

Aged Care Quality and Safety Commission

Submission to the Senate Standing
Committee on Community Affairs:
Inquiry into the provisions of the
Aged Care Bill 2024

30 September 2024



Australian Government

Aged Care Quality and Safety Commission

Engage
Empower
Safeguard



About the Commission

The Aged Care Quality and Safety Commission (the Commission) is the national regulator of the delivery of funded aged care services to individuals under the Commonwealth aged care system. The Commission's purpose, as set out in our [Corporate Plan](#) 2024-25, is to protect and enhance the safety, health, wellbeing and quality of life of older people receiving aged care. We achieve this by regulating aged care providers to ensure that they uphold their obligations to provide safe, quality care, and treat the people using their services with dignity and respect.

The Commission is led by the Commissioner, Ms Janet Anderson PSM, who is a statutory officer under the *Aged Care Quality and Safety Commission Act 2018* and the accountable authority for the Commission under the *Public Governance, Performance and Accountability Act 2013*. Under the current legislative framework, the Commissioner has the power to do all things necessary and convenient to carry out the following activities¹:

- approving providers to deliver Commonwealth-subsidised aged care services
- engaging with and educating key stakeholders in the aged care sector about the Commission's functions
- resolving complaints about aged care services
- accrediting residential aged care services
- monitoring providers' compliance with the Aged Care Quality Standards and other obligations
- administering the Serious Incident Response Scheme
- regulating aged care workers, volunteers and governing persons under the Code of Conduct
- undertaking compliance and enforcement actions, and
- revoking approval to deliver (Commonwealth-subsidised) aged care services.

The Aged Care Quality and Safety Advisory Council (the [Council](#)) is established under the *Aged Care Quality and Safety Commission Act 2018*, with its role being to advise the Commissioner relating to the Commissioner's functions. The Council can also advise the Minister for Health and Aged Care regarding these functions. Council members have extensive experience in aged care, including clinical care, service delivery, consumer representation and more.

¹The Commission works under the *Aged Care Quality and Safety Commission Act 2018* and the *Aged Care Quality and Safety Commission Rules 2018*. The *Aged Care Act 1997* outlines the obligations and responsibilities applying to aged care providers receiving subsidies from the Australian Government.



The Commission's [Regulatory Strategy 2024-25](#) sets out our approach to regulating under the current legislative framework. It outlines our proportionate approach to regulating providers and workers, how we respond to risk and harm, and how we act to prevent harm from occurring in the first place. It describes how we identify risks and undertake supervision and enforcement to hold providers and workers to account, and safeguard and protect older people.

The proposed Act

The Aged Care Bill 2024 (the Bill) as tabled in the House of Representatives on 12 September 2024 establishes a rights-based, person-centred and risk-proportionate regulatory framework for aged care focused on continuous improvement.

Under the Bill, the Commonwealth aged care system is governed by the Secretary of the Department of Health and Aged Care (known as the System Governor), the Commissioner and the Complaints Commissioner. The Department and the Commission support the Secretary and Commissioners respectively. Both agencies are expected to work together, including by sharing information and access to databases, to ensure that the governance of the aged care system is effective, sustainable, and promotes the safety, health, wellbeing and quality of life of older people.

The Commission remains the national regulator of funded aged care services, with the Bill establishing the statutory positions of both the Commissioner and the Complaints Commissioner and conferring specific functions on each position. The Commissioner remains the accountable authority for the Commission and the Head of the Statutory Agency, responsible for the administration and management of the Commission. The Commission's function is to assist the Commissioner and Complaints Commissioner in the performance of their functions, including:

- protecting and enhancing the safety and wellbeing of people accessing aged care services
- engaging with people accessing aged care services, and their supporters and representatives to develop best-practice models for registered providers and aged care workers
- registering providers to deliver aged care services
- monitoring and enforcing aged care workers' and responsible persons' compliance with their obligations, including the *Code of Conduct for Aged Care*
- monitoring and enforcing providers' compliance with their obligations, including the [Strengthened Aged Care Quality Standards](#) and other obligations
- regulating digital platform providers who facilitate individuals' access to aged care providers
- administering the [Serious Incident Response Scheme](#)
- resolving complaints about the conduct of providers, responsible persons and aged care workers



- reporting on complaints received and handled by the Complaints Commissioner
- reducing the use of [restrictive practices](#)
- building the capability of registered providers, responsible persons and aged care workers, and empowering older people accessing funded aged care services.

The Commissioner will be responsible for safeguarding individuals accessing aged care services, undertaking regulatory and compliance actions against entities and individuals involved in the provision of aged care, educating and engaging with providers to ensure their compliance with the Act, and the registration of providers and their entry to the sector.

The Complaints Commissioner will be responsible for dealing with complaints and feedback received by the Commission about the delivery of funded aged care services, including complaints about provider, responsible person and aged care worker compliance with the Act. The Complaints Commissioner will also be responsible for the compilation and analysis of data and intelligence related to the Commission's complaints system, and the promotion of an industry culture of continuous improvement and effective complaints and feedback systems that are managed by providers.

Both the Commissioner and the Complaints Commissioner, through their respective functions, will have a responsibility to uphold the rights under the Statement of Rights, as well as to protect and enhance the safety, health, wellbeing and quality of life of individuals accessing funded aged care services. The Commissioner and Complaints Commissioner will separately have the power to do all things necessary and convenient to carry out their responsibilities. As the accountable authority under the Bill, the Commissioner will remain the primary responsible statutory authority within the Commission and will be responsible for ensuring that all Commission functions are managed and operationalised effectively.

The Bill expands the role of the Advisory Council, increasing its membership by one and widening the scope of its functions. Specifically, the Council will have functions to monitor the performance of the Commission's functions, to provide advice to the Complaints Commissioner (as well as the Commissioner), and to support the Commission in developing its strategic objectives. The Council will also be empowered to gather, analyse and publish information for the purposes of fulfilling its functions.

The Bill also introduces a new [aged care regulatory model](#). The new model sets out how the aged care sector will operate, emphasising stronger working relationships, transparency and collaboration between aged care providers, the Department of Health and Aged Care (Department), and the Commission. The new model changes:

- How providers enter the sector
- Provider obligations
- Regulatory oversight of the sector



- How the Commission manages complaints and feedback.

The Commission is undertaking significant preparatory work to implement this framework, which is subject to parliamentary processes. Key focus areas include:

- Provider registration
- Strengthened Aged Care Quality Standards
- Complaints management, and
- Risk-proportionate regulation focused at the provider level.

Provider registration

The Bill introduces a new model for provider registration, significantly changing the requirements for entities seeking to participate in the Commonwealth-subsidised aged care services sector. For the first time, both corporations and other entities can register to deliver funded aged care services. Registration will be for a time-limited period determined by the Commissioner (generally 3 years), requiring providers to submit to periodic reassessments of their suitability, commitment, capability and capacity. Providers will be registered in different categories depending on the type of aged care services they provide, with these categories being the primary determinant of their obligations.

The periodic renewal of registration process, along with the Commission's ongoing supervision of providers, will be key elements of the Commission's regulatory oversight. We are updating our processes and systems (both externally and internally) to facilitate the new arrangements. The Commission is also working closely with the Department to streamline the transition to the new registration framework for existing approved providers and grant-funded providers. A suite of sector communications, resources and supporting materials is being jointly developed to support providers, and the transition process will ensure that providers are able to continue delivering care uninterrupted throughout the transition period.

Strengthened Aged Care Quality Standards

The Bill introduces the *Strengthened Aged Care Quality Standards (Strengthened Quality Standards)* to replace the current standards that were introduced on 1 July 2019. The *Strengthened Quality Standards* aim to make sure that older people receive safe and quality care and, alongside other obligations, clearly set out the expectations for providers delivering funded aged services.

The Commission will be responsible for regulating registered providers against the *Strengthened Quality Standards*, which will apply to and be a cornerstone obligation for aged care providers registered in categories 4-6. The selective application of these standards will require an updated audit process for providers in the relevant registration categories. The Commission has made significant progress in developing and trialling the new audit process and developing provider resources in consultation with the sector (see Preparing for a new Act section below).



Complaints management

Complaints are one of the most important ways that the Commission engages directly with older people to understand their experience of aged care and to protect and enhance their safety, health, wellbeing and quality of life when receiving aged care. At the same time, complaints are a vital source of information for the Commission to respond quickly to risks to older people receiving funded aged care services. In this way, complaints and their timely resolution can lead to improvements in care not only for one individual but typically for others as well. Complaints also help the Commission to understand where more intensive provider supervision is needed.

The current non-statutory role of the Complaints Commissioner was established in 2023 as part of Government's response to the Royal Commission into Aged Care Quality and Safety (Royal Commission). Under the Bill, the Complaints Commissioner is a statutory officer with a suite of administrative and enforceable powers focused on facilitating restorative engagement and bespoke resolutions that meet the needs of all parties to a complaint. This flexibility ensures that the Complaints Commissioner's processes can respond to changing community expectations on best practice complaints handling.

In addition to powers yet to be prescribed by the Rules, the Complaints Commissioner has the following enforceable powers in the Bill:

- To issue a Required Action Notice compelling a registered provider to examine or investigate a matter, and to provide a report on the examination or investigation to the Complaints Commissioner. The Complaints Commissioner may require that this examination or investigation be undertaken by an independent expert if the Complaints Commissioner considers it appropriate;
- To compel any person to attend before the Complaints Commissioner and answer questions or produce documents, including requiring the person to take an oath or make an affirmation in relation to the questions;
- To compel any person to give the Complaints Commissioner any information or documents required for the Complaints Commissioner's functions.

Consistent with the Royal Commission's recommendations, the powers of the Complaints Commissioner will not be focused on monitoring providers' compliance with their obligations. Rather, the powers are directed towards facilitating meaningful resolution of complaints, and requiring the participation and engagement of providers and aged care workers in the complaints resolution process.

Risk-proportionate regulation focused at the provider level

The Bill and the new regulatory model anticipate that all providers will be subject to constant supervision by the Commission using a range of methodologies. Providers will be monitored through a range of site based, desk based, announced, or unannounced activities, including the use of investigation powers and powers to compel provision of information.



The Commissioner will have powers relating to monitoring and enforcing providers' and workers' compliance with their legislative obligations, as well as powers relating to managing providers' market entrance, participation and exit. These powers include:

- The power to issue notices requiring action, including:
 - Required Action Notices, which compel providers to investigate or examine issues and report back to the Commission
 - Compliance Notices, which compel providers to take (or refrain from taking) specified actions to address non-compliance
 - Regulatory notices compelling any person to answer questions, give information or produce documents.
- The power to undertake on-site monitoring and investigation activities, with or without the consent of the provider, including powers relating to search and seizure of evidence. In limited circumstances, the Commissioner may exercise these powers without a warrant, for example to secure evidence until the relevant warrant is obtained.
- The power to impose conditions on a provider's registration and restrict or remove a provider's participation in the aged care sector, through varying, suspending or revoking a provider's registration. The Commissioner may also ban providers and workers from undertaking certain activities (or prohibiting them from participating in the aged care sector entirely).
- The power to issue pecuniary penalties (infringement notices) or to seek civil remedies (civil penalties, injunctions, compensation) in response to contraventions of the Act.
- The power to accept enforceable undertakings relating to providers' compliance with their obligations.
- The power to refer certain contraventions to the Director of Public Prosecutions to seek criminal penalties.

This expanded suite of powers works in conjunction with other key elements of the new regulatory model, such as the registration framework, to ensure that the Commission can monitor and enforce compliance with providers' and workers' obligations with the Act in a targeted, risk-proportionate way that safeguards older people and upholds their rights.

Preparing for a new Act

The Commission has a program of work underway to prepare the Commission to regulate following enactment of the Bill, and to help prepare the sector for the changes. This includes supporting providers and workers to understand their obligations and building awareness for older people, workers, providers and the community on what they can expect from the Commission. The Commission is working closely with the Department of Health and Aged Care to ensure that our



communication, education and engagement activities are joined-up, consistent and meet the needs of stakeholders.

Guidance materials for the sector

The proposed *Strengthened Quality Standards* will underpin many of the changes to the way that providers are expected to deliver care services. The Commission has already undertaken an extensive engagement and education program with the aged care sector by releasing in early 2024 a suite of explanatory resources on the draft *Strengthened Quality Standards*, including:

- *Draft Standards Guidance* – explains each standard, including practical steps that providers can take to achieve the outcomes under each standard. The Commission developed the Guidance in close consultation with the Department, the Australian Commission on Safety and Quality in Health Care and service providers. The guidance includes information for different service types and roles including governing bodies, providers, and aged care workers.
- *Draft Evidence Mapping Framework* – outlines evidence that the Commission will look for to assess provider performance against each standard. The Framework helps governing bodies, providers, aged care workers and older people prepare documents and answer questions we might ask.
- *Draft Audit Methodology* – describes each step of the audit process for providers and the Commission. The fully transparent Methodology helps providers understand what they could expect from the Commission audit process.

We consulted on the explanatory resources over 3 months in early 2024 and received extensive feedback from the sector. We will be incorporating this feedback and updating the Guidance in the coming months. We anticipate being able to release the next iteration of the resources in December 2024 and will finalise the Guidance once the Bill has received Royal Assent.

Updated Regulatory Strategy

The Commission published its updated [Regulatory Strategy 2024-25](#) in August 2024. It outlines how the Commission regulates under its current legislative framework, and how we are continuing to evolve our risk-based regulatory approach. This will align well with the Bill's emphasis on risk proportionate regulation focused at the provider level.

For example, we are implementing a provider supervision model under which all aged care providers are allocated a 'supervision status'. There are four supervision statuses which escalate in terms of the intensity of the Commission's intervention in responding to risk. The four levels of supervision, in order of increasing risk and resourcing, are: risk surveillance, targeted, active and heightened supervision.

All providers are subject to ongoing monitoring and risk surveillance all the time to protect and safeguard older people receiving aged care. In the absence of any specific risk or compliance



concerns, providers will have a 'risk surveillance' supervision status. Providers will be moved to any supervision status at any time based on the level of risk and provider's capacity and willingness to manage that risk. Providers subject to targeted, active or heightened supervision will be aware of this through the Commission's engagement with them. Details of the provider supervision model, including case studies of it in practice, are available in our [Regulatory Strategy 2024-25](#) and our [Sector Performance Report for Q4 2023-24](#).

The Regulatory Strategy will be updated ahead of the commencement of the Act, to ensure that our strategy aligns with the new regulatory framework in the legislation passed by the Parliament. The updating exercise will include a consultation process open to older people, providers and other stakeholders in the aged care sector, and we will communicate when the Regulatory Strategy is finalised so that people can understand our regulatory approach.

Next steps

When the Bill is given Royal Assent, the Commission will review all guidance already published about the draft *Strengthened Quality Standards* and other matters, to ensure that it reflects the Act passed by Parliament (with a further review to be undertaken when the Rules are finalised).

We will continue to publish comprehensive education and communication materials and engage across the sector in the lead-up to and following the Act's commencement, to assist older people and their advocates, providers and others to understand their rights and obligations, the role of the Commission, and how we will regulate under the new Act.

We will be updating our internal processes and systems to be ready for the new regulatory framework and to ensure a smooth transition for stakeholders including older people and aged care providers and workers. Information about this work will be published on the Commission's website as it is finalised.



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