

Aged Care Act exposure draft consultation

12 February 2024

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Multicultural
Aged Care



Kuarna Acknowledgement

We would like to acknowledge this land that we meet on today is the traditional land for the Kurna people and that we respect their spiritual relationship with their country.

We also acknowledge the Kurna people as the custodians of the Adelaide region and that their cultural and heritage beliefs are still as important to the living Kurna people today.

We are committed to achieving equity for their children.



AGED CARE ACT exposure draft consultation

- [A new Aged Care Act: exposure draft- Consultation paper no.2](#)
- [New Aged Care Act exposure draft - consultation paper - plain English summary](#)

- Aged Care Act 2024

Consultation submissions due 16 February 2024

- [The strengthened Aged Care Quality Standards – Final draft \(November 2023\)](#)

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[A new Aged Care Act: exposure draft- Consultation paper no.2](#)

- Once in a generation opportunity
- Rights-based Aged Care Act –supported by the sector
- Responds to Royal Commission recommendations (29 in full and 4 in part)
- The reform timeline and sector readiness

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[A new Aged Care Act: exposure draft- Consultation paper
no.2](#)

- Chapter 1 Introduction
- Chapter 2 Entry to the Commonwealth aged care system
- Chapter 3 Registered providers aged care workers & digital platform operators
- Chapter 7 Information management
- Chapter 9 Reform timeline & readiness support

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- Chpt 1, part 2 Definition and key concepts
- Chpt 1, part 3 Aged care rights and principles
- Chpt 1, part 4 Supporters and representatives
- Chpt 2, part 3 Classification
- Chpt 3, part 2 Provider registration process
- Chpt 3 part 4 Obligations
- Chpt 3 part 5 Statutory duty and compensation
- Chpt 7 part 2 Confidentiality of information
- Chpt 9 Timeline and readiness support



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Chapter 1 Introduction, part 1 Preliminary of the exposure draft

- New Objects added, including providing for sustainable funding arrangements for the delivery of funded aged care services by a diverse, trained and skilled workforce
- **QUESTIONS**
- Do you have any major concerns about the Objects, particularly the wording of the new additions? (Put thoughts in the chat)

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Chapter 1 Introduction Part 2

Definitions and key concepts

- Definitions and key concepts set the foundations for: what services will be delivered, where they will be delivered, who can deliver these services, how these services must be delivered, and the standards of care that everyone involved in the delivery of funded aged care services should aim to achieve
- An aged care service list (e.g. gardening, nursing) will be included in the Rules for which a subsidy or grant may be payable. Services will be grouped into service types (e.g. domestic assistance; accommodation) to be delivered through one or more service groups (e.g. home support, home care, residential respite care)
- Diagram of the aged care services model -page 16 of the consultation paper

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Chapter 1 Introduction Part 2 Definitions and key concepts

- 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 (section 10)
- Definitions include 'responsible persons' (section 11) (replaces the existing concept of key personnel) and 'high-quality care' (section 19) (prioritises matters that the Department has heard lead to excellent care outcomes and improved quality of life for older people)
- Rules may prescribe requirements for the Aged Care Code of Conduct (section 13) and the Aged Care Quality Standards (section 14)
- The definition of a reportable incident is included in section 15

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Chapter 1 Introduction Part 2 Definitions and key concepts

- Restrictive practice requirements are set out in sections 16 and 17
- However, the existing hierarchy for a restrictive practices substitute decision-maker and associated immunity provision have not been included.
- The Government continues to work with the states and territories on establishing clear arrangements or the appointment of substitute decision-makers

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Chapter 1 Introduction Part 2 Definitions and key concepts

- Section 18 includes a definition of significant failure and systematic pattern of conduct
- These definitions are key for Chapter 3 which includes offences/penalties where registered providers or responsible persons breach new duties designed to target serious, poor quality and unsafe care

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Chapter 1 Introduction Part 2 Definitions and key concepts

- What high quality care means is set out in section 19
- Consultation paper refers to high-quality care as establishing 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.'

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Chapter 1 Introduction Part 2 Definitions and key concepts

QUESTIONS

- Do you have any feedback in relation to high-quality care including:
- Definitions themselves included in the legislation and how providers might 'prioritise' these definitions –refer Section 19 ©?
- Do you have any concerns with the definition of responsible persons including key personnel as well as members of the governing body?
- Do you have any concerns with the removal of the hierarchy for a restrictive practices substitute decision-maker and the associated immunity provision?
- What changes would you like to see made to state and territory laws to make clear the arrangements for appointing a restrictive practices substitute decision-maker?

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Chapter 1 Part 2 Definitions and key concepts

Rights (Part 3, Div 1 –Chapter 1 of the exposure draft)

Statement of Rights –rights now grouped under headings with some changes to the rights (summary on consultation paper pages 22-23)

- Does not include workers' or carers' rights, or list of responsibilities for older people
- Section 21(2) exposure draft: “It is the intention of the Parliament that registered providers delivering funded aged care services to individuals must not act in a way that is incompatible with the rights specified in [the Statement of Rights] taking into account that limits on rights may be necessary to balance competing or conflicting rights and the rights and freedoms of other individuals”
- Diagram re upholding rights –consultation paper page 24

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Chapter 1 Part 2 Principles (Part 3, Div 2 –Chapter 1 of the exposure draft)

Statement of Principles has been updated (summary on consultation paper pages 25-26)

- Per consultation paper –the Statement of Principles will guide the decisions, actions and behaviours of government agencies operating under the Act
- Section 23 exposure draft: “It is the intention of Parliament that the Minister, the System Governor, the Commissioner and any other person or body, performing functions or exercising powers under this Act, must have regard to the principles ... when performing those functions or exercising those powers”

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Chapter 1 Introduction Part 3 Aged care rights and principles

QUESTIONS

Rights

- Do you have any concerns about any of the new/amended rights (see summary on consultation paper pages 22-23)?
- What do you think about the 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? Does this sufficiently clarify/address any concerns you have about implementation?

Principles

- Do you think the Statement of Principles is clearer than the previous draft?
- Do you think the operation/purpose of the Statement of Principles is sufficiently clear (and do you have any concerns)?

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Chapter 1: Supporters and Representatives Chapter 1, Part 4 of the exposure draft

- The new Act will establish roles and duties of supporters and representatives who will be required to act in accordance with supported decision-making principles
- Steps for making an appointment –diagram on consultation paper page 28
- Amendments made following feedback on the first consultation paper (on the proposed foundation elements) include that people will now be able to have multiple supporters, or multiple representatives at the same time. However, there can't be both supporters and representatives
- The exposure draft at subsection 27(2) clarifies that representatives are not automatically authorised to provide consent to the use of a restrictive practice
- Note: administrative aspects of appointing, suspending and canceling supporters and representatives are set out in Chapter 8, Part 4 of the exposure draft

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Chapter 1: Supporters and Representatives Chapter 1, Part 4 of the exposure draft

QUESTIONS

- How do you think differences in views of supporters (where there is more than one supporter) or representatives (where there is more than one representative) should be addressed?
- What issues do you envisage might arise in relation to the proposed duties of supporters or representatives and how might these be addressed?

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Chapter 2 Entry to the Commonwealth aged care system 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.
- **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.

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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.

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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

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Chapter 3 –registered providers

- Providers will need to apply and be registered by the Commissioner in one or more registration categories. There will be transitional arrangements for existing providers.
- The registration period is generally 3 years –although the Commissioner can shorten or lengthen this period
- Residential care homes must also be approved
- Registered providers will need to comply with a range of obligations, including conditions on registration, even where they subcontract delivery of funded aged care services
- The Commissioner will be able to revoke or suspend a provider's registration as well as vary a provider's registration in certain circumstances
- The Commissioner will maintain a Provider Register

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Chapter 3 –registered providers

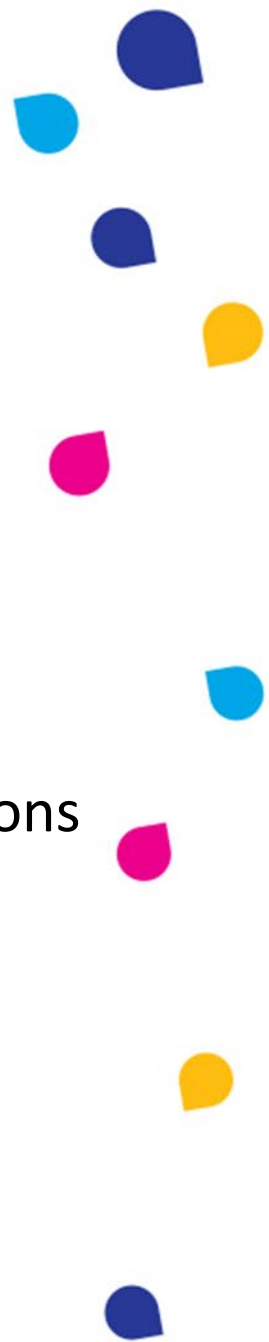
- There will be general registration requirements (e.g. an ABN; demonstrate suitability to deliver the intended aged care services) and category-specific registration requirements (e.g. complete an audit against the Aged Care Quality Standards)
- For the first phase of reforms, some registered providers will need to be constitutional corporations (home care; short-term restorative care) (section 72)
- Arrangements for the registration of state and territory government providers have not been finalised
- Information on the six revised proposed registration categories (to be set out in the Rules) can be found on page 44 of the Department's summary report on A New Model for Regulating Aged Care Consultation
- The six registration categories group services based on common characteristics, service risks and provider obligations to address risks

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Chapter 3 –registered providers

The six revised proposed registration categories are

- Category 1 –home and community services
- Category 2 –assistive technology and home modifications
- Category 3 –advisory services
- Category 4 –personal and social care in the home or community (including respite)
- Category 5 –nursing and complex care management
- Category 6 –residential care



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Chapter 3 –registered providers

All categories are subject to provider obligations.

- **Category 4** subject to aged care quality standards 1-4,
- **Category 5** subject to aged care quality standards 1-5,
- **Category 6** subject to aged care quality standards 1-7
- **Category 3** Care management (basic) in (advisory services)
- **Category 4** Personal care (personal and social care in the home or community (including respite) and (complex care management)
- **Category 5** Care management (complex) (nursing and complex care management)

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- Chapter 3 –registered providers and registration categories

QUESTIONS

- Do you have any concerns with the proposed registration process?
- Do you envisage any issues with the requirement to have residential care homes approved?
- Do you think there will be issues with care management being separated into basic and complex categories?

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Chapter 3 -Obligations Part 4 of the exposure draft

- The new Act includes obligations on registered providers and others to safeguard older Australians
- Breach of a condition of registration 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)
- Significant failure and systemic pattern of conduct are terms defined in section 18 of the exposure draft

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Chapter 3 –part 4 Obligations

The new Act will impose obligations on registered providers including:

- Complying with the Aged Care Code of Conduct and
- Complying with worker screening requirements
- The intention is that aged care worker screening assessments will be conducted by state and territory worker screening units. This requires new state and territory legislation
- In the interim period, existing obligations will continue

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- Other registration obligations include those relating to the Statement of Rights
- Personal information and record keeping, incident management and complaints management
- This part of the exposure draft also provides the legislative framework to require certain registered providers to meet the Aged Care Quality Standards, Financial and Prudential Standards, continuous improvement, provider governance, restrictive practices requirements

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Chapter 3 Division 2 of part 4 outlines additional obligations on registered providers, as well as separate obligations on responsible persons and aged care workers

- These include for example meeting reporting requirements (section 109), considering whether responsible persons remain suitable to deliver funded aged care services every 12 months (section 114), and ensuring that at least one registered nurse is on site, and on duty, at all times at an approved residential care home, unless an exemption is in place (section 116)
- Responsible persons are required to notify their registered provider of a change in circumstances relating to suitability (section 111)
- Responsible persons (section 119) and aged care workers (section 118) must comply with the Aged Care Code of Conduct

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Chapter 3 –statutory duty and compensationart 5 of Chapter 3 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)
- The new statutory duty provides that registered providers must ensure, so 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
- 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

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Chapter 3 –statutory duty and compensationart 5 of Chapter 3 of the Exposure Draft includes new statutory duties on registered providers (section 120) and responsible persons (section 121).

- **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**

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Chapter 3 –statutory duty and compensation

- The new Act places a duty on responsible persons to exercise due diligence to ensure that a registered provider complies with the provider's duty (section 121)
- Penalties 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 (subsections 121(6) and (7)) (1000 penalty units or 5 years imprisonment or both)

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Chapter 3 –statutory duty and compensation

- The new Act also includes a compensation pathway in certain circumstances where a registered provider breaches their statutory duty Section 127 provides for a relevant court to order a registered provider found guilty of a criminal offence 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 individual, or if the individual applies directly
- An application for compensation must be made within six years

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- **Chapter 3 –obligations, statutory duty and compensation**

QUESTIONS

- Do you have any concerns in relation to the proposed obligations on registered providers, responsible persons or aged care workers?
- What impact do you think the new statutory duties might have on the willingness of people to become responsible persons?
- Do you think there will be an impact on the cost of insurance or the ability to obtain insurance?
- What are your thoughts about the compensation pathway in certain circumstances where a registered provider breaches their statutory duty?

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Chapter 7 Information management 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.

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Chapter 7 Information management 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.

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QUESTIONS Chapter 7 Information management

- 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?
- What challenges could there be with the proposed whistleblower framework, and do you have any proposed solutions?
- 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?

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Chapter 9: The reform timeline and readiness support

- Phased approach to aged care reform –diagram on consultation paper page 97
- Currently in phases 4 and 5 which include consultation on the exposure draft as well as the continuing development of policy and drafting instructions alongside consultation processes for both the new Act and related subordinate legislation

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Chapter 9: The reform timeline and readiness support

- The Department is building an integrated readiness plan (due for release in early 2024 for feedback; commencing delivery from March 2024)
- Readiness activities include: webinars; updated or new manuals and guides; system training (where applicable); practical scenarios to support how the changes apply; regular updates through the Department's newsletter, website and My Aged Care channels

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Chapter 9: The reform timeline and readiness support

Questions

- 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 [and why]?
- 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?

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Chapter 9: The reform timeline and readiness support

Questions

- What support will providers need to implement the registration requirements?
- What support will providers and responsible persons need to prepare for the proposed statutory duties?
- What support will operators of aged care digital platforms need?

For more information:

Contact MAC

Information, resources and training opportunities

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