including a duty on aged care workers. Many suggested this would disincentivise the workforce and add an unnecessary further layer of professional regulation that could cause duplication and confusion. Therefore, a duty on aged care workers has not been included in the Exposure Draft.

Statutory duty on registered providers

The majority of submissions we received supported the inclusion of strong penalties in the new Act through a statutory duty on registered providers.

While some stakeholders may be disappointed the duty is not related to high quality care, for the reasons outlined in [Consultation paper No. 1](#), the duty remains focussed on registered providers taking reasonable steps to avoid their actions adversely affecting the

health and safety of persons in their care. Consistent with the Royal Commission's recommendations regarding a duty of high quality care, a higher civil penalty is also available where a provider's breach of their registration involves a significant failure or a systemic pattern of conduct (see section 88).

The new statutory duty provides that registered providers must ensure, as far as is **reasonably practicable**, that their conduct, while delivering funded aged care services to older people, does not cause adverse effects to the health and safety of those people.

Subsection 120(2) outlines what is considered reasonably practicable for the purposes of the duty. That is, what can be done in the circumstances, and whether it is reasonable in those circumstances to do all that is possible, taking into account and weighing up all relevant matters, including the likelihood of the adverse effect occurring and the harm it could cause, and dignity of risk of the older person. No single matter determines what is (or was at a particular time) reasonably practicable to be done to ensure health and safety.

Not all actions of a registered provider that adversely affect the health and safety of individuals accessing funded aged care services amount to a breach of the duty. Rather, a registered provider commits a strict liability offence if there is a substantial departure from the duty where they engage in conduct that amounts to a **serious failure**.

A serious failure involves conduct that:

- exposes an individual to whom the registered provider owes a duty to a risk of death or serious injury or illness, and
- involves a significant failure or is part of a systemic pattern of conduct (see section 18 and discussion of these terms above at *Conditions on provider registration*).

Subsections 120(5) and (6) introduce higher criminal penalties where a registered provider's conduct amounts to a serious failure to comply with the duty **and** their conduct results in the actual death of, or serious injury to, or illness or the individual to whom they owed the duty. This includes a higher threshold for circumstances where a registered provider is reckless in their conduct without reasonable excuse.

This approach to penalties aligns with similar offence provisions under the *Work Health and Safety Act 2011*. It is intended to act as a deterrent and target serious harms caused by the behaviour of substandard registered providers.

As set out in subsection 120(7), a registered provider is not liable for a breach of their duty if they have a reasonable excuse.

Statutory duty on responsible persons

The new Act places a duty on responsible persons of a registered provider to exercise **due diligence** to ensure that a registered provider complies with the provider's duty (section 121).

This is consistent with feedback received which broadly supported more responsibility being placed on responsible persons through introducing a statutory duty. While some stakeholders thought a duty on responsible persons was unnecessary and could discourage individuals from participating in governing positions, most agreed that it would reinforce accountability and help foster a culture of compliance.

For the purposes of section 121, due diligence includes taking reasonable steps to:

- acquire and maintain knowledge of requirements applying to registered providers under the new Act
- gain an understanding of the nature of the funded aged care services the registered provider delivers and the potential adverse effects that can result to individuals when delivering those services
- ensure that the registered provider has appropriate processes for receiving and considering information regarding incidents and risks and responding in a timely way to that information, and
- ensure that the registered provider has, and implements, processes for complying with any duty or requirement of the registered provider under this Act.

The list of actions in subsection 121(2) are non-exhaustive, and intended to support accountability and development and implementation of appropriate policies to ensure that a registered provider complies with their duty. What steps are considered reasonable will depend on the circumstances, including the role and influence of the responsible person.

Similar to the penalties for a breach of the duty by a registered provider, the penalties included in the Exposure Draft for breach of the duty by a responsible person apply to conduct that amounts to a serious failure to comply with the duty. Higher penalties, including imprisonment, are included where a breach of the duty results in the death of, or serious injury to or illness of an individual to whom a registered provider owes a duty (see subsections 121(6) and (7)).

As set out in subsection 121(3), a responsible person of a registered provider may be convicted or found guilty of an offence for failing to comply with their duty regardless of whether the registered provider has breached their duty. Subsection 121(8) also highlights that a responsible person is not liable for a breach of their duty if they have a reasonable excuse.

General principles that apply to the duties

The new Act sets out a number of provisions which apply to the duties in Chapter 3, Part 5, Division 1.

Consistent with the findings of the Royal Commission, the duties on registered providers and responsible persons are non-delegable (section 122). This means that registered providers and responsible persons cannot transfer their duty to someone else, such as another aged care worker or an associated provider to avoid liability.

An entity can have more than one duty, where for example, a registered provider forms part of a partnership, and is also a responsible person (section 123).

More than one entity can also concurrently have the same duty (section 124), which allows for circumstances where, for example, the makeup of the entity has multiple partners or members responsible for the management of the business, or where there are multiple responsible persons of a registered provider.

In these scenarios, each duty holder is required to comply with their duty, even if another entity also has the same duty, to the standard required by the new Act.

Where more than one entity has a duty for the same matter, each duty holder retains responsibility for their duty, and is expected to comply with it only so far as they have the capacity to influence and control the relevant matter. The more control or influence over the matter, the greater the steps that need to be taken by the registered provider or responsible person to discharge the duty.

For example, it may not be reasonable to require an entity to do things that are beyond their control, and where they have very limited capacity. These factors will assist in determining what is 'reasonably practicable' for them in complying with their duty of care.

The duties on registered providers and responsible persons in Chapter 3, Part 5, Division 1 do not affect any duty imposed by, or under, any other law of the Commonwealth, or of a State or Territory, or under the common law (section 125). Nor do they exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with these duties (section 126).

Compensation pathway

As proposed in [Consultation paper No. 1](#), the new Act will include a compensation pathway in certain circumstances where a registered provider breaches their statutory duty.

Section 127 of the Exposure Draft provides for a relevant court to order an entity (that is, a registered provider) found guilty of a criminal offence listed above to compensate an individual for serious injury or illness caused by the commission of the offence.

The court may only make an order for compensation if the Commissioner applies for such an order on behalf of the harmed individual, or if the individual applies directly. An application for compensation must be made within six years.

Part 6 – Aged care digital platform operators

Chapter 3 Part 6 of the Exposure Draft introduces the concept of ***aged care digital platform*** and provides for a separate statutory duty as well as certain obligations on operators of such platforms.

Meaning of aged care digital platform

An *aged care digital platform* will be defined in the new Act to cover online applications or websites operated to facilitate the delivery of services in the aged care system. Such platforms link older people with providers of funded aged care services.

The definition included in the Bill at section 128 of the Exposure Draft is intended to cover organisations that are not registered providers because they do not directly deliver funded aged care services to older people or claim Commonwealth subsidies.

The definition is intended to identify online platforms that facilitate older people engaging providers of aged care services. It is not intended to apply to other online services such as online classified services (for example, Gumtree or Facebook marketplace).

It is intended the Rules will be able to prescribe or exclude other platforms as aged care digital platforms for the purposes of this Part to ensure that the statutory duty and obligations for operators of online platforms are appropriately targeted.

Statutory duty of operators of aged care digital platforms

In response to [Recommendation 14](#) of the Royal Commission and feedback received from stakeholders as part of [Consultation paper No. 1](#), the new Act will include a separate statutory duty on *aged care digital platforms* as organisations that facilitate access to funded aged care services (section 129).

Stakeholders highlighted the unique risk that facilitating organisations pose. They supported imposing a duty on these organisations to ensure that older people who use such platforms are not put at risk due to inadequate regulatory oversight. However, some stakeholders raised concerns about the scope of the duty and how such organisations could be regulated.

The Royal Commission recommended aged care digital platforms should have a duty to ensure that any aged care workers it makes available have the relevant experience, qualifications, skills and training to provide the particular care.

Section 129 sets out that an operator of an aged care digital platform must check and display on the platform whether:

- an entity is a registered provider or not
 - if they are a registered provider, the registration categories in which the entity is registered
- a person is an aged care worker of a registered provider or not
 - if they are an aged care worker of a registered provider – the details of the registered provider and whether the registered provider is satisfied the aged care worker has complied with their worker screening requirements,

meets are qualifications and training requirements or any other requirements prescribed in the Rules.

A civil penalty of 500 penalty units applies where this duty is breached (subsection 129(3)).

The intention is not for the above duty to impose separate requirements on digital platform operators, where requirements are not imposed on registered providers or aged care workers. They are intended to complement them. For example, the obligation of operators to confirm that providers have complied with worker screening requirements before allowing workers to access their platform complements the obligation of providers to comply with worker screening requirements.

Other obligations of certain operators of aged care digital platforms

The new Act also sets out other obligations of certain operators of aged care digital platforms (section 130).

If an operator is a constitutional corporation, they must also:

- notify the Commissioner that they operate the platform
- implement a complaints management system and manage complaints in accordance with that system
- implement an incident management system and manage incidents in accordance with that system
- display on the platform, a summary and explanation of the above systems
- display the Statement of Rights in a way that is easily accessible to older people seeking to access aged care services
- report to the Commissioner, the System Governor, the Complaints Commissioner or the Inspector-General, any information prescribed in the Rules.

If an entity fails to comply with these obligations, they may be subject to a civil penalty of 250 penalty units (subsection 130(2)).

These additional proposed obligations are not intended to replicate existing obligations on registered providers, or to in any way exempt registered providers from complying with these obligations where they make use of the services of an aged care digital platform operator.

It is intended that the obligations of operators will be tailored to target key risks and ensure appropriate oversight, and to avoid unnecessary duplication and regulatory burden. For example, operator's obligations to have complaints and incident management systems will be different from provider obligations.

Additional resources for Chapter 3

You can access additional resources by visiting the new Aged Care Act consultation page at www.health.gov.au/aged-care-act-consultation.

To provide your feedback you can:

- complete the [survey](#) where you can tell us what is most important to you,
- include a response to the consultation questions in a more detailed written submission to the Department or ask a question by sending an email to agedcarelegislativereform@health.gov.au.

Chapter 4 – Fees, payments and subsidies

Chapter summary:

This Chapter is intended to cover means testing, subsidies, and payments and fees arrangements. It is **not** included in the Exposure Draft.

Provisions in this chapter are generally expected to mirror the current legislative framework. This is because it is anticipated that funding under the new Act will remain largely the same until the introduction of Support at Home.

Minor changes will be made to resolve issues within the current system and to align it with the new Act's structure and terminology. The provisions will also be presented differently in the new Act and form part of a new, clearer subsidy framework.

More significant changes to funding and means testing arrangements will be considered once the Government considers the recommendations of the [Aged Care Taskforce](#).

As provisions for these parts are still under development, all information below is subject ongoing drafting discussions.

Consultation questions Chapter 4:

We are particularly interested to hear your responses to the following questions:

21. How does the proposed structure of Chapter 4 read to you?
22. Do you think categorising the subsidies into person-centred and provider-based reflects the person-centred approach to the new Act?
23. Are there any other improvements you would like to see made to the subsidy framework for the new Act?
24. Do you support registered providers being given access to specific additional Commonwealth funding which must be used for a particular purpose, rather than to deliver specific aged care services?

Part 2 – Means Testing

The means testing arrangements in the Aged Care Act sit within the subsidy provisions of Chapter 3. These can be hard to follow and interpret. As such, we are proposing to move the means testing provisions to sit together under Part 2, Chapter 4 of the new Act. It is intended that this will make these provisions easier to understand and find.

The provisions themselves are expected to remain largely the same with minor amendments to align with the structural and terminology changes to the new Act.

As noted above, further required changes to means testing provisions will be considered following the report of the [Aged Care Taskforce](#).

Part 3 – Subsidies

Subsidy provisions are expected to form part of Part 3, Chapter 4 of the Bill.

The Government has already made changes to introduce the AN-ACC funding model via the [Aged Care and Other Legislation Amendment \(Royal Commission Response Act\) 2022](#). These changes will continue under the new Act, however, will be moved into a new framework to better reflect how this subsidy is paid.

The new framework will comprise of two types of subsidies: a **person-centred subsidy** and a **provider-based subsidy**. These subsidies are proposed to operate alongside the existing home care subsidy, which will continue only until the new Support at Home program is introduced.

These two subsidies, explained in more detail below, are intended to shift the focus of the subsidy framework away from different subsidies which are based on the type of care being accessed (that is, residential care, home care, flexible care) to different subsidies that:

- are based on the type of costs required to deliver funded aged care services (i.e. fixed costs vs variable costs), and
- reflect the extent to which the subsidies are specifically linked to funded aged care services delivered to a particular individual.

The new framework aims to ensure greater transparency and accountability in terms of Commonwealth subsidies for aged care and reflect a more person-centred approach to the funding of aged care services, allowing subsidy arrangements to be more easily understood.

Person-centred subsidy

The person-centred subsidy is intended to meet the variable costs of funded aged care services, where funding is linked directly to the delivery of services to a specific person to whom a registered provider has delivered services, consistent with the person's classification.

Person-centred subsidy will be paid to registered providers delivering services through the following service groups, where services are not funded via a specialist aged care program:

- permanent residential care and residential respite
 - funding will be based on the existing AN-ACC funding model (with the exclusion of the base care tariff – that is, the fixed component of the current AN-ACC basic daily subsidy)
- short term restorative care services and transition care services
 - funding will be paid via a person-centred subsidy, as per the current TCP and STRC programs, based on places allocated to the provider.

Provider-based subsidy

The provider-based subsidy will meet the fixed costs of delivering aged care services, where funding is linked to a registered provider's characteristics such as their location, capacity or specialisation.

Existing subsidies and supplements that will be accommodated under the provider-based subsidy will include:

- the base care tariff of the AN-ACC funding model
- registered nursing supplement, and
- block funded and agreement-based funding arrangements under:
 - the MPS program, and
 - the NATSIFAC program which is intended to transition from a grant to a block funded subsidy program in financial year 2024-25, prior to further funding reforms the following year.

It is also intended to provide for registered providers to be given access to specific additional Commonwealth funding to use for a particular purpose rather than to deliver a specific funded aged care service(s). For example, a one-off subsidy payment for additional equipment in a pandemic scenario.

This will ensure the new aged care framework can better cater for 'one off payments' to providers, providing the Government with greater assurance, in future, that additional funding is spent consistently with its approved purpose.

Payments and fee arrangements

We expect that provisions related to fees and payments will form part of Part 4, Chapter 4 of the Bill.

Any changes required to current fees and payments arrangements will be considered following the report of the [Aged Care Taskforce](#).

Minor changes will also be made to resolve some of the existing issues within the current legislation and to align the framework with the structural and terminology changes of the new Act.

Additional resources for Chapter 4

You can access additional resources by visiting the new Aged Care Act consultation page at www.health.gov.au/aged-care-act-consultation.

To provide your feedback you can:

- complete the [survey](#) where you can tell us what is most important to you,
- include a response to the consultation questions in a more detailed written submission to the Department or ask a question by sending an email to agedcarelegislativereform@health.gov.au.

Chapter 5 – Governance of the aged care system

Chapter summary:

The new Act provides for the Commonwealth aged care system to be overseen by the Secretary of the Department of Health and Aged Care (known as the System Governor) and regulated by the Commission. There is also an Aged Care Quality and Safety Advisory Council and a Complaints Commissioner.

Independent from the Commission and the Department, but an essential aspect of monitoring the aged care system, is the Inspector-General of Aged Care, which was established via the *Inspector-General of Aged Care Act 2023*. The Independent Hospital and Aged Care Pricing Authority, established under the *National Health Reform Act 2011*, will also continue to provide independent advice about aged care pricing to ensure that aged care funding is directly informed by the actual cost of delivering care.

The System Governor will oversee and manage the Commonwealth's administration of the aged care system including facilitating equitable access to funded aged care services, providing stewardship, and protecting and upholding the integrity of the Commonwealth's administration of the aged care system.

The Commission's functions will include safeguarding, engagement and education, complaints and provider registration functions. The Commissioner will also be able to make Financial and Prudential Standards.

The Advisory Council's functions will include monitoring the performance of the Commissioner's functions, providing advice to the Commissioner and the Minister in relation to the functions of the Commissioner, supporting the development of the strategic objectives of the Commission and identifying systemic performance issues within the Commission.

The Complaints Commissioner is a member of the staff of the Commission and will be appointed by the Commissioner. The Complaints Commissioner will be delegated the Commissioner's complaints functions.

The Inspector-General of Aged Care has the functions of monitoring, investigating and reporting to the Minister and Parliament on the Commonwealth's administration of the aged care system. This includes independent reviews to identify and investigate systemic issues and making recommendations to the Commonwealth for improvement.

Consultation questions Chapter 5:

We are particularly interested to hear your responses to the following questions:

25. Do you think there are any additional functions missing from the role of the Commissioner?
26. Is it clear how the roles of the System Governor and Commissioner differ, but also fit together, as regulators of the aged care system?
27. Do you think the proposed arrangements for the Complaints Commissioner clearly demonstrate their role in the aged care system?
28. Do you think there would be a benefit to requirements regarding liquidity and capital adequacy extending to home services providers, to protect continuity of care and monitor financial viability and sustainability in the home services sector?

Part 2 – System Governor

Part 2 of this chapter outlines the functions of the System Governor, who will be the same person as the Secretary of the Department (section 132).

It is intended that the new Act will provide that the System Governor is responsible for the operation and oversight of the aged care system. These provisions address Royal Commission [Recommendations 8 and 96](#).

The Exposure Draft provides that the System Governor's functions include:

- facilitating equitable access to funded aged care services for older people in need irrespective of their location or diverse characteristics
- supporting the continuity of funded aged care services when a registered providers ability to deliver services is disrupted
- providing stewardship of the aged care system and encouraging the delivery of high quality care by developing policy in consultation with individuals of diverse backgrounds and promoting availability and choice of registered providers
- protecting and upholding the integrity of the aged care system including collecting, maintaining and providing accurate information about the Commonwealth's administration of the funded aged care system
- monitoring and encouraging the training and development of aged care workers
- reviewing the Commonwealth's administration of the aged care system.

The System Governor must also maintain a register and comply with reporting requirements in relation to coroner's reports received by the Department about the death of a person accessing funded aged care services (as recommended by the Royal Commission in [Recommendations 96](#)).

The System Governor may request information or documents from persons where they reasonably believe the information or documents are relevant to the System Governor's functions (section 136).

Part 3 – Aged Care Quality and Safety Commission

The Royal Commission made recommendations about revising the structure of the Commission. The implementation of these recommendations was intended to be informed by the outcomes of the independent capability review of the Commission (Capability Review) ([Recommendations 104](#)).

The final report of the Capability Review was delivered earlier in 2023 and recommended that the Commission be retained in its current form with changes to its organisational structure (see Chapter 6 of the Final Report, and Recommendations 6.1 and 6.2).

Part 3 of this chapter establishes the Commission. The Commission will consist of the Commissioner and the staff of the Commission who will assist in the performance of the Commissioner's functions. The Commissioner may also be assisted by certain other officers, employees and may engage consultants.

The Royal Commission heard that greater transparency was required in relation to the Commission's performance in safeguarding the quality of life and quality of care provided to people receiving aged care services ([Recommendations 105](#)).

The Exposure Draft outlines the reframing of the Commissioner's functions in a way which has a greater focus on the rights of older persons, ensuring safe and quality care to older Australians in the performance of these functions.

The Commissioner's functions have been re-grouped into safeguarding functions, engagement and education functions, complaints functions, and registration of providers functions (section 141).

In the performance of their functions, the Commissioner must take reasonable steps to engage with individuals receiving funded aged care services and take into consideration the rights of older persons under the Statement of Rights (subsection 141(4)).

The Commissioner has also been given a new power to make Financial and Prudential Standards ([Recommendations 130,131,132,133 and 135](#)).

These Standards may include requirements in relation to the liquidity and capital adequacy of non-government registered providers that are delivering funded residential care services. The Commission will undertake consultation on the liquidity requirements and how they may apply to residential providers in early 2024.

Safeguarding Functions

The Commissioner's safeguarding functions under the new Act (section 142) include protecting and enhancing the safety and wellbeing of persons accessing funded aged care services through encouraging the delivery of culturally safe and healing informed funded aged care services.

This section provides that the Commissioner will protect continuity of care including through monitoring the financial viability and sustainability of registered providers, their compliance with their financial and prudential obligations under section 98.

Similarly, the Commissioner will promote continuous improvement for registered providers, the delivery of high quality care and the confidence and trust of individuals in the delivery of funded aged care services.

Other functions include ensuring registered providers and operators of aged care digital platforms comply with the new Act using the regulatory mechanisms available to the Commissioner under Chapter 6, and building the capability of and supporting registered providers to manage incidents effectively, particularly reportable incidents.

The Commissioner may also seek and consider clinical advice and professional advice relevant to functions of the Commissioner.

Engagement and Education Functions

The new Act outlines the engagement and education functions of the Commissioner (section 143), including engaging with people accessing funded aged care services, and their supporters and representatives to develop best practice models for registered providers and aged care workers. The Commissioner will promote these best practice models to ensure registered providers, responsible persons and aged care workers engage with the people they provide services to.

This section details that the Commissioner will engage and educate the sector, including those accessing funded aged care services on the Statement of Rights, the functions of the Commissioner and the obligations of registered providers under Part 3 of Chapter 3. The Commissioner will collect, correlate, analyse and disseminate information relating to the Commissioner's functions to ensure transparency and accountability.

Complaints Functions

The expanded complaints functions of the Commissioner are set out in section 144 of the Exposure Draft. Since the Royal Commission's final report, the Commission has embraced an 'open door' policy to complaints and feedback, meaning that they receive a broad range of complaints and feedback. The Commissioner, or their delegate, will consider, and refer on, complaints to the person, organisation or agency who is best placed to resolve those complaints in a way that is meaningful to the complainant, and any person accessing aged care that is involved.

The Commissioner will be able to handle complaints about:

- a registered provider or aged care worker's or responsible person's compliance with the new Act, and
- a registered provider acting in a way that is incompatible with the Statement of Rights.

The Commissioner will consider information relating to complaints to identify trends or systemic issues, refer complaints to other bodies where they would better be handled by that body, and promote a culture for registered providers and aged care workers of open disclosure, best practice in complaints handling and continuous improvement based on feedback.

Detail regarding how complaints will be dealt with by the Commissioner will be set out in the Rules. These details are currently being developed in consultation with relevant stakeholders, including the Commission. However, it is proposed that the Rules will include the following principles relating to best practice complaint handling:

- the system should be user-centred, simple to access and easy to use
- the system should support the early resolution of complaints
- the system should be integrated with the broader regulatory functions of the Commission
- the system should enable reporting on sector-wide complaints insights
- complaint-handling should be supported by clear process guidance
- complaints staff should have the skills and support they need to deliver better practice
- the system should have robust quality assurance and review processes
- regular communication will be required with the complainant and other affected parties

Following the Royal Commission's recommendations, the key focus of all complaints processes will be ensuring that outcomes are meaningful to the complainant and any person accessing aged care involved, including taking opportunities to improve the care of individuals, addressing systemic issues, and remedying the consequences of poor care.

Registration of Providers Functions

The registration of provider functions of the Commission are outlined in section 145 of the Exposure Draft and include the registration functions by the Commissioner under Part 2 of Chapter 3 as well as monitoring and auditing the delivery of funded aged care services.

Reporting

A key recommendation of the Royal Commission related to increasing the transparency and accountability of the Commission, in particular of the complaints handling process.

The Final Report noted there was very little information available publicly about the outcomes of complaints dealt with by the Commissioner. Publishing more information about complaint outcomes will provide greater transparency about the extent to which the complaints system is achieving satisfactory outcomes for complainants.

It is proposed that the Commissioner will be required to report frequently on complaints received and handled by the Commissioner, both in the Commission's Annual Report (see section 160) but also directly to the Department and the Minister. Further details as to what those reports must contain will be set out in the Rules.

The Minister will also be able to request (see section 161) a report on matters relating to any of the Commissioner's functions, including complaints and complaints management.

Part 4 – Aged Care Quality and Safety Advisory Council

Part 4 of this Chapter establishes the Aged Care Quality and Safety Advisory Council (section 168). The Capability Review also recommended in its Final Report that the Advisory Council should be strengthened to provide stronger independence, accountability and oversight (Recommendation 6.2).

The functions of the Advisory Council have been expanded under Part 4 and include monitoring the performance of the Commissioner's functions, providing independent advice to the Commissioner and the Minister in relation to the Commissioner's functions, supporting the development of the strategic objectives of the Commission and identifying systemic performance issues within the Commission and making referrals to the Minister if appropriate (section 169).

The Advisory Council consists of a Chair, a Deputy Chair and at least seven, but not more than 11, other members (section 171). The members are appointed by the Minister and must have substantial experience or knowledge in a specified field (section 172).

Part 5 – Complaints Commissioner

Part 5 of this Chapter outlines the roles and responsibilities of the Aged Care Complaints Commissioner. The role of the Complaints Commissioner was also considered in Chapter 5.3 of the Final Report of the Capability Review (see recommendation 5.7).

Quality Regulation and Advocacy is addressed by the Royal Commission in Chapter 14 of their Final Report. The Royal Commission heard there was a lack of transparency around the investigation and resolution of aged care complaints, and in turn that the complaints function failed to deal with underlying concerns raised during a complaint.

The Royal Commission recommended that the Complaints Commissioner be established as a separate statutory appointment within the Commission. However, in order to preserve a clear hierarchy and ultimate accountability for decision-making within the Commission, the Exposure Draft provides that the Complaints Commissioner will be an Senior Executive Service (SES) position appointed by the Commissioner, and that the Commissioner will delegate all of their complaints functions to the Complaints Commissioner (see section 182).

This approach ensures that there is an SES employee with primary responsibility for resolving and investigating complaints made to the Commission, while also ensuring there is a single person (the Commissioner) accountable for all decisions made by the Commission. A single point of accountability will enable clear attribution of responsibility if there are shortcomings with the complaints management system in the future.

Further, the Royal Commission recommended that the Inspector-General of Aged Care should be able to oversee and handle complaints, either where the Complaints Commissioner has determined they would be better handled by the Inspector-General, or where a complainant or respondent is not happy with a decision made by the Complaints Commissioner. However, it is proposed that it would be inappropriate for the Inspector-General to handle individual complaints matters when their sole focus is systemic problems arising within the aged care system, and any such role may interfere with the independence of their position. Therefore, it is not proposed to give the Inspector-General any functions relating to handling complaints other than the functions it already holds relating to systemic issues that might arise from complaints.

Additional resources for Chapter 5

You can access additional resources by visiting the new Aged Care Act consultation page at www.health.gov.au/aged-care-act-consultation.

To provide your feedback you can:

- complete the [survey](#) where you can tell us what is most important to you,
- include a response to the consultation questions in a more detailed written submission to the Department or ask a question by sending an email to agedcarelegislativereform@health.gov.au.

Chapter 6 – Regulatory mechanisms

Chapter summary:

A range of regulatory mechanisms are available under the new Act to either the Commissioner or the System Governor, or both, to undertake their functions under the new Act.

These mechanisms form part of a new and more effective regulatory model centred on the protection of the rights of older Australians as a key feature of the new Act. See [A new model for regulating aged care - Consultation paper 2 - Details of the proposed new model](#).

This includes regulatory powers triggered under the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act), as well as bespoke powers specific to the aged care system. New powers included in the new Act, which are discussed in more detail below, include:

- broader monitoring, investigation and enforcement powers for the Commission, as committed to by the Government, including to monitor the financial viability and sustainability of aged care providers consistent with the recommendations of the Royal Commission
- mirroring powers for the System Governor in relation to system integrity
- as committed to by Government, new powers for authorised Commission officers, with the authorisation of the Commissioner, to enter and search approved residential care homes without a warrant or consent, for monitoring and investigation purposes
- a new streamlined framework for notices to address non-compliance and risks of harm to older people, and
- expanded assurance powers and a new debt recovery framework for the System Governor to support system integrity.

While not included in the Exposure Draft, this Chapter may also include new critical failures powers for the Commissioner, as discussed below.

The new Act also provides both the Commissioner and the System Governor with increased flexibility to use existing powers in different scenarios, ensuring that they can take a proactive and risk-proportionate response to emerging risks.

This Chapter also deals with the appointment, functions and powers of authorised officers (Commission and the Department) exercising monitoring and investigation powers under the Regulatory Powers Act and miscellaneous matters.

Consultation questions Chapter 6:

We are particularly interested to hear your responses to the following questions:

29. Do you consider the expanded powers made available to the Commissioner will ensure they can take a pro-active and risk-proportionate approach to the regulation of the sector?
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 additional safeguards you think should be put in place?
31. Does the new Act provide sufficient clarity regarding the role of the Department in managing the integrity of the aged care program? Is there anything you would like to see included in the new framework to ensure program assurance is maintained?
32. What are the advantages and disadvantages of the proposed new critical failures powers? Are these powers necessary to ensure urgent and decisive action can be taken to protect older persons in residential care and maintain service continuity?
33. Are the conditions identified to trigger the critical failures powers reasonable, or are there other conditions that could be considered?

The Department will test the scope of the application of the regulatory mechanisms outlined in this Chapter to particular types of entities once the full draft of the Bill is available. For constitutional reasons, it is expected that there may be limitations on directly regulating State and Territory government providers operating under certain specialist programs. These matters are still under consideration.

Parts 2 and 3 - Monitoring and investigating under the Regulatory Powers Act

The new Act, and offences related to it, are subject to monitoring under Part 2 of the Regulatory Powers Act (see Part 2 of Chapter 6) (section 185). Offences and civil penalty provisions of, and related to, this Act are also subject to investigation under Part 3 of the Regulatory Powers Act (see Part 3 of Chapter 6) (section 200).

These arrangements are outlined in Parts 2 and 3 of this Chapter, which trigger the relevant parts of Regulatory Powers Act.

These powers will be available to both the Commissioner and the System Governor in respect of their functions under the new Act.

These powers include entry, search and seizure powers for monitoring compliance with the new Act and gathering evidence in relation to contraventions of the new Act's civil penalty provisions and related offences. They may be used when the occupier of the premises consents, or under authorisation by a judicial officer (that is, with a warrant).

Parts 2 and 3 also specify modifications to the standard powers available under Parts 2 and 3 of the Regulatory Powers Act, consistent with the current aged care framework. These modifications include authority for an authorised person to use force against property when executing a warrant, but only if all reasonable alternatives to execute the warrant effectively without the use of force have been exhausted (section 191).

Part 5 of the Exposure Draft includes additional powers to facilitate access to electronic equipment and data where relevant to monitoring and investigation actions.

Part 4 - Monitoring and investigating under authorisation by Commissioner

As committed to by Government and recommended by the Royal Commission ([Recommendation 97](#)), this part of the Exposure Draft provides new powers for the Commissioner to enter premises without consent or a warrant.

Specifically, Part 4 Division 4 provides for the Commissioner (rather than a judicial officer) to authorise an officer to enter an approved residential care home for monitoring and investigation purposes without the occupier's consent.

This is an exceptional power which can be exercised only if it is reasonably determined to be necessary and there is a severe risk to the safety, health and wellbeing of a resident (see subsection 220(2)).

Parts 6, 7, 8 and 9 - Enforcement powers under the Regulatory Powers Act

The new Act's regulatory framework provides a range of mechanisms to address non-compliance in a risk-proportionate way. This framework is designed to further enable the use of appropriate enforcement tools, based on the registered provider's capacity, willingness to comply and the risk presented by the non-compliance.

These Parts of the Exposure Draft expand the enforcement mechanisms available to the Commissioner and the System Governor by implementing the standard enforcement powers in the Regulatory Powers Act to:

- apply to a court for civil penalty orders for contravention of a civil penalty provision of the new Act

- issue an infringement notice for contravention of a civil penalty provision or strict liability offence (for example, for failing to comply with reporting obligations under section 109)
- apply to court for an injunction against a provider (for example, to compel them to comply with an obligation imposed by the new Act), and
- accept and enforce undertakings by providers (for example, an undertaking not to contravene a particular obligation under the new Act).
 - This includes a written undertaking given by a provider that they will pay compensation to a person, who has suffered loss or damage due to the provider's failure to comply with their obligations under Chapter 3 of this Act.

Part 10 - Notices requiring action and other notices

The new Act contains revised provisions to streamline the type of notices that can be issued by the Commissioner or the System Governor. These notices can require a registered provider to do, or not to specified things, to ensure the delivery of quality and safe care to older Australians.

As outlined in [A new model for regulating aged care - Consultation paper 2 - Details of the proposed new model](#), two notices were initially proposed: a Requirement for Action notice, now to be called a Required Action notice, and a Compliance Notice.

These notices are included in Part 10 of the Exposure Draft. They provide for procedural fairness by permitting a registered provider to provide a response to the notice. The Commissioner or System Governor must consider any response and may subsequently vary or revoke the notice, as appropriate (see sections 266 and 267). Review rights will also be available.

- The Commissioner or System Governor may use a **Required Action** notice (see sections 262 and 263) where relevant to address non-compliance by a registered provider, concerns about its financial position or to take action in a matter affecting the interests of an individual to whom the registered provider is delivering funded aged care services. The registered provider must report to the Commissioner or System Governor on the action taken in response to the notice, and there is a civil penalty for failing to comply with this notice (see section 268).
- The Commissioner or System Governor may use a **Compliance** notice (see sections 269 and 270) where relevant to address non-compliance by a registered provider. If a registered provider fails to comply with this notice, they will be subject to a civil penalty (see section 275). It is intended that a compliance notice will also affect a registered provider's rating under the [Star Rating system](#). To enable further escalation, the Commissioner may also specify that the compliance notice relates to a significant instance, or systematic pattern, of non-compliance.

An additional Adverse Action Warning notice has also been included. This expansion ensures that there is flexibility to require registered providers to take a range of actions to address non-compliance and to take action in the interests of individuals affected by the registered provider's delivery of funded aged care services.

- The Commissioner may use an **Adverse Action Warning** notice (see section 276) to address serious non-compliance and where the Commissioner is considering revoking, suspending or varying the provider's registration. The notice specifies the action a registered provider must agree to take to address the non-compliance, and the action that may be taken if the registered provider fails to comply with the notice. These are significant actions and include, for example, arranging for the appointment of an adviser to assist the provider to meet its obligations under the new Act.

The Commissioner and System Governor also have the power to issue notices to persons to give information, produce documents or attend to answer questions where relevant to their functions (see Division 4 of Part 10 of the Exposure Draft).

Part 11 - Critical failures powers

While not included in the Exposure Draft, Part 11 of the Bill may include new critical failures powers.

Consistent with [Recommendation 103](#) of the Royal Commission, these arrangements would provide the Commissioner power to appoint an external manager to a registered provider in limited circumstances where there are significant or sustained failures by the provider resulting in:

- either an immediate risk to the health and safety of individuals accessing residential aged care services or the provider becoming insolvent, and
- the Commissioner not having confidence that the registered provider is able to address the situation.

These powers continue to be developed, including consideration of the limited circumstances under which they may apply, and any potential interactions with other laws, including the *Corporations Act 2001* (the Corporations Act).

Targeted consultation on these powers will occur as the policy design is finalised. However, we welcome any initial feedback on the proposed scope of these powers.

Part 12 - Banning orders

This Part provides for the Commissioner to make banning orders, in a range of circumstances, prohibiting or restricting a registered provider from delivering funded aged care services. This includes where the registered provider has contravened the new Act, is unsuitable to deliver those services, or poses a severe risk to the health, safety and wellbeing of individuals to whom it is delivering services (see section 286).

A banning order may also be made to prohibit or restrict an individual from being an aged care worker, or responsible person, of a registered provider (see section 287).

The Commission is to maintain a register of banning orders which includes certain information about registered providers or individuals against whom a banning order has been made (see section 296).

These provisions reflect the banning order provisions available under the current aged care framework but are expanded to cover registered providers as well as responsible persons and aged care workers. They have also been updated to reflect the new service list arrangements.

Parts 13 and 14 - System Governor functions assurance activities and Recoverable amounts

These Parts provide expanded powers to the System Governor to support the integrity of the aged care system. These arrangements will help assure that program funds (and associated self-reporting by providers) are being used for approved purposes, and older people and taxpayers are getting value for money.

Part 13 provides expanded assurance powers. These powers enable the System Governor to undertake activities for the purpose of fulfilling its functions and to issue public reports about its findings and recommendations (see section 297 and 299).

The System Governor may also use the other powers in this Chapter to support its activities, such as issuing notices to persons to provide information or produce documents, or taking enforcement action if providers fail to respond to its findings and recommendations.

Part 14 provides a framework for the System Governor to recover overpayments of subsidies and grants as debts if the registered provider was not entitled to be paid those amounts.

Additional resources for Chapter 6

You can access additional resources by visiting the new Aged Care Act consultation page at www.health.gov.au/aged-care-act-consultation.

To provide your feedback you can:

- complete the [survey](#) where you can tell us what is most important to you,
- include a response to the consultation questions in a more detailed written submission to the Department or ask a question by sending an email to agedcarelegislativereform@health.gov.au.

Chapter 7 – Information management

Chapter summary:

The new Act includes a revised information management framework to improve system transparency. Key parts of this new framework are found in Chapter 7 of the Exposure Draft.

This framework still includes secrecy provisions, which make it an offence to use, record or disclose ‘protected information’ unless it is for an authorised purpose under the new Act or another Act. However, to improve transparency, the definition of protected information in the new Act is much more limited than in the current Act. It focuses on protecting information about people who access or seek access to funded aged care services. It no longer includes broad ranging protection of any information relating to the affairs of an approved provider, an approach which was criticised by the Royal Commission.

The new Act will also not incorporate any of the specific exemptions from freedom of information arrangements that are included in the current legislative framework. Consistent with Royal Commission [Recommendation 88](#), only the usual exemptions under the *Freedom of Information Act 1982* (FOI Act) will apply.

Chapter 7 also sets out the circumstances in which information obtained or generated under the new Act may be used, recorded or disclosed. These new arrangements will facilitate improved data holdings on the interaction between health and aged care data systems, consistent with Royal Commission [Recommendations 67 and 108](#). This is expected to include data on health care services used by people accessing funded aged care services and care outcomes at a system level.

Expanded whistleblower protections are also included in Chapter 7 of the Exposure Draft. These expanded protections address Royal Commission [Recommendation 99](#) and fulfill a Government Commitment. They will ensure that whistleblowers, as well as anyone associated with the whistleblowers, will be protected where they make a disclosure to specified people about a breach of aged care legislation.

Additional parts will potentially be included in Chapter 7 of the Bill in relation to record keeping (Part 3) and to ensure that the System Governor and the Commissioner have sufficient information sharing powers to carry out their functions effectively (Part 4). These provisions are still under development.

Consultation questions Chapter 7:

We are particularly interested to hear your responses to the following questions:

34. Do you agree with the proposed 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 proposed whistleblower framework, and do you have any proposed solutions?
36. What other barriers are there to people disclosing information about what they observe in the aged care system, and how can these best be overcome?

Part 2 – Confidentiality of information

This Part creates limits on recording, using and disclosing certain information obtained or generated for reasons relating to the Act, or derived from that information. This information, referred to as ‘protected information’ (see Section 322) includes:

- personal information within the meaning of the *Privacy Act 1988*, and
- information that could reasonably be expected to prejudice the financial interests of a provider if it is disclosed.

Note: Where the information is about a provider, it will not be protected if it is already public and can easily be discovered.

Authorised activities

Activities that involve using, disclosing or recording protected information must be authorised under the new Act or other legislation.

Such activities will be authorised where they are connected with function, duty or power under the Act (section 324), involve information has already been legally published (section 335), or are undertaken:

- by a person for the same purpose that it was disclosed to them (section 325)
- with the consent of the person that the information is about (section 326)
- to avert or report serious threat to a person seeking or accessing funded aged care services (section 333), or
- to provide services to a person (section 334).

In addition, a disclosure of protected information can be made to:

- the entity that the information is about (section 327)
- the same person that provided the information (section 328)
- the Minister (section 329)
- to obtain legal advice or a legal service (section 330)
- to a court (section 331)
- for the purpose of worker screening (section 332)

The new Act will also provide for the System Governor, the Commission or both to authorise the disclosure of specific protected information in a range of appropriate and necessary circumstances. They can both authorise disclosures:

- to the Chief Executive Centrelink or the Chief Executive Medicare (that is, Services Australia) where it relates to paying subsidies (section 336)
- for the purpose of law enforcement and revenue protection (section 337)
- in order to maintain professional standards (for example, where the conduct of a worker registered with the Australian Health Practitioner Regulation Agency is likely to have breached their professional standards) (section 338)
- to other, specified, Commonwealth agencies for matters relating to the functions of those bodies (339)
- to representatives of people seeking or accessing funded aged care services (section 340)
- to ensure the continuation of funded aged care services where someone has temporarily taken over the delivery of those services (section 341)
- for the purpose of research or policy development (section 342)
- for State or Territory complaints process relating to healthcare or community services (section 343).

Note: The Rules can also specify additional circumstances where the System Governor or Commissioner can authorise the disclosure of protected information (section 344).

In addition, the System Governor can authorised disclosures where:

- necessary in the public interest (this requires a determination and may be subject to Rules) (section 345)
- made to the Chief Executive Centrelink or Chief Executive Medicare (that is, Services Australia), for the purpose of a Centrelink or Medicare program or the

Health and Other Services (Compensation) Care Charges Act 1995 (section 346)³

- for the purpose of a grants program under the Act (section 347)
- for the purpose of star ratings (section 348), or
- made to the Independent Health and Aged Care Pricing Authority (section 349).

The Commissioner can also authorise disclosures where:

- necessary in the public interest (this requires a determination and may be subject to Rules) (section 350)
- to the Independent Health and Aged Care Pricing Authority (section 351), or
- to a coroner (section 352).

This Part also allows for officials of the Independent Health and Aged Care Pricing Authority to disclose protected information in specified circumstances (section 353).

Note: There are also limits placed on when a court, or any other body or person that has power to require the production of documents or the answering of questions, may require a person to disclose protected information (section 354). For example, where disclosure is required for the purposes of the new Act.

Unauthorised activities

Unauthorised use, disclosure or recording of protected information is a criminal offence that has a maximum penalty of 2 years imprisonment (see subsection 323(1)).

This offence applies to specified people only, including particular Commonwealth officials (see paragraph 323(1)(c)). It only occurs where the person obtained or generated the information for reasons relating to the Act or to enable people to perform aged care functions, duties, or exercise legislative powers.

A further offence deals with the secondary disclosure of protected information (see subsection 323(2)). This offence applies where an initial disclosure was authorised under the new Act or another Act (subsection 323(2)), but the person who receives the information then makes an unauthorised record, use or disclosure of this information.

Note: These offences do not apply to registered providers, responsible persons or workers who have other obligations with respect to personal information (see section 93).

³ Centrelink program is defined in the *Human Services (Centrelink) Act 1997* and Medicare program is defined in the *Human Services (Medicare) Act 1997*.

Part 3 – Record keeping

The new Act will provide that a registered provider will commit an offence where they fail to keep, or retain a record, as required by conditions of provider registration.

An offence will also be committed where a registered provider makes a record, purportedly in compliance with a condition of registration that is false or misleading.

It is intended that an offence will be committed where a former registered provider fails to retain a record for 7 years after cessation of practice, where they were required to do so as a condition of registration. The record must relate to a funded aged care service the person delivered as a registered provider.

Note: these provisions are under development and may be moved to ensure that they are co-located with other provider obligations in Chapter 3 of the new Act.

Part 4 – Data sharing

This Part is expected to provide for the Rules to outline the information that the System Governor must publish about:

- funded aged care services
- registered providers delivering those services, and
- responsible persons of those registered providers.

The Rules will detail the ways in which information must be published, and the time period within which it will be required to be published.

It is intended that this Part will also specify the types of information the System Governor and the Commissioner may publish about particular funded aged care services (similar to what appears in section 86-9 of the Aged Care Act and sections 59 and 59A of the Commission Act). This includes matters such as the services provided, the facilities and activities available, information about a registered provider's performance, and the number of people who access funded aged care services through a registered provider.

Note: As per the current framework, the new Act will also confirm that the System Governor will not be liable to civil proceedings for loss, damage or injury of any kind suffered by a registered provider as a result of the publication of star ratings information.

Part 5 – Whistleblower protections

As outlined in [A New Aged Care Act: the foundations \(Consultation paper No. 1\)](#), the new Act will include a new whistleblower framework. These new arrangements are a critical part of the new Act given the Royal Commission's findings that fear of reprisal can deter older people and aged care workers from making complaints about a registered provider. Part 5 of the Exposure Draft outlines how this is proposed to work.

Taking into account feedback received, any person will be able to be a whistleblower, and will be protected if they make a disclosure to a broad range of people including:

- the Commissioner or a member of the staff of the Commission
- the System Governor, or an official of the Department
- a registered provider, their responsible person or an aged care worker
- a police officer.

The disclosure can be made orally or in writing, but the person making the disclosure must have reasonable grounds to suspect that a person or entity may have contravened a provision of the new Act (section 355).

- In response to feedback, a whistleblower no longer needs to provide their name to be offered protection, ensuring potential whistleblowers feel safe to make disclosures.
- Disclosures also don't need to be made in 'good faith' removing additional barriers for prospective whistleblowers. The whistleblower just needs to have 'reasonable grounds' to make a disclosure.

Where the above requirements are met, whistleblowers will be protected from civil, criminal and administrative liability, as well as contractual or other remedies (section 356). A civil penalty may also apply if a person discloses their identity (or information that could lead to their identification (subsection 357(1))).

There are, however, exceptions to this to ensure information can be dealt with and investigated appropriately. This includes disclosure being permitted:

- to the Commission, the Department, the Inspector-General of Aged Care, the Australian Federal Police or State or Territory Police
- to a legal practitioner for the purposes of obtaining legal advice
- where the disclosure is necessary to lessen or prevent a serious threat to the safety, health or wellbeing of one or more individuals.

Note:

- Part 5 does not exclude or limit the operation of a law of a State or Territory that is capable of operating at the same time with this Part (section 361).
- Current protections against victimisation will be retained in the new Act. This means that any individual or entity associated with the whistleblower, in addition to the whistleblower themselves, will be protected from victimisation that might occur due to a whistleblower disclosure (section 358).
- The new Act will also place obligations on registered providers to not victimise or discriminate against anyone for making a complaint or giving feedback (section 96).

Additional resources for Chapter 7

You can access additional resources by visiting the new Aged Care Act consultation page at www.health.gov.au/aged-care-act-consultation.

To provide your feedback you can:

- complete the [survey](#) where you can tell us what is most important to you,
- include a response to the consultation questions in a more detailed written submission to the Department or ask a question by sending an email to agedcarelegislativereform@health.gov.au.

Chapter 8 – Miscellaneous

Chapter summary:

This Chapter establishes various machinery provisions required to facilitate the operation of the new Act.

These provisions encompass both the System Governor and Commissioner's delegations of powers and functions, review of decisions, the appointment of supporters and representatives and the suspension and cancellation of such appointments.

The Chapter details the processes for applications and requests made to the System Governor and Commissioner, as well as fees for applications and for services provided by the System Governor and Commissioner.

Annual reporting on the performance of the System Governor's functions during each financial year and the making of rules will be outlined in this Chapter.

The provisions also set out how the new Act applies to certain entities, including partnerships and unincorporated associations.

This Chapter also sets out a grant framework under which the System Governor can enter in grant arrangements, ensuring all grant programs have a clear legislative authority.

To ensure lawful and best-practice arrangements are in place regarding automated decision-making, all decisions made by a computer under the new Act will also be specified in a single provision in this chapter. This is expected to cover classification decisions for permanent residential care (as occurs currently under AN-ACC arrangements), as well as simple, objective decisions related to prioritising and place allocation processes.

Consultation questions Chapter 8:

We are particularly interested to hear your responses to the following questions:

37. Do you have any concerns about review rights under the current aged care legislative framework that you would like to see addressed under the new Act?
38. Are there any decisions that should only be delegated to staff of senior levels by the System Governor and the Commissioner?

Part 2 – Review of decisions

There will be an expanded number of reviewable decisions throughout the new Act, including decisions made by the System Governor as well as the Commissioner.

It is proposed that the new Act will provide for a consistent approach to all reviewable decisions. It is anticipated that all reconsiderations of reviewable decisions undertaken by the System Governor, or the Commissioner, will be reviewable by the new federal administrative review body which will replace the Administrative Appeals Tribunal.

These provisions are not included in the Exposure Draft. They will be drafted once the provisions throughout the new Act relating to decisions made by the System Governor and Commissioner are finalised.

Part 3 – Delegation provisions

This Part provides that the System Governor may delegate all or any of their functions and powers under the new Act (other than Chapter 6), to a person engaged by a Commonwealth entity. Where relevant and necessary, the System Governor may delegate specific functions and powers to the following positions:

- Pricing Authority
- Chief Executive Centrelink
- Chief Executive Medicare
- Veterans' Affairs Secretary
- Repatriation Commission
- Social Services Secretary

This Part also provides that the Commissioner may delegate all or any of their functions and powers under the new Act (other than Chapter 6), to a member of the staff of the Commission or a consultant engaged under section 159.

These provisions set out some limitations on the delegations, such as both the System Governor and Commissioner are required to have regard to a person's seniority (subsections 363(2), 370(3)) before delegating to an office or position that is not a Senior Executive Service (SES) office or position. However, we are currently working on ways to further limit delegations to ensure there is consideration given to the kinds of decisions being made and the person or office holder making those decisions. For example, it is proposed that decisions around the revocation of a registered provider's registration as well as decisions to *not* appoint a current guardian or enduring power of attorney as an individual's representative will not be delegated below SES level.

Part 4 – Appointment of supporters and representatives

This Part sets out the administrative aspects of appointing, suspending and cancelling supporters and representatives. Further explanation of these provisions is set out at Part 4 of Chapter 1 above, including where feedback provided during the last consultation was considered.

Part 5 – Application of this Act to certain entities

Unlike the current Aged Care Act, which limits approved providers to constitutional corporations and government bodies, under the new Act it is intended that a broader range of entities, including partnerships and unincorporated associations will be able to become registered providers. This Part is included so as to avoid doubt as to how these entities should be treated under the new Act.

Note: for the first phase of the reforms, the majority of providers will still be constitutional corporations or government bodies with other entities not able to deliver services under any service group other than home support, unless they are a NATSIFAC provider.

Part 6 – Grants

Under the new Act, it is intended that the System Governor will be able to make grants of financial assistance to registered providers or organisations that work to support the rights of older persons and some other individuals with specialised complex needs (for example, services to support individuals with early onset dementia).

The grant provisions included in this Part are not intended to fund funded aged care services (as defined at section 7 of the new Act) delivered through CHSP or NATSIFAC grant programs.

Services funded through CHSP and NATSIFAC will be linked to the aged care service list and will be regulated by the Commission on the same basis as other funded aged care services. These funding arrangements for CHSP and NATSIFAC may be set out in Chapter 4 of the new Act.

Registered providers or organisations providing services funded through a grant program under this Part will be regulated via requirements set out in the respective grant agreements. CHSP and NATSIFAC providers will not be excluded from support grants established under this Part of the new Act.

The Exposure Draft provides that the System Governor may make a grant if it is related to a constitutional head of power as listed in section 395 and relates to one of the following purposes listed in subsection 392(2):

- to initiate, sustain, support or increase the delivery of services to older persons in the aged care system
- to strengthen the capability of, and raise awareness among, registered providers and aged care workers, about specialised complex needs of older persons accessing funded aged care services
- to provide additional support to address such specialised complex needs
- to support and uphold the rights and entitlements of older persons accessing services in the aged care system
- to address shortages and retention issues in relation to the delivery of funded aged care services.

This Part replaces current arrangements under Chapter 3 of the Aged Care Act and the *Financial Framework (Supplementary Powers) Regulations 1997* (FFSP Regulations). It creates a simple and flexible framework under which the System Governor can enter into grant agreements while ensuring all grant programs operate under clear legislative authority. This negates the need to rely on complex arrangements under the FFSP Regulations.

Part 7 – Use of computer programs

This Part provides that the System Governor may arrange for computer programs to be used to make decisions on the classification and priority of individuals (section 398). It is intended the Commissioner may also arrange for computer programs to be used to make decisions that are relevant to the powers and functions of the Commissioner (section 399).

These arrangements are expected to be used for classification decisions under the new Act.

They are also expected to be used by the System Governor to determine priority categories and allocate places for permanent residential care based on simple, objective and transparent criteria.

No provisions have been drafted at this stage that allow the Commissioner to use a computer program in making decisions.

Part 8 – Applications, requests and notifications

Under the new Act, both the System Governor and Commissioner are expected to receive applications and requests as they relate to their functions and powers.

This Part of the new Act provides that these applications and requests must be provided in the approved form, and allows for the System Governor

or Commissioner to make a request for further information, in order to consider the application or request.

The System Governor or Commissioner will not be required to make a decision if the application or request is not in the approved form, if information or documents are not provided following a request, or if any required application fee is not paid. There will also be a penalty if an entity provides false or misleading information or documents as part of their application or request.

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

This Part provides that the System Governor or Commissioner may charge a fee for services provided in performing their respective functions and duties, 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.

The effect of this Part is to enable cost recovery in relation to provision of a government service.

Part 10 – Reports on and review of this Act

At the end of each financial year, the System Governor must provide the Minister with a report on the performance of the System Governor's functions (section 411). The report must include information on a number of matters, including:

- the extent of unmet demand for funded aged care services
- the duration of waiting periods for funded aged care services
- the number of registered providers entering and exiting the market for the delivery of funded aged care services
- the financial viability of registered providers in that market
- matters relating to the bond guarantee scheme, accommodation bonds and charges and contributions
- the extent of building, upgrading and refurbishment of residential care homes.

The new Act will also include a provision requiring the Act to be reviewed within 6 months after the fifth anniversary of its commencement (section 412).

Part 11 – Rules

An important part of the new Act will be enabling the Minister to make Rules on matters 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 give effect to the new Act.

Additional resources for Chapter 8 – Miscellaneous

You can access additional resources by visiting the new Aged Care Act consultation page at www.health.gov.au/aged-care-act-consultation.

To provide your feedback you can:

- complete the [survey](#) where you can tell us what is most important to you,
- include a response to the consultation questions in a more detailed written submission to the Department or ask a question by sending an email to agedcarelegislativereform@health.gov.au.

Chapter 9 – The reform timeline and readiness support

Chapter summary:

The new Act will deliver the next phase in a series of aged care legislative reforms. Each phase builds on the last to make improvements to the Commonwealth aged care system and progressively deliver better outcomes for older people.

The Department has heard that implementing the proposed reforms will take time, and that aged care providers and workers need support, education and training to ensure that the vision for a new aged care system can be realised. We are also realistic about the time it will take to get the Bill for the new Act right, and that commencement is subject to parliamentary passage and appropriate consideration by Senate Committees.

To inform discussions about sector readiness, this chapter summarises the main changes which are proposed to be delivered via the new Act in 2024.

Further legislative changes in 2025 will accompany the introduction of the new Support at Home program. Future changes will be required as part of continuous improvement – for example, to introduce the new funding models being considered for the MPS and NATSIFAC programs.

To ensure continuity of quality and safe care for older people, it will be critical that the sector is prepared for these upcoming reforms, and that effective transitional arrangements are in place.

Consultation questions Chapter 9:

We are particularly interested to hear your responses to the following questions:

39. Do you support a phased approach to reform?
40. Do you consider this will allow for staged implementation and more time for consultation on key changes? Or do you consider that it will add complexity and prove challenging for the aged care sector?
41. What do you consider to be the benefits that will be delivered via each phase of the reforms?
42. Do you have any views on the best approach to schedule the implementation of these important reforms to help ensure a smooth transition and compliance with the new legislative framework?

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 type of activities will you need to do to transition to the new aged care system (e.g. structural changes, staff training etc) and how much time will you need for these activities prior to the new system taking effect?
45. Are there factors that may impact your readiness for transition that you would like the Government to consider?
46. Do you have any concerns about the sector being ready to transition to the new aged care system from 1 July 2024? How much time do you think the sector realistically needs?

A phased approach to reform

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 2022⁴.

This phased approach will ensure that key reforms, such as the Statement of Rights and a new regulatory model, can be implemented without delay, delivering improved outcomes for older people. At the same time, it will allow for the more comprehensive consultation and engagement on upcoming significant home care reforms prior to their implementation.

We want to balance delivering long-awaited reforms that will benefit older people as soon as possible with the need to take our time to get these important reforms right. We have also listened to the sector's feedback that implementing such significant reforms will take time, and that aged care providers and workers will need support, education and training to ensure that the vision for the new Act can be upheld.

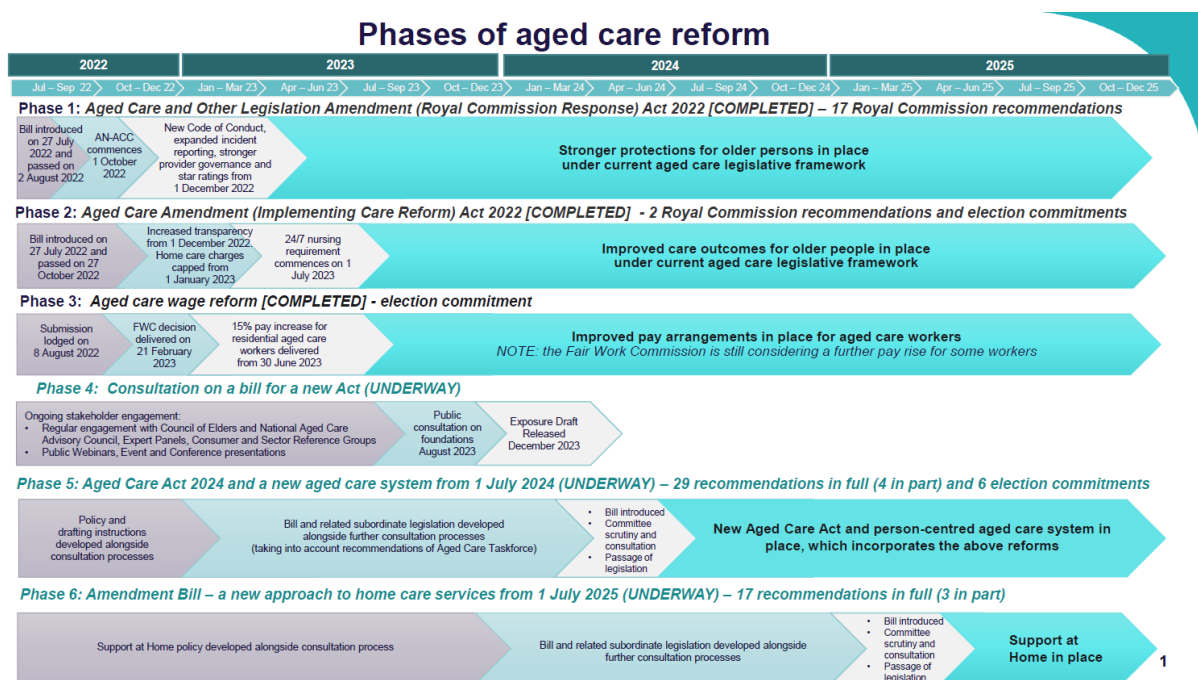
It is critical that providers are supported to adjust and comply with the new legislative framework in a timely manner to minimise disruption to the delivery of quality and safe

⁴ The *Aged Care and other Legislation Amendment (Royal Commission Response) Act 2022*, responded to 17 recommendations of the Royal Commission and included provisions for an enforceable Code of Conduct, extending SIRS to home care and strengthening provider governance. The *Aged Care Amendment (Implementing Care Reform) Act 2022* delivered a further two Royal Commission recommendations and implemented the Government's election commitments, including the requirement for providers to have a registered nurse onsite and on duty 24 hours a day, 7 days a week in every residential aged care home. Further information on the legislative reforms delivered to date is available on the [Department's website](#).

care to older people. As a result, we want to ensure that the proposed reform timeline is clear, and we want to work with the sector before, during and after each of the reform phases to achieve a smooth transition to the new aged care system.

To inform discussions about sector readiness, the diagram below provides a timeline of the next phases of reform, so providers and the broader community can better understand how these phases are expected to work together and when key changes will be implemented. Further detail about the main changes for people and providers for each phase is provided below.

You can access a full screen version of this diagram on the [Department's website](#).



What will be different for 2024

The implementation of a new rights-based Act is a significant change for the aged care sector. Key changes delivered by the new Act will impact both providers and people accessing, or seeking access to, funded aged care services, as is summarised below.

Parts of the aged care system will, however, stay the same in 2024. For example, aged care programs currently operating, such as Home Care Packages, STRC and CHSP will continue.

Many of the reforms introduced recently via the *Aged Care and Other Legislation Amendment (Royal Commission Response) Act 2022* (RCR Act) and the *Aged Care Amendment (Implementing Care Reform) Act 2022* (ICR Act) will also be carried over to the new Act with minor amendments. Initiatives such as the Code will remain key pillars of the new aged care system. This should allow the sector to reorientate to the new rights-based framework and implement any required new arrangements, while preparing for the next phase of reforms.

We value your feedback on the scope of this next phase of reforms and sector readiness for 1 July 2024 implementation. The tables below summarise at a high-level key changes that will impact persons accessing funded aged care services and providers respectively.

Key changes to benefit older people
<ul style="list-style-type: none"> • need to be aware of their rights and can seek to have them upheld
<ul style="list-style-type: none"> • can have a supporter or representative appointed who must comply with supported decision-making principles
<ul style="list-style-type: none"> • enter aged care via a new single entry point, with one assessment for all aged care programs, a single assessment framework, and clear legal decisions on eligibility for a needs assessment and access to services
<ul style="list-style-type: none"> • new eligibility criteria for an aged care needs assessment, with younger people, not already in the aged care system, no longer able to access aged care services
<ul style="list-style-type: none"> • Aboriginal or Torres Strait Islander persons or people who are homeless or at risk of homelessness aged 50-64 formally recognised as younger persons who require access to aged care early due to their specific life experiences
<ul style="list-style-type: none"> • individuals approved for permanent residential care allocated a place (not provider)
<ul style="list-style-type: none"> • the Statement of Rights, streamlined obligations and strengthened quality standards make it clear what older people can expect from providers and aged care workers
<ul style="list-style-type: none"> • persons accessing services under NATSIFAC or CHSP have same regulatory protections as other aged care programs
<ul style="list-style-type: none"> • new complaints arrangements will facilitate access to restorative outcomes, and older people who make a complaint will be protected from reprisal action
<ul style="list-style-type: none"> • compensation available where a serious injury or illness results from a breach of duties on registered providers or responsible persons following a criminal conviction

Key changes for providers
<ul style="list-style-type: none"> • actions to be guided by the Statement of Rights
<ul style="list-style-type: none"> • required to register with the Commission (with transitional arrangements in place for existing providers) and have any residential care homes approved
<ul style="list-style-type: none"> • NATSIFAC and CHSP providers to be registered under the new Act and regulated by the Commission
<ul style="list-style-type: none"> • revised set of provider obligations including conditions on registration
<ul style="list-style-type: none"> • strengthened Quality Standards apply to some categories of providers

- new financial and prudential standards
- worker screening requirements
- new statutory duties

Key changes for aged care workers

- Statement of Rights recognises a right for individuals to have services delivered by aged care workers of registered providers who have appropriate qualifications, skills and experience
- Statement of Principles recognises that the aged care system should support aged care workers to be empowered to support innovation, continuous improvement and the delivery of high quality care, and participate in governance and accountability mechanisms
- expanded whistleblower protections
- worker screening arrangements

Note: This first phase of reform will also have significant impacts on the Commission, with the implementation of a completely new regulatory model and a revised person-focussed complaints process.

Readiness support for older people and the sector

We understand that the new Act represents a significant amount of change across the aged care system, and you will need support to understand what this means for you.

To assist you, we are building an integrated readiness plan that will make clear what support will be provided, when and how these activities will be delivered. We want to ensure that the sector is not only prepared for the changes, but that together we deliver sustainable and long-lasting change and quality improvements for older people now and into the future. The readiness plan will provide detailed information on what is new, what is changing and what is staying the same for different stakeholder groups, and will outline the communication, engagement and training activities that will be tailored to support the needs of each stakeholder group. It will also indicate when you can expect these activities and how to access them.

We will ensure that messaging and activities are clear, timely, relevant, accessible and meet the diverse needs of target audiences. Where possible, we will proactively engage and seek feedback through peak organisations, advocacy and community groups, unions and professional associations and other representative bodies.

Readiness activities will include: booklets for older people (including translated versions); videos for older people, workers and providers; webinars; tailored information kits for stakeholder groups; information to support workers; engagement at sector and advisory group meetings, forums and events; updated or new manuals and guides; system training (where applicable); practical scenarios to support how the changes apply; and regular updates through the department's newsletter, website and My Aged Care channels.

We are currently refining the readiness plan and aim to release it in early 2024 for feedback. This will help us to ensure the activities proposed will meet your needs, prior to commencing delivery from March 2024. We will build in feedback loops within our approach, and will continue to monitor, measure and adapt our activities as implementation progresses and stakeholder needs evolve.

What is coming for 2025

Further legislative changes in 2025 will accompany the new Support at Home program. See: [Reforming in-home aged care](#).

These changes are expected to be accompanied by:

- a new contributions framework and a revised aged care service list informed by the findings of the Aged Care Taskforce
- the establishment of a First Nations Aged Care Commissioner
- additional training requirements on aged care workers

Appendix A

Glossary of terms

Term	Definition
Aged Care Quality and Safety Commission	The Aged Care Quality and Safety Commission (Commission) is the aged care Regulator.
Aged Care Quality and Safety Commissioner	The Aged Care Quality and Safety Commissioner (Commissioner)) is the aged care Regulator and head of the Aged Care Quality and Safety Commission.
Compliance	Compliance is the process of making sure registered providers and aged care workers meet their responsibilities under the legislation when delivering funded aged care and services.
Department	Department of Health and Aged Care, led by the System Governor, who has responsibility for the operations and oversight of Commonwealth funded aged care. The Department will administer parts of the legislation as the System Governor.
Enforcement	Enforcement refers to actions taken by the Commissioner or the System Governor to address registered providers or aged care workers who are not meeting applicable laws or responsibilities.
My Aged Care	My Aged Care is the entry point to the Australian aged care system. It provides general information about aged care services, and can register, screen, and refer eligible older people for an aged care assessment.
Obligations	Obligations refer to ‘what’ a registered provider must do to comply with the aged care legislative framework – and hence, the actions or behavior that will be required of them. A failure to comply with one or more obligations that apply to them under the legislative framework could result in enforcement action being taken against the registered provider – for example, penalties, fines or other legal action. Obligations include conditions of registration.
Subordinate legislation	Subordinate legislation, also known as delegated legislation, is not directly made by an Act of the Parliament, but under the authority of an Act of the Parliament. For the <i>Aged Care Act 1997</i> , subordinate legislation includes sets of Principles. Under the new Act, subordinate legislation will include a set of Rules, as well as additional legislative instruments where required.
System Governor	The Secretary of the Department of Health and Aged Care



Phone **1800 318 209**



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For translating and interpreting services

Call **131 450** and ask for the call centre on **1800 318 209**.

Use the National Relay Service

Visit **nrschat.nrscall.gov.au/nrs** or call **1800 555 660**.