

Aged Care Quality and Safety Commission Independent Capability Review

TERMS OF REFERENCE

Purpose

In line with recommendations 10 and 104 from the Royal Commission into Aged Care Quality and Safety, an independent review of the capabilities of the Aged Care Quality and Safety Commission (Commission) is to be undertaken.

The capability review will support the aged care regulator to deliver safe and high-quality care for older Australians now and into the future. The review will identify improvements that would support the aged care regulator to undertake strong regulatory activities, embed best practice, increase accountability and to enhance its quality and prudential activities.

The full spectrum of regulatory functions will be considered, across both home care and residential aged care, now and into the future. This will include all activities that ensure the safety and protection of older Australians, risk monitoring and management, quality monitoring and reviews, compliance intervention, accreditation, approval and audit, financial and compliance reporting, complaints management and resolution, education – of aged care consumers and providers, and engagement/communication with the community.

The review will take into consideration the Australian Government priorities and reform activities recently delivered, planned or underway.

In examining best practice for the aged care regulator, regard will be given to relevant legislation¹, legal obligations, aged care quality responsibilities and standards and the roles of all stakeholders (older Australians, providers, and all levels of government) to deliver a transparent aged care experience that our community expects, and older Australians deserve.

Methodology and timing

The review will be undertaken by an independent and appropriately skilled person who has experience in the public sector and regulatory reform (selected in line with Department of Health and Aged Care Procurement Standards). The reviewer will be supported by a dedicated support team comprising appropriately skilled individuals.

A preliminary report is to be delivered to Government at the mid-way point of the review. The final review including recommendations, and a summary of findings must be reported back to Government within six-months of commencement.

Where required, the Department of Health and Aged Care and the Commission will facilitate access to information and evidence and other logistical support.

¹ Including but not limited to the *Aged Care Quality and Safety Commission Act 2018*, the *Aged Care Quality and Safety Commission Rules 2018*, the *Aged Care Act 1997*, the *Aged Care Act 1997* objects and principles and the *Public Governance, Performance and Accountability Act 2013*.

Scope

The review is to consider:

1. The performance of the Commission against its prescribed objectives, functions, and priorities, focusing on:
 - a) the Commission's approach to the use of regulatory powers, mechanisms in place to address providers' non-compliance (or potential non-compliance) with their legal obligations, including the Aged Care Quality Standards, and responses to quality, safety, financial and prudential risks.
 - b) outputs, impacts, effectiveness, and barriers (legislative or otherwise) to deliver its functions and services effectively and efficiently for aged care consumers and opportunities to improve its regulatory functions.
 - c) whether the Aged Care Quality and Safety Commissioner and the Commission have sufficient legislative powers, regulatory frameworks and access to data to appropriately investigate and resolve complaints in a timely manner and to undertake compliance monitoring and enforcement activities.
2. The Commission's organisational values, structure, leadership, and culture, including strengths, opportunities and weaknesses that inhibit or enable a high performing, contemporary, best practice, human services regulator.
3. The Commission's ongoing governance, skills, and capabilities (strategic and operational), paying particular attention to:
 - a) the Commission's risk management approach and decision making, including: the appropriate use, timing, and delegation of powers to best protect the safety and wellbeing of aged care residents and care recipients, the balance of the Commission's effort and focus directed towards poor/high risk performers while still maintaining whole of system safety and quality, and the balance of education and best practice promotion vs. enforcement.
 - b) adaptability of the Commission to meet emerging challenges/issues/risks/concerns within the aged care sector (e.g., the ongoing response to the COVID-19 pandemic).
 - c) efficient allocation of resourcing for the Commission, including workforce, executive management structures, remuneration structures, infrastructure (including IT) and identification of service duplication and gaps.
 - d) the role of Statutory Office Holders or key executive officers, including the Commissioner, Assistant Commissioner of Sector Capability, Senior Practitioner of Restrictive Practices and the to-be appointed Aged Care Complaints Commissioner.
 - e) capability of the workforce to perform the functions of a regulator including workforce size and the adequacy of clinical, assessment, monitoring, compliance and enforcement knowledge and skills.
 - f) capability to undertake monitoring and enforcement activities in rural and remote areas, and to ensure nationally consistent but locally relevant application of the standards, reviews, enforcement action, and outcomes.
 - g) capability to undertake monitoring and enforcement activities for aged care services providing care for older people with dementia, culturally and linguistically diverse consumers and specific diversity groups including Aboriginal and Torres Strait Islander people, veterans and the LGBTIQ communities.

4. Transparency and engagement/communications with, and education of, older Australians, their families, and carers, and the community more broadly (e.g., through public reporting and messaging).
5. Provide options for the design, form, structure, governance, powers, workforce, resourcing, and proposed timing of establishment of a culturally sensitive and capable new aged care regulatory Authority, to ensure effective performance of the new Authority for its existing and additional roles and responsibilities.

Additional considerations

In undertaking the review, regard should be given to:

1. Progress in the Commission's performance since the previous iteration of the Commission and the Quality Standards.
2. Previous reviews of the Commission and similar entities, including:
 - a. Review of National Aged Care Quality Regulatory processes, Australian Law Reform Commission (Report 131) Elder Abuse - A National Legal Response, Independent Commissioner against Corruption report on Oakden and;
 - b. Independent Inquiry into events at Earle Haven Retirement Village and Joint Standing Committee releases report on NDIS Commission.
3. Similar International entities, including:
 - a. UK Care Quality Commission and;
 - b. ISQua - The International Society for Quality in Health Care.
4. Best practice guidelines and models for regulatory bodies (national and international), including:
 - a. OECD Best Practice Principles on the Governance of Regulators - OECD and;
 - b. Principles of best practice regulation | Department of the Prime Minister and Cabinet (pmc.gov.au).
5. Lessons learned from sector innovations and other social care regulators, including opportunities to align and promote consistency of practice (e.g., digitisation of health services).
6. The legislative reforms planned or underway, as part of the new Aged Care Act.
7. The impact of Government priorities and reform activities (already delivered, planned or underway) to implement recommendations from the Royal Commission into Aged Care Quality and Safety, including potential/expected future interactions and impact on the Commission.
8. The role of the aged care regulator in rebuilding confidence of the community in the aged care regulator and the aged care system more broadly.
9. The role and responsibility of the Commission in working with the Commonwealth Government Department of Health and Aged Care and the Australian Commission on Safety and Quality in Health Care (ACSQHC) to regulate aged care, including clarifying responsibilities and legislation impacts across the sector, state and federal departments and health agencies.

Consultation

Noting the extensive stakeholder consultation undertaken as part of the Royal Commission into Aged Care Quality and Safety, the review should consider relevant and targeted consultation with:

1. Older people receiving aged care services, their families, carers and advocates and peak bodies.
2. Aged care workers, relevant unions, and professional bodies.
3. Aged care providers and their peak bodies.
4. The Council of Elders, the National Aged Care Advisory Council, the Aged Care Quality and Safety Commission, the Aged Care Quality and Safety Advisory Council and the Department of Health and Aged Care.
5. Specific diversity groups including Aboriginal and Torres Strait Islander people, veterans and the LGBTIQ communities.
6. Other regulators in Australia, including social care regulators and the Australian Commission on Safety and Quality in Health Care.
7. Relevant ministers and officials from the Commonwealth and state and territory governments.